

***The Prisons Act 1958:  
Queensland's missed  
opportunity in prison reform.***

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28 September 2015

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## Abstract

After the only change in government in Queensland for more than 40 years, 1957 marked a chance to review the state's prison system that had been operating for more than 60 years under the *Prisons Act 1890*. While the new Government consulted other jurisdictions to 'modernise' its prison legislation, in the end the *Prisons Act 1958* contained many regulations that were either extracted straight from the previous Act or were designed simply to enhance security or prison administration. Few of the changes were in the prisoners' favour or designed to assist prisoner rehabilitation.

Even though it was possible for some clauses of the *Prisons Act 1958* to be exploited to initiate rehabilitative reform, Queensland's prison administrators considered prisoner rehabilitation could be adequately addressed by either prison employment or improved education. Ultimately, the administrators' primary focus, in the drafting and implementing of the Act, was on improving security and administration. The need to address prison overcrowding meant prison infrastructure did improve after 1958, and this resulted in some archaic regulations becoming obsolete. However, the Queensland prison landscape generally retained its Victorian style prisons, and these remained bastions of outdated attitudes and regulations.

During the drafting and after the implementation of the *Prisons Act 1958*, the stated policy of the Queensland prison system was to encourage rehabilitation. Contemporary penological and criminological theories emphasised the efficacy of rehabilitative practices. Yet in Queensland there continued to be a disparity between policy and practice. Queensland's prisons operated as they had in the past, with outdated infrastructure and regulations. Rehabilitation programs were a secondary consideration and their status did not improve significantly after the implementation of the new Act. This study will show that even though there was a real need for a genuine commitment to rehabilitation, the *Prisons Act 1958* was Queensland's missed opportunity in prison reform.

# Contents

Certificate of authorship and originality .....	ii
Copyright statement. ....	ii
Abstract .....	iii
Contents.....	iv
List of Tables and Illustrations .....	vii
Acknowledgements .....	viii
Abbreviations .....	ix
Explanatory note regarding Queensland's prison service .....	x
Introduction .....	xii
History of punishment .....	xiv
Early use of imprisonment .....	xvi
Crime as a disease .....	xviii
Silent and separate systems .....	xix
Non-judicial punishments.....	xxi
Background of the 1958 Prisons Act.....	xxii
Conclusion.....	xxviii
Methodology .....	xxxix
Rationale.....	xxxix
Methodology .....	xxxiv
Literature Review .....	xli
Introduction to Queensland's prisons.....	xlvi
Early attitudes to prison management .....	xlvi
Early management of prisoners in Australia .....	xlix
Prison design in Australia.....	l
Some significant prison figures .....	li
Chapter 1 Influences and Issues: a Thematic Overview of Queensland Prison	
History .....	1
Prison history.....	2
Infrastructure .....	8
Reform through deterrence.....	18
Improve the staff standard .....	20
Officer recruitment .....	22
Spare the rod.....	24
Hard labour.....	25
The start of change .....	27
Conclusion.....	31
Chapter 2 Theory and policy .....	33
Theoretical schools.....	35
Penology.....	44
Open institutions.....	45
Prison designs.....	49
Work as rehabilitation .....	61
Indeterminate sentences .....	64
Classification .....	66
Punishment .....	69
Rehabilitation options.....	71
Getting the right staff .....	74
Who provides the oversight.....	75

Conclusion.....	76
Chapter 3 Behind closed doors.....	79
Prison disruptions .....	80
Dangerous prisoners .....	82
Problematic prison management .....	86
Going soft on crime.....	94
The prison farm experiment .....	95
Problems inside .....	97
No sympathy given.....	98
Unreliable evidence .....	100
The unions have a say .....	102
Rehabilitate but get tough.....	103
Don't question the decision .....	105
Conclusion.....	108
Chapter 4 Devil's in the detail: <i>Prisons Act 1958</i> .....	111
Historical background .....	112
Legislation introduction and powers of the Governor in Council.....	115
Powers and duties of the Comptroller-General of Prisons .....	119
The Law of Prisons.....	120
The Discipline of Prisons .....	126
General provision in the Act .....	138
Legislation comparisons and contributions .....	140
Conclusion.....	144
Chapter 5 Policy on the prison floor .....	145
Prison administrators.....	145
Staff discontent.....	149
Bending the rules.....	150
Change from the outside in .....	151
Oversight .....	154
Prisoner rehabilitation .....	156
Punishments applied.....	158
Prisoner education .....	171
Prisoner employment.....	172
Parole.....	174
Remission .....	177
Conclusion.....	177
Chapter 6 Managing the possibilities of reform .....	179
Rehabilitation in the background .....	180
The Comptroller-General's stance .....	185
Staff training.....	188
Prison management issues.....	196
Prisoner support in the prison.....	198
Prisoner Education .....	201
Prison labour.....	204
Release programs .....	207
Parole for the few .....	208
Community involvement.....	210
Conclusion.....	214
Chapter 7 Change is in the air, but is it in the prison. ....	216
The 1969 Amendment Bill .....	216

The Comptroller-General's stance hardens .....	219
Prisoner's Self Help group .....	220
Classification, parole and staff for prisoner programs .....	221
Periodic detention programs.....	225
Staff training.....	227
Prison labour.....	231
Prison upheaval .....	232
The Bredhauer inquiry.....	235
Conclusion.....	240
Conclusion.....	242
Bibliography .....	250
Books.....	250
Departmental Annual Reports .....	258
Hansard, State Library of Queensland (SLQ) .....	262
Internet.....	263
Journals.....	265
Legislation .....	268
Newspaper Articles .....	270
Other Documents.....	280
Papers .....	281
Queensland State Archives.....	282
Theses .....	291
Annex A .....	293
Legislation comparative table .....	293

## List of Tables and Illustrations

Table 2.1 Prison populations .....	57
Table 2.2 Indeterminate sentences. ....	66
Table 5.1 Prisoner education enrolments in Wacol prison.....	172
Table 5.2 Prisoner employment at Townsville prison.....	173
Table 5.3 Discharge and parole data .....	175
Table 6.1 Annual statistical data .....	209

Figure 1.1 Prisoners' Barracks .....	9
Figure 1.2 Petrie Terrace Prison.....	9
Figure 1.3 Layout of St. Helena Prison. ....	10
Figure 1.4 Plan of Brisbane Prison.....	11
Figure 1.5 HM Prison Thursday Island .....	12
Figures 1.6 and 1.7 HM Prison Townsville, Stewart's Creek .....	12
Figure 1.8 Aerial view of Wacol prison .....	15
Figure 1.9 Wacol accommodation cells in the background .....	16
Figure 1.10 Entrance of Rockhampton Prison in 1913 .....	16
Figure 1.11 HM Prison Brisbane.....	17
Figure 2.1 Palen Creek Prison Farm 1934 .....	48
Figure 2.2 Influential persons in prison design .....	53
Figure 2.3 Prison designs .....	54
Figure 2.4 Brisbane Prison (Boggo Road) .....	55
Figure 2.5 Townsville Prison Stuart Creek .....	55
Figure 2.6 HM Prison Brisbane (Boggo Road) c. 1988 .....	59
Figure 2.7 HM Prison Farm Wacol .....	59
Figure 2.8 Prison cell in HM Prison Wacol .....	60
Figure 2.9 Cell window in the Security Patients Hospital .....	60
Figure 4.1 Legislation tree of influence .....	114
Figure 5.1 Significant Prison Administrators 1952–1974.....	148
Figure 5.2 Exercise yards and shelters in Brisbane Prison c. 1950.....	152
Figure 5.3 Average periods of half rations imposed in 1956 to 1959 .....	160
Figure 5.4 Number of offences in Queensland prisons .....	161
Figure 5.5 Number of cases of insubordinate conduct or language in each prison.....	162
Figure 5.6 Number of cases of punishment in Queensland prisons .....	163
Figure 5.7 Additional sentences applied in Queensland prisons.....	165
Figure 5.8 Number of applications of separate confinement in Queensland prisons .....	166
Figure 5.9 Number of cautions given in Queensland prisons .....	167
Figure 5.10 Totals of key values .....	167
Figure 5.11 Numbers of offences and punishments at Brisbane prison.....	168
Figure 5.12 Number of escapes or attempted escapes in Queensland.....	170
Figure 7.1 Brisbane Prison Riot Helmet c1970s – late 1980s.....	234

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## Abbreviations

AIF.	Australian Imperial Force.
CG.	Comptroller-General of Prisons.
CIB.	Criminal Investigation Branch.
DOB.	Date of Birth.
DPS.	Department of Psychiatric Services.
DSO.	Distinguished Services Order.
GMO.	Government Medical Officer.
NSW.	New South Wales
NZ.	New Zealand.
QCSA.	Queensland Corrective Services Academy.
QLD.	Queensland.
QPD.	<i>Queensland Parliamentary Debates.</i>
<i>QPP.</i>	<i>Queensland Parliamentary Papers.</i>
QSA.	Queensland State Archives.
QSSU.	Queensland State Services Union.
<i>QVP.</i>	<i>Votes and Proceedings of the Legislative Assembly.</i>
SLQ.	State Library of Queensland.
SIPD.	Society for the Improvement of Prison Discipline and for the Reformation of Juvenile Offenders.
UK.	United Kingdom.
VJ.	Visiting Justice appointed under the Prisons Act.

## **Explanatory note regarding Queensland's prison service**

There has been slippage in the usage of prison related terms over time and between users and locations. To assist the reader these terms have been included here with a brief explanation.

The terms for places of detention include prison hulk, community detention facilities, open institutions, prisons and police gaols. The police gaols are different to police lock ups and are not detailed in this thesis. Suffice to say that both are controlled by the police for the short term detention of offenders.

Two of Queensland's prisons had an official name and a local label. These were HM Prison Brisbane which was also referred to as Brisbane Prison or Boggo Road and HM Prison Townsville also referred to Townsville prison, Townsville prison Stuart Creek or Stuart Creek prison.

Prisoner	The term prisoner and offender were used interchangeably during the period under review in this thesis.
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Prison staff operated within a strict rank structure but some redundant titles continued to be used informally.

Prison officer.	A base grade staff member responsible for the security and discipline of prisoners. They underwent an initial probationary period before being formally appointed. At various times the position was also referred to as warder, gaoler, turnkey or correctional officer. Initially the terms warder and gaoler were used for the person in charge but later they referred to any prison officer.
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First Class Prison Officer	This was a rank introduced during the mid 1900s as a progression following successful examination. There was no line responsibility but some of the more sensitive tasks/posts were undertaken by this rank.
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Senior Prison Officer.	The title and rank of first line managers over prison officers.
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Chief Prison Officer.	The title and rank of second line managers over prison officers.
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Deputy Superintendent.	The title and rank of third line managers over prison officers and generally in charge of a section or division of a prison.
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Superintendent.	The person in charge of a prison.
Deputy Comptroller-General.	Assistant to the Comptroller-General and for many years held the same level/authority as prison Superintendents.
Comptroller-General.	The title of the departmental head of Queensland prisons.

# Introduction

Rupert Cross maintained that ‘a change to the penal system can properly be described as an endeavour to achieve penal reform if it is aimed directly or indirectly at the rehabilitation of the offender, or if its object is to avoid, suspend or reduce punishment on humanitarian grounds’,<sup>1</sup> and most people would at least take the word ‘reform’ to mean ‘improve’ in some manner. However, the perception of improvement is subjective and dependent on the philosophical and political outlook of the individual. What might be seen by some as an ineffectual policy initiative could be regarded by others as a positive one with any subsequent reform being viewed alternatively as either progressive or regressive, depending on the individual’s point of view. It is the contention of this thesis that reform should be gauged in terms of improvements to prison conditions that enhance prisoner rehabilitation opportunities within a secure environment, though that might not necessarily be the stated purpose of imprisonment at any given time. The purpose of the thesis is to examine the *Prison Act 1958*, first to understand why it was necessary, and then to assess its influence on the history of prison reform in Queensland

Most people are exposed at some time or other to different arms of the criminal justice system and places of detention for criminals have become part of today’s society. These places of detention are given various names including prisons, gaols, correctional centres, juvenile detention centres and community custody centers. Prisons have not always existed and it is the development of this form of punishment that has produced the method of incarceration that is used today. Methods of punishment have been observed, recorded and analysed for many years and the history of prisons in various countries has been documented in numerous texts. There is also research that considers prison design and architecture, punishments, criminology and prison

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<sup>1</sup> R Cross, *Punishment Prison and the Public*, 1971, Stephens & Sons, London, p. 46.

management in an Australian context.<sup>2</sup> At the same time, there is a decided lack of research on the history of Queensland's prisons in the post convict to pre-1970s era, despite the work of Lincoln and McGuire which will be discussed in the literature review.<sup>3</sup> It is this gap in the knowledge that the thesis will attempt to address, by investigating why the reforms proposed in the 1950s were so desperately needed and why they then took decades to implement.

Thus the research questions are:

Why, by the 1950s, was the Queensland prison system in need of reform, and can any subsequent reforms be attributed to the *Prisons Act 1958* and the period following its implementation?

While it is acknowledged that achieving significant change is a slow process it could be anticipated that visible signs should be apparent within ten years of the implementation of a change process. This thesis will examine the decades following the enactment of the *Prisons Act 1958* up to 1974 when Bredhauer conducted his second review of Queensland's prisons. It will attempt to determine whether there was significant rehabilitative reform in this area and if so, how much of it can be attributed to the change in Queensland's prison legislation.

Using an archival historical approach, the research will consider the

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<sup>2</sup> Significant publications in these areas are I Lincoln, 'The punishment of crime in Queensland, 1860-1890', BA Hons. Thesis, University of Queensland, 1966; JS Kerr, *Out of Sight, Out of Mind*, Ervin Gallery, Sydney, 1988; JS Kerr, *Design for Convicts*, Star Printery, Erskineville, 1984; L Connors, 'The birth of the prison and the death of convictism: the operation of the law in pre-separation Queensland 1839 to 1859', PhD Thesis, University of Queensland, 1990; J McGuire, 'Punishment and Colonial Society: A History of Penal Change in Queensland 1859 - 1930s', PhD Thesis, University of Queensland, 2001; S O'Toole, *The history of Australian Corrections*, University of New South Wales Press, Sydney, 2006; F Rinaldi, *Australian Prisons*, F & M Publishers, Canberra, 1977 and; C McCartney, R Lincoln & P Wilson, *Justice in the Deep North*, Bond University Press, Gold Coast, 2003.

<sup>3</sup> I Lincoln, 'The punishment of crime in Queensland, 1860-1890', BA Hons. Thesis, University of Queensland, 1966; J McGuire, 'Punishment and Colonial Society: A History of Penal Change in Queensland 1859 - 1930s', PhD Thesis, University of Queensland, 2001.

incarceration of offenders in Queensland, examine the influence on policy of community attitudes towards prison management, as well as the penological and criminological bases (or lack thereof) for policy decisions. But to understand the progression of punishment from revenge, to retribution, to rehabilitation, we must briefly consider the reasons for and application of the different punishment methods. Traditions run deep and archaic practices can be passed from one practitioner to the next with the original purpose of the practice being lost in transmission. For example, the idea of work being assigned to prison inmates originated in the workhouse, to teach the poor employable skills and to recoup expenses. Useful work continued to be a feature in bridewells and subsequently was passed into prisons. In prisons, for a period of time, it transformed into punishment for the sake of punishment, like the tread mill or the shot drill. However, by the time we reach the era under consideration here it had changed again and work was considered rehabilitative and supposed to 'be of service to the prisoner on their discharge'.<sup>4</sup>

### ***History of punishment***

Prisons have become a crime control measure and the first record of crime control was the criminal code documented in Babylonia, 4000 years ago. From this time prisons developed slowly over the next 3700 years. Authors like Abbott in *Rack, rope and red-hot pincers*, have said that punishment between the twelfth and sixteenth centuries was aimed at targeting the flesh through various forms of corporal punishment; including public whipping (corporal punishment still had a place in the *Prisons Act 1958*).<sup>5</sup> The public spectacle may have been intended to show that justice was seen to be done and to provide a deterrent to other would-be offenders; however, the publicity and mob mentality that derived from these events tended to normalise the suffering of others and provide community sanction for punishments not prescribed by the courts.

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<sup>4</sup> Queensland Government, *Prison Regulations of 1959*, regulation 419.

<sup>5</sup> G Abbott, *Rack, rope and red-hot pincers*, Bodman, London, 1993, pp. 8, 126; Queensland Government, *Prisons Act 1958*, section 35.

The population's attitude towards death during this period, in England and Europe, was tempered by centuries of conflict, famines and pandemics. Morris and Rothman, O'Toole, as well as Falcon and Tella, identify that penology was influenced by shifting demographics,<sup>6</sup> for instance in the fourteenth and fifteenth centuries when many peasants and serfs left the land and moved to the more densely populated villages and towns. Given the regular exposure to pain, suffering and death during that time, the treatment of those who offended against the common good was always likely to be harsh. A study by Gabriele Gottlieb into the use of capital punishment between 1750 and 1800 found that it was used as a form of social control and that Philadelphia experimented by substituting public labour for capital punishment. This, eventually, changed to imprisonment at hard labour.<sup>7</sup> Offences against slaves, including murder, were treated as property offences with restitution to the master being ordered, while it was accepted, to a certain degree, that offences by slaves received extra-legal punishments, including the death penalty, administered by masters, overseers and other whites.<sup>8</sup> It can be readily understood how this produced a desensitisation to the pain of others and a belief that the infliction of pain was righteous.<sup>9</sup> Another study by Katrina N Stitz into capital punishment in North Carolina found that executions were intended to terrorise those observing by the use of different execution methods. Seitz cites Robert Johnson as saying that 'the attending public viewed the condemned as socially marginal and with that, little concern was expressed regarding how this "societal scapegoat" was to be dispatched'.<sup>10</sup> It was considered by Seitz that the community believed it was a social and religious necessity for the condemned to suffer by physical

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<sup>6</sup> N Morris & DJ Rothman, *The Oxford History of the Prison*, Oxford University Press, Oxford, 1998; S O'Toole, *The history of Australian Corrections*, University of New South Wales Press, Sydney, 2006, pp. 5 - 8; Y Falcon and MJ & F Tella *Punishment and Culture: A right to punish?* Martinus Nijhoff, Boston, 2006, pp. 52 - 53.

<sup>7</sup> G Gottlieb, *Theater of Death: Capital Punishment Early America, 1750 - 1800*, Doctor of Philosophy thesis, Pittsburgh, 2005, pp. 233 - 234..

<sup>8</sup> *ibid.*, p. 15.

<sup>9</sup> Also refer to M Ignatieff, *A just measure of pain: the penitentiary in the industrial revolution, 1750-1850*, Macmillan, London, 1978.

<sup>10</sup> KN Seitz, 'The transition of methods of execution in North Carolina: A descriptive social history of two time periods, 1935 & 1983', PhD thesis, Virginia Polytechnic Institute and State University, Virginia, 2001, p. 15.

mutilation or any other means.<sup>11</sup> The existence of this mentality could provide background reasons for the ‘non-judicial’ treatment of offenders while in prison, which will be referred to shortly.

While labour was in oversupply, mutilation or death was common as a punishment; however, when this supply dwindled, the punishment became more of an economic consideration. In the European countries, the eventual replacement of the galleys by sailing ships resulted in offenders being left in the prisons or transported to provide labour to various colonies.<sup>12</sup>

### ***Early use of imprisonment***

The early alternative to galleys was imprisonment; previously this was primarily used to hold offenders until trial and the subsequent physical punishment that would be inflicted. Grunhut said in *Penal Reform* that the community’s fear of the large numbers of dislocated peasants, debtors and vagabonds resulted in places called Bridewells being created.<sup>13</sup> These Bridewells were intended to reform the person from their idle ways and provide some welfare.<sup>14</sup> As time progressed, Bridewells were attached to prisons, blurring the difference in conditions between prison and Bridewell. Eventually similar offenders and conditions could be found in either the prison or the Bridewells, both of which became a popular sentencing option.

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<sup>11</sup> *ibid.*, p. 15.

<sup>12</sup> J Thorsten Sellin, *Slavery and the penal system*, 1976, Elsevier scientific publishing, New York, pp. 53, 92; Y Falcon & M.J & F Tella, *Punishment and Culture: A right to punish?* Martinus Nijhoff, Boston, 2006, p. 53.

<sup>13</sup> M Grunhut, *Penal Reform*, Clarendon Press, Oxford, 1948, pp. 15, 24 - 25; also see C Harding B Hines, R Ireland & P Rawlings, *Imprisonment in England and Wales*, Croom Helm, London, 1985, pp. 65 - 69; R Evans, *The fabrication of virtue*, Cambridge University Press, Sydney, 1982, pp. 21, 63; P Bernie *The origins and growth of criminology*, Dartmouth, Sydney, 1994, pp. xii 3, 17; J Semple, *Bentham’s prison*, Oxford University Press, Oxford, 1993, p. 63; EA Fattah, *Criminology Past, present and future. A Critical overview*, MacMillan Press, London, 1997, pp 65 - 69, 198.

<sup>14</sup> S O’Toole, *The history of Australian Corrections*, University of New South Wales Press, Sydney, 2006, pp 7- 8; This is consistent with Spierenberg’s comments about the repression of the vagabonds and beggars in the workhouses through the use of the poor laws as a form of social control against these groups. N Morris & DJ Rothman, *The Oxford History of the Prison*, Oxford University Press, Oxford, 1998, p. 281; Reiman states that even today the criminal justice system is ‘not to punish and confine the dangerous and criminal, but to punish and confine the poor who are dangerous and criminal’. J Reiman, *The Rich Get Richer and the Poor Get Prison*, 6<sup>th</sup> edn. Allyn and Bacon, Sydney, 2001, p. 143.



Through this blurring, work was introduced inside the prison, however, the nature of the work was to alter over time as different theories and economic pressures were applied.

With increased use of imprisonment, overcrowding became a problem that caused concern because of the potential for diseases and increased expense. A method of dealing with overcrowding that went in and out of favour was transportation. Sentenced convicts from England were sent to many locations, with the two main destinations being North America and New South Wales.<sup>15</sup> After the revolution and before the transportation to New South Wales, the use of floating hulks was instigated to relieve the resultant overcrowding.

Many books have been written about the English system of transportation and WH Oldham states in *Britain's convicts to the colonies* that it was increasingly resorted to because of the fear of widespread disease in the prisons.<sup>16</sup> While other locations were considered, and in some cases tried, New South Wales received approximately 160000 mainly male offenders of varying ages during the period that transportation was used. This relieved the overcrowding crisis and it was during this time that reform in England was occurring in the areas of criminology, prison design and the subsequent treatment and management of offenders.<sup>17</sup>

The use of prison hulks from 1776 was intended as a short-term solution prior to transportation to New South Wales, however, this lasted until 1857. Charles Campbell in his book *The Intolerable Hulks, British shipboard confinement 1776 - 1857*, explains how the reconstruction of Newgate Prison was to allow

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<sup>15</sup> S O'Toole, *The history of Australian Corrections*, University of New South Wales Press, Sydney, 2006, p. 29; Convicts were sent to America until the revolution, when O'Toole states it was decided that the Americans did not want the outcasts from England in the form of convicts, but preferred to buy slaves from Africa whom they could then own.

<sup>16</sup> WH Oldham, *Britain's convicts to the colonies*, Library of Australian History, Sydney, 1990, p. 122.

<sup>17</sup> *The State of the Prisons* written by John Howard and first published in 1777 was based on his findings during tours of hulks and goals in England and Europe. Howard reported on the prison conditions relating to health, hygiene and treatment from a humanitarian perspective and his reports brought about many changes. J Howard, *The State of the Prisons*, Dent & Sons, NY, 1929, pp. 253 - 256.

for the implementation of the silent and separate systems,<sup>18</sup> unfortunately this coincided with the closure of America as a destination for transported convicts. The result was overcrowding and a greater reliance on prison hulks both in England and later in Australia to alleviate the overcrowding in the prisons.<sup>19</sup>

### ***Crime as a disease***

By attempting to understand the cause of crime, criminologists believed that it was then possible to prevent further occurrences, either by the individual or others. These beliefs were subsequently given practical application in the prisons under the authority of legislation. The adaptation or rejection of the prevalent beliefs is then evident in the rewrites of the legislation. Several criminologists attempted to explain the causation of criminal behaviours and Manheimm in *Pioneers in Criminology* provides examples. Manheimm explains that one of these earlier criminologists, Cesare Lombrose, published '*Le Crime: Causes ut remédes*' which made several assertions that those with certain physical identified characteristics were more inclined towards crime.<sup>20</sup> Garland, as cited by Bernie in *The origins and growth of criminology*, considered that Lombrose was naïve and uninformed about offenders and the institutions that dealt with them; however, Lombrose's ideas were not considered radical or against prevailing ideologies at the time.<sup>21</sup> These ideas contributed to society's thinking, as well as the reforms in prison practice and design that were to occur and eventually flow on to Australia and Queensland. In the short term in England, more immediate issues relating to overcrowding required attention before reform could be considered.

However, as Rothman says in his chapter on 'Perfecting the Prison' in *The Oxford history of the prison*, 'notions of total isolation, unquestioned obedience, and severe discipline became the hallmarks of the captive

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<sup>18</sup> C Campbell, *The Intolerable Hulks. British shipboard confinement 1776-1857*. Heritage, Bowie, 1993, pp. 30, 42.

<sup>19</sup> J Finger, *The St Helena Island prison in pictures*, Boolarong, Brisbane, 1988, p. i.

<sup>20</sup> H Manheimm, *Pioneers in Criminology*, Patterson Smith, New Jersey, 1973, p. 293.

<sup>21</sup> P Bernie, *The origins and growth of criminology*, Dartmouth, Sydney, 1994.

society'.<sup>22</sup> It appears that it was considered that those who were unable to conform to societal norms needed to have their behaviours and attitudes modified because they were diseased in some way and this disease could be transmitted to others. This modification was then attempted by enforcing standards of behaviour that were more severe than those in the general community. The aim of this treatment was to provide deterrence and the opportunity of time for reflection. This 'opportunity' was provided in the form of either the silent or the separate systems.

### ***Silent and separate systems***

The two main systems of behaviour modification utilised in western society prisons at the time were the silent and separate systems, remnants of which can be seen in the *Prisons Act 1958* in the form of single cells and control of noise while in the cells.<sup>23</sup> Various authors, including Evans, as well as Morris and Rothman, have explained that in the silent system total silence was observed through continuous isolation. Prisoners were kept apart from each other, they saw and spoke to no one unless it was organised by the governor. The other option was the separate system where the prisoners were allowed to associate during the day at work and exercise but not speak. They were then separated during the night in individual cells where they were, again, not allowed to talk to each other.<sup>24</sup>

A modern example of this is provided in a 2003 article by Briggs, Sundt and Castellano entitled 'The effect of supermaximum security prisons on aggregate levels of institutional violence'. They found that segregating violent offenders and providing a regimented routine produced mixed results.<sup>25</sup> The removal and placement of selected prisoners in the supermaximum facilities

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<sup>22</sup> Rothman was the author of this chapter; N Morris & DJ Rothman, *The Oxford History of the Prison*, Oxford University Press, Oxford, 1998, p. 100.

<sup>23</sup> Queensland Government, *Prisons Act 1958*, ss. 18 (a) and 32 (j).

<sup>24</sup> R Evans, *The fabrication of virtue*, Cambridge University Press, Sydney, 1982, pp. 73, 119, 131, 132; N Morris & DJ Rothman, *The Oxford History of the Prison*, Oxford University Press, Oxford, 1998, p. 76.

<sup>25</sup> CS Briggs, JL Sundt & TC Castellano, 'The effect of supermaximum security prisons on aggregate levels of institutional violence', *Criminology*, vol. 41, no. 4, Nov 2003, p. 1365.

was intended to produce specific and general deterrence. Only 4.8 % returned to prison, which indicates specific deterrence was achieved for the individual, however general deterrence did not occur in any but one institution.<sup>26</sup> This study does not focus on other causal factors occurring at the time that might have influenced the outcome, for example changes in policy, conditions or movement of staff. The relationship of this information to this thesis is that building design, isolation and regimented procedures still are being used to modify behaviour in a modern supermaximum facility and this appears to be a reflection of what was occurring in Queensland at the time of the 1958 legislation.

In the 18<sup>th</sup> Century, criminality was considered to be a disease and contagious, so by 1790, classification was utilised to separate and isolate those who were infected. William Blackburn was an architect who designed a prison that used physical structure to assist in this separation. Morris and Rothman state that because the prisoner was considered to be a rational being, Blackburn intended that by separation he or she would be able to reflect on their crimes, come to their reason and self-regulate their behaviours.<sup>27</sup> This concept of separation can be traced through the subsequent prison legislation.

Pentonville prison, built in London in the 1840s and still in use, was seen as a desirable model and replicated in many countries including Australia and subsequently Queensland. Its design was based on the idea of Jeremy Bentham's panopticon, which had a central hub from which the warder could observe all of the prisoners. Morris and Rothman, in *The Oxford history of the Prison*, provide details about the physical structure of the prison that was built to allow for the implementation of the silent system. The guards patrolled to a system of time clocks and did not communicate with the prisoners. To further deter communication, any time the prisoners left their cells they wore a

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<sup>26</sup> *ibid.*, p. 1344.

<sup>27</sup> N Morris.& DJ Rothman, *The Oxford History of the Prison*, Oxford University Press, Oxford, 1998, p. 82; R Evans, *The fabrication of virtue*, Sydney, 1982, p. 146.

hood.<sup>28</sup> Finnane refers to some aspects of Queensland prisons and punishment in his book, *Punishment in Australian Society*, and describes prison design in Australia as being diverse. He argues that Bentham's panopticon design had been 'little used' while 'their [prisons] design emphasised solidity and minimalist functionality'.<sup>29</sup> It will be seen in this thesis that the separate system was included in Queensland's *Prison Act 1958* by the use of single cell accommodation and the regulations against unnecessary conversations.

### ***Non-judicial punishments***

In the 19<sup>th</sup> Century, society wished to be viewed as modern, advanced and compassionate; therefore the use of the death penalty and applications of corporal punishments on those suffering from the disease of criminality had to be reduced. America demonstrated this at the beginning of the 19<sup>th</sup> century by reducing the number of capital offences. However, the reduction in death sentences was replaced with certainty of punishment through imprisonment. The offender was still considered to be an 'enemy of the state' so the treatment of the offender during imprisonment was not a major concern to those in authority. Therefore, the unintended punishment could still be both harsh and brutal. An example is where Stephenson, who was a prison Superintendent in Queensland 1963 through to 1974 punished offenders under a minor charge that he had the power to determine, rather than the more serious major prison offence for a breach. The result was a loss of remission<sup>30</sup> that he knew had no avenues of appeal and which Finnane describes as a 'display in absolute power'.<sup>31</sup> This example occurred under the authority invested in the Superintendents through the *Prisons Act 1958*.

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<sup>28</sup> N Morris & DJ Rothman, *The Oxford History of the Prison*, Oxford University Press, Oxford, 1998, p. 92.

<sup>29</sup> M Finnane, *Punishment in Australian Society*, Oxford University Press, Melbourne, 1997, p. 54.

<sup>30</sup> Remission is early release from a sentence for good behaviour. The example given resulted in fourteen months early release being deducted, or it can be described as the prisoner serving fourteen months further before release.

<sup>31</sup> M Finnane, 'After the convicts: Towards a history of imprisonment in Australia', *Australian and New Zealand Journal of criminology*, vol. 24, issue 2, p. 115; Queensland Government *Prisons Act 1958*, s. 32 (10).

In an 1871 American court case, *Ruffin v. Commonwealth*, it was recognised in law that once sentenced, offenders had the status of ‘civil death’. This meant they had no civil right to complain about staff brutality or prison conditions. Gilmore notes in *States of Incarceration: Prisoners’ rights and United States prison expansion after World War II*, that until the 1960s many states still had laws allowing corporal punishment, while brutalisation by guards was either sanctioned or ignored.<sup>32</sup> There will be several discussions in Chapter 3 that will show a similar situation of assaults’ of prisoners occurred in Queensland’s prisons and investigators were hesitant to make findings in the prisoner’s favour.

### ***Background of the 1958 Prisons Act***

The thesis will briefly describe the history of Queensland prisons commencing in Chapter 1 where the background of convict settlement and prison discipline is discussed. It will be seen that there was a strict disciplinary approach to the management of prisons and this approach was to permeate through to prison administration at the time of the *Prisons Act 1958*. In the late 19<sup>th</sup> Century Queensland prison infrastructure was built using radial designs similar to those existing in England with small, high windows and perimeter walls, which in many instances assisted in the maintenance of the disciplinary regulations. Prison overcrowding was an ongoing issue with demand outstripping capacity on many occasions. When this occurred it will be seen that single cell occupancy for each prisoner became a luxury and it was replaced by several dormitories. This overcrowding did force the consideration of alternative options and the prison farm’s honour system was introduced. The eventual prison expansion program of the 1960s utilised different prison designs that will be discussed in Chapters 1 and 2 and it will be seen in subsequent chapters that these designs were not as conducive to regulations which originated in the earlier era. Therefore, some of the earlier applications of discipline will be discussed in this chapter to assist in the understanding of the discipline applied following the *Prisons Act 1958*. It is

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<sup>32</sup> KE Gilmore, ‘States of incarceration: Prisoners’ rights and United States prison expansion after World War II’, PhD thesis, New York University, New York, 2005, p. 4 - 6.

also necessary to consider what the prison administrators wanted from the staff employed in the prisons, many of who possessed a poor education or were post war migrants, as it was believed by some members of Parliament that these staff would contribute to prisoner rehabilitation and prison reform. Following this prison historical background it is appropriate to consider the contemporary theories and policies that were available for consideration when the Prisons Act was being drafted.

The practices that were embedded in the *Prisons Act 1958* appear to primarily follow the classical theories of punishment with some intermingling of positivist treatment practices, therefore; some of these will be discussed in Chapter 2 as their application in Queensland's prisons will be seen in several instances throughout this thesis. In contrast, England and the United States, leading up to this period, had primarily followed the positivist school, through the provision of treatment models, whilst starting to adopt scientific models.<sup>33</sup> The effectiveness of these treatment and scientific models was being questioned and opinion was shifting towards a doctrine of 'nothing works'. It could be argued that the preferred method of prison management was termed 'administrative penology' and this will be discussed in the chapter as it applied the fundamental perspective of custody, security and discipline. While the use of the separate system, through single cells, can be seen to work within a secure and disciplined environment, overcrowding forced open custody options to be considered and these had the potential to open new avenues for prison management and rehabilitative reform.

Overcrowding also necessitated a building program in Queensland when new prison designs were used. These and the pre-existing designs will be discussed as the infrastructure could help or hinder prison management and the reform process. To provide some cost savings in the building program prison labour

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<sup>33</sup> For a discussion on what constitutes treatment or scientific models refer to GB Vold, & TJ Bernard, *Theoretical Criminology*, 3<sup>rd</sup> edn, Oxford University Press, Oxford, 1986 and MG Maxfield, & E Babbie, *Research methods for Criminal Justice and Criminology*, Wadsworth, Melbourne, 1995.

was used under the guise of rehabilitation. The policy of prison labour will be considered in Chapter 2. It will subsequently be seen that its intended use was a recurring problem during the period under review and was interpreted differently by politicians and prison administrators. Another policy used in prison management was the classification of prisoners into different homogeneous groups; this will be discussed in Chapter 2, and considered further in later chapters, as the classification that was applied to a prisoner affected their privileges and placement. The classification was based on several factors including the prisoners' institutional behaviour which was recorded through behavioural reports and breaches of discipline when punishments were applied. The recurring theme of punishment will be discussed, along with policies for prisoners to demonstrate positive institutional behaviour through various opportunities including work, education and parole. To facilitate these within a modern prison management regime it was recognised that the staff employed in the prisons needed to possess certain qualities and receive professional development, this policy set the tone for training and industrial issues that arose during the period under review.

At the same time that there were these and other models available for prison management the media was providing the community with reports of prison disturbances occurring locally and overseas. Chapter 3 considers the community's exposure to prison management, how it was portrayed in the media including the dangerousness of prisoners and if this influenced any changes during the development of the *Prisons Act 1958*. The community became aware of lapses in prison management practices when investigations, criminal proceedings for breaches of prison security, or public service appeals were reported in the media. Several of these will be discussed as their findings, while not generally making recommendations in the prisoners' favour that would appear lenient or soft, reflected on inadequate security practices in the prisons and executive expectations. It will be seen that as a result of the negative findings, additions were made to the drafts of the *Prisons Act 1958* that dealt with the behaviour and duties of prison staff.



Queensland's *Prisons Act 1958* is considered in detail in Chapter 4 where the chapter follows as closely as possible the same section sequence and groupings as the Act. The late 1950s was a period when Queensland underwent a transition after 26 years of Labor Government. The change to a conservative Country-Liberal government on 3 August 1957, and the subsequent review of legislation and administrative practices, meant that the era was ripe for reform in any area under government control, including the Prisons Department. The new Premier, Frank Nicklin, appointed Alan Whitside Munro as Attorney General and he was given responsibility for the prison portfolio. The incoming government wanted to renew what was considered to be outdated legislation and a prime example of that was the Prisons Act that had been in force since 1890 with only some minor amendments. In a speech entitled 'The problem of Prisons', Munro stated that the old idea of prison administration was to keep prisoners behind walls and that it was time to give greater thought to rehabilitation and moral redemption.<sup>34</sup> In line with this thinking he initiated the Prisons Bill on the 20 November 1958<sup>35</sup> that he said would be a 'modernisation' of existing laws.<sup>36</sup> The Act would also be influenced by the legislation from interstate and New Zealand and it can be hypothesised that other legislation was examined to provide consistency in punishment practices across the various adjacent jurisdictions. Alternatively, it may have been a matter of expedience, responding to the political pressure to honour an election promise to implement reforms as soon as possible after the change of government. The latter option appears to be the more likely, given the speed of initiation, review, discussion and introduction of legislation.

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<sup>34</sup> AW Munro, 'The problem of prisons', based on his reference to Mr. Kerr and Mr Smith as being in charge it is thought that this speech was delivered in approximately 1958. QSA., 13257/1/31, item 293136.

<sup>35</sup> Hansard, Prisons Bill, Initiation in Committee, 4/3/1958 – 3/12/1958, p. 1485; Draft notes for the Minister to introduce the Prisons Bill. QSA., PRV 9251/1/33.

<sup>36</sup> Hansard, Prisons Bill, Initiation in Committee, 4/3/1958 – 3/12/1958, p. 1486; AW Munro, Confidential document for Cabinet regarding approval for the introduction of a Bill to consolidate and amend the law relating to prisons and the custody of prisoners, 30 Oct. 1958. QSA., PRV9251/1/33, JUS W63, item 20378.

Chapter 4 will discuss how the new legislation redefined hard labour to eliminate outdated practices like the treadmill, while allowing for other forms of labour generally performed in the wider community. It will consider the expectation that public institutions should strive to reduce the burden on the public purse; therefore, the priority for prisoner labour was directed towards funds generating activities rather than therapeutic interventions. The rationalisation was that the abilities learnt in gaol could help reduce recidivism if the skills assisted the prisoner in gaining employment upon release.<sup>37</sup> The examination of the Act in this chapter will show that some improvements included authority to employ specialist staff to assist with the prisoners' physical and mental health, examinations for the employment or promotion of prison officers, the segregation of youthful or troublesome offenders and payment for prisoners who had been injured while performing prison labour. There was also an expansion of the list of offences by prisoners and other persons.<sup>38</sup>

One area that the Government did believe required immediate attention was improving the professional capacity of prison staff. There are two methods of changing employee sub-culture behaviours; one is to retrain existing staff who are willing to change, or to employ new staff with the desired behaviours. The second alternative allows the numbers of older staff to be proportionately reduced so that the critical mass is in favor of the new order. Years earlier in 1937, EM Hanlon, Queensland's Secretary for Health and Home Affairs, stated that, 'In addition to improving the prison conditions it is essential that we improve the prison officials'.<sup>39</sup> While the goal of classical penology is to regulate and apply punishment consistently, the reality across Queensland was

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<sup>37</sup> R Semmens, 'Issues for Prison Education in Australia', *Convergence*, 1993, vol. 26, issue 3.

<sup>38</sup> Hansard, Prisons Bill, Initiation in Committee, 4/3/1958 – 3/12/1958, pp. 1486-8; Draft notes for the Minister to introduce the Prisons Bill. QSA., PRV 9251/1/33; S Kerr, Letter to the Under Secretary, Department of Justice, 'Re: Proposed New Prisons Act', 16 Sept. 1958, p. 2. QSA., JUS W63, item 20378; An examination on employment and again prior to appointment was proposed in the first draft of the Prison Bill but then omitted from the second draft by John Seymour the Parliamentary Counsel and Draftsman, J Seymour, Letter to Under Secretary, Department of Justice, 'Re: Prisons Bill', 11 Oct. 1958, p. 3. QSA., PRV 9251/1/33.

<sup>39</sup> Hansard, Prisoners Parole Bill. Initiation in Committee. 11/8/1936 - 11/11/1937, p. 1012.

that its application had varied according to local conditions and personalities. McGuire found that until the 1930s, punishment regimes were inconsistent between institutions.<sup>40</sup> It is reasonable to suppose that this continued beyond that time and this possibility will be examined in Chapter 5.

Chapter 5 provides background to contextualise prison management practices to 1974 that will be discussed in the remaining chapters. This commences with an introduction to some of Queensland's prison administrators, because they were instrumental in the implementation of the Prisons Act. Part of the implementation process included the training of base level prison staff to prepare them to eventually replace those senior administrators. The chapter also will consider how prison staff at both the base and senior levels applied the regulations and this will be presented in tabular form to depict punishment trends. These trends will be discussed to determine if there were correlations that may be attributed to less apparent factors, including the predispositions of various prison administrators. A brief discussion will occur to set the scene for what prison administrators considered to be the viable rehabilitative options of education and work. There will also be an explanation of the release options of parole and remission, in terms of the benefits and risks for prisoners, as well as the Prisons Department, especially their use in the decade following the enactment of the 1958 Act, which will be discussed in Chapter 6.

A brief synopsis of the 1964 amendments to the 1958 Act show that they allowed the arrest and charging of escapees under the Prisons Act, authority to approve leave of absence for various reasons including finding employment prior to discharge, and regulations for the soon to open Security Patients Hospital. While there were no legislated changes to prison labour, it will be seen in Chapter 6 that this contentious issue dominated parliamentary debate. In the 1960s and 1970s some progress was being made in the area of staff training, and this chapter discusses the programs that were being implemented, but staff problems persisted. These resulted in tense industrial

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<sup>40</sup> J McGuire, 'Punishment and Colonial Society: A History of Penal Change in Queensland 1859 - 1930s', 2001, PhD thesis, University of Queensland, Brisbane, pp. 147, 157.

relations that grew more problematic towards the end of the era under consideration.

Tensions were not restricted to staff, as community welfare groups that entered the prisons also were at loggerheads with prison administrators and other outside parties questioned the ability of the administrators to implement reform. Problems were to continue and within another five years further amendments to the Prisons Act were required.

By 1969 it was considered necessary to introduce changes to the Prisons Act 1958 that would improve the standard of prison staff, allow the employment of programs staff to assist prisoners, allow for the regulation and control of external groups entering the prisons, and provide the flexibility to release prisoners to participate in external activities. These changes are discussed in Chapter 7 along with the use of periodic detention options and the application of classification and parole. The Opposition's and Comptroller-General's continued hard line approach to prison management will be considered, and how they were in conflict with the Government position. It will be seen that this tension culminated in the 1974 Bredhauer inquiry, resulting in the Comptroller-General being replaced as a consequence of Queensland's prisons not keeping pace with contemporary reforms.

The *Prisons Act 1958* was an opportunity for Queensland's prisons system to proactively move into the 20<sup>th</sup> century; instead, it will be seen through this thesis that it continued to languish in a rut that resulted in a period of industrial and prisoner unrest. This is reflected in the thesis title: A missed opportunity in penal reform, because this was a period when there was potential for alternative methods of penal management to be explored.

## ***Conclusion***

Scholars of history have various opinions regarding the usefulness of historical knowledge. Carr stated that 'to master and understand it [history] is

the key to understanding the present’,<sup>41</sup> while Geoffrey Barraclough went further and asserted that history should be relevant to the present and historians should use their ‘knowledge of the past for the shaping of the future’.<sup>42</sup> Ranke stated that history ‘has been assigned the office of judging the past, of instructing the present for the benefit of future ages’.<sup>43</sup> While Evans reminds us that history is of course a ‘very bad predictor of future events’,<sup>44</sup> because an exact repetition of an historical situation may never occur, we should be willing to learn from the mistakes of those who went before us and make informed decisions based on our knowledge of and understanding of the past.

The work that previous historians and authors have done allows us to see how the history of prisons has progressed. Each has their own focus of attention, with asides, to provide a fuller picture. Occurrences in Queensland tend to be commented on in these asides. It is by gaining an understanding of earlier prison practices and listening to what historians like Connors and McGuire have said that we will gain a feeling for the development of the prisons.<sup>45</sup> As Finnane stated, ‘there is a historical space which has been little explored by historian or criminologists in this country’<sup>46</sup> and it is from where these other authors have finished that this thesis will continue to explore. It will examine why reform had become so necessary by the 1950s, and whether the application of the *Prisons Act 1958*, as an instrument to implement meaningful prison rehabilitative reform, actually worked.

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<sup>41</sup> EH Carr, *What is History*, Penguin, London, 1987, p. 26; RJ Evans, *In Defence of History*, Granta Books, London, 1997, pp. 135, 187, 191.

<sup>42</sup> G Barraclough, *Main Trends in History*, Holmes & Meier, New York, 1991, p. 215.

<sup>43</sup> RJ Evans, *In Defence of History*, Granta Books, London, 1997, pp. 17.

<sup>44</sup> *ibid.*, pp. 59.

<sup>45</sup> G Mackenzie, ‘From prison hulks to Penalties and Sentences in Queensland: Lessons learned or history repeated?’ *Queensland Lawyer*, 2005, vol. 25, issue 4, p 186.

<sup>46</sup> M Finnane, ‘After the convicts: Towards a history of imprisonment in Australia’, *Australian and New Zealand Journal of Criminology*, 1991, vol. 24, issue 2, p.105.

The hypothesis is that:

Competing government priorities, departmental politics, and the influence of individuals and groups in the community, staff and offender populations shaped the management of Queensland prisons and prisoners. Competing interests resulted in outcomes that were not always consistent with best practice recommended by the criminological and penological theories of the time.

This thesis will argue that those competing interests resulted in delays or disregard of practices which may have achieved rehabilitative reforms. By identifying the priorities, politics and influences the reader may view that Queensland society, in the 1950s, had expectations regarding the reform of crime and punishment and that these reforms should be introduced in a timely manner. Individual and departmental attitudes and priorities were not always in harmony with these expectations, which resulted in delays or failure to implement change. Why was this the case and what was the outcome? The response to these questions in the Queensland context may have wider implications for other places where there are closed prison systems which were unresponsive to community expectations. .

# Methodology

## ***Rationale***

Rinaldi (1977) and McCartney, Lincoln and Wilson (2003)<sup>1</sup> have observed that there is scope for a lot more research into prisons in Australia, and as McCartney et al have said the ‘lack of interest in the history of crime, law and justice of each state is surprising’.<sup>2</sup> McGuire also believes that the study of post-convict punishment has been a ‘neglected area of Australian Studies’.<sup>3</sup> The history of prisons, specific to Queensland, has attracted even less scholarly attention and what has been done is generally embedded in research examining prisons in the national context. As a result, information relating to Queensland becomes secondary to the theme of the text. This gap in the academic research is the focus of this thesis and will be explored in the coming chapters.

The year 1958 is significant because it marks the first major revision of the Queensland prison’s Act and Regulations for 69 years. An examination of the 1958 Act reforms will show that either:

- the government was aligning its practice with public opinion and the criminological and penological theories of the time, or
- it was disregarding these theories and simply legislating for what was a minority opinion, or
- it was simply formalising an existing operational practice.

The period following 1958 was marked by major technological advances and there was a new social awareness which resulted in increased public scrutiny of prisons and reform. Enormous change occurred in attitudes and practice at the governmental, departmental and individual levels, too much to be dealt

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<sup>1</sup> F Rinaldi, *Australian Prisons*, F & M Publishers, Canberra, 1977; C McCartney, R Lincoln & P Wilson, *Justice in the Deep North*, Bond University Press, Gold Coast, 2003.

<sup>2</sup> C McCartney, R Lincoln & P Wilson, *Justice in the Deep North*, Bond University Press, Gold Coast, 2003, p. ix.

<sup>3</sup> J McGuire, ‘Punishment and Colonial Society: A History of Penal Change in Queensland 1859 - 1930s’, PhD Thesis, University of Queensland, 2001, p. 25.

with here. Therefore further research will be required to tell the whole story of prisons in Queensland. However, this thesis will provide useful insights for those who wish to understand the effect of decisions that were made in the past.<sup>4</sup> As Danaher reminds us ‘we cannot understand the present and the future without first knowing what happened in the past’.<sup>5</sup>

Throughout Queensland’s prison history there were pockets of activity that resulted in significant change. Some of these spanned a few years with a single incident or cluster of incidents being the catalyst. The intervening periods of minimal activity could span decades, in which prisons became blasé about their responsiveness to the community and this may help explain their failure to implement reforms in a timely manner. For instance, it appears that the reforms introduced under the *Prisons Act 1890* fell victim to inaction and McGuire suggests that ‘most aspects of prison life and labour remained fairly constant’<sup>6</sup> into the 1930s.

It is possible that the slow response to change had its foundation in the convict era. Early in Queensland’s history, the English parliament established various policies relating to the management of convicts and penal settlements,<sup>7</sup> policies that were based on the experience, attitudes and worldview of the community at that time.<sup>8</sup> However, Whitehall’s responses to requests for specific direction from the military authorities in New South Wales were always delayed because of distance, so timely decisions were taken within a military context for application to criminal offenders in a frontier setting. When the ‘official’ policy eventually arrived from England, it was either adapted to what had been put in place or ignored completely because it did not fit with the practical adjustments that had been made.

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<sup>4</sup> M Howell & W Prevenier, *From Reliable Sources*, Cornell University Press, New York, 2001, p. 128.

<sup>5</sup> G Danaher, ‘Discipline and punish and the discursive production of Australian Historiography’, PhD thesis, Central Queensland University, Rockhampton, 1995, p. 29.

<sup>6</sup> J McGuire, ‘Punishment and Colonial Society: A History of Penal Change in Queensland 1859 - 1930s’, PhD Thesis, University of Queensland, 2001, p. 97 also chapter 3.

<sup>7</sup> An example is the adoption of the recommendations in the report by JT Bigge; *Report into the Colony of New South Wales, 1823*, copy of these documents reproduced by the Libraries Board of South Australia, Adelaide, 1966.

<sup>8</sup> A Fenna, *Australian Public Policy*, 2<sup>nd</sup> edn, Pearson Longman, Frenchs Forest, 2004, p. 2.



As the decades passed and prisons went from military to civilian control, they became even more isolated and secretive as administrators made decisions based on what they believed worked. This was likely due to their desire to maintain the status quo with which they were familiar. It is possible that because of this the conceptual distance between the community and what was happening in the realms of punishment and prison practice became more pronounced. This gap may have widened when the society became preoccupied with physical and financial survival in times of global conflict and economic depression. As these threats subsided and western economies stabilised, technology improved and the prisons became more susceptible to the media and subsequently public attention. Consequently, prisons came to be scrutinised by investigations and official enquiries. Ultimately this resulted in prison management becoming more transparent and responsive to current attitudes regarding the punishment of offenders. A good example of responsiveness is the Royal Commission into Aboriginal Deaths in Custody (1987-1991),<sup>9</sup> which has resulted in many changes to prison policies, procedures, infrastructure and staff training. Nevertheless, as Fenna has pointed out, interest groups might apply pressure to governments to develop new policies, but once in place they are not always easy to implement or administer and sometimes there are unintended and unwelcome outcomes.<sup>10</sup>

The thesis will explore how prisons have and continue to evolve, and it will show that in some instances there is a substantial time lapse between changes in community attitudes<sup>11</sup> and the application of new community standards within prisons. Akers believes that a policy is adopted for political, economic or bureaucratic reasons and then a theory or theories are overlaid to justify its

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<sup>9</sup> E Johnston, *Royal Commission into Aboriginal Deaths in Custody*, Canberra, 1991.

<sup>10</sup> A Fenna, *Australian Public Policy*, 2<sup>nd</sup> edn, Pearson Longman, Frenchs Forest, 2004, p. 3; P Bridgman & G Davis, *The Australian policy Handbook*, 3<sup>rd</sup> edn, Allen & Unwin, Crows Nest, 2004, p. 35; C Aulich, J Halligan & S Nutley, *Australian Handbook of Public Sector Management*, Allan & Unwin, Crows Nest, 2001, p. 21.

<sup>11</sup> A survey conducted in 1974 by the NSW Bureau of Crime Statistics and Research found that following a 'significant event', such as an escape, the community's attitude towards the management of prisons changed. NSW Bureau of Crime Statistics and Research, *Statistical report 17, Crime, Correction & the Public*, Sydney, 1974. pp. i, 20.

adoption.<sup>12</sup> If this is the case in the Queensland context, then untangling the different theories from the policies and determining which were applied or disregarded, why this was so and when this occurred, presents an interesting challenge.

### ***Methodology***

Martin Weiner wrote that the history of penal policy and practice usually has been written from one of two perspectives, ‘pragmatism’ or ‘revisionism’. However, McGuire approached his study from somewhere between the two camps<sup>13</sup> and he believes there is a strong case for theoretical eclecticism in the study of punishment.<sup>14</sup> This thesis takes a similar approach to McGuire, because policies are shaped by events and situations, while individuals and groups might influence their application.

McGuire then developed his interpretative framework of penal change in colonial Queensland around six thematic chapters.<sup>15</sup> These chapters examined the period from 1859 to the 1930s and focused on the emergence and development of disciplinary power, social control, bureaucracy, changes to the nature of penalty, the influence of cultural forces and political economy.<sup>16</sup> The centre of gravity of this thesis is the *Prisons Act 1958*. The chapters will examine institutional history to identify the need for reform by the 1950s, how theories and policies complemented or contradicted each other and whether community pressure resulted in political responses. It next analyses the 1958 Act itself, comparing it with previous legislation. There is then an examination of prisoner and prison staff responses to the legislation, which sometimes expresses itself through prison disturbances or industrial action. The final section considers the application of reforms from and following the implementation of the *Prisons Act 1958* and will show that while there were

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<sup>12</sup> RL Akers, *Criminological Theories*, Roxbury Publishing, Los Angeles, 2000, p. 11.

<sup>13</sup> J McGuire, ‘Punishment and Colonial Society: A History of Penal Change in Queensland 1859 - 1930s’, PhD Thesis, University of Queensland, 2001, p. 5 – 8.

<sup>14</sup> J McGuire, ‘Punishment and Colonial Society: A History of Penal Change in Queensland 1859 - 1930s’, PhD Thesis, University of Queensland, 2001, p. 7.

<sup>15</sup> *ibid.*, p. 8.

<sup>16</sup> *ibid.*, p. 8.

some changes in the area of rehabilitation, those that can be directly attributed to the *Prisons Act 1958* were minimal.

McGuire's study of the period through to the 1930s reveals many sources of information<sup>17</sup> that explain the attitudes of gaol staff who in years to come would be in positions of influence within the prisons. Nevertheless, the nature of this study presents new methodological challenges relating to the understanding of data, because there are some management issues that are isolated to a location and time and others that are systemic and span decades. The method chosen to address this is to view them in context by providing a brief institutional history of Queensland prisons. This will be followed by an overview of the criminological and penological theories and the organisational policies that were current at the time and how these were received by staff and prisoners. Their responses can be measured by industrial disputation, major incidents, prisoner demonstrations, and the type, degree and frequency of punishments of both prisoners and staff. The thesis will also consider government responses to changing societal attitudes to the administration of prisons and punishment. These areas of contention were part of the rationale for the review of policy and the passing of the *Prisons Act 1958*. Therefore, the thesis examines the legislation, how it differed from the previous legislation and how key individuals informed its implementation. This reveals opportunities for reform that were considered but not implemented.

To achieve the aim of the thesis, an archival historical approach has been taken, relying mainly on primary documents<sup>18</sup> which were gathered, analysed and evaluated and are available departmentally or from public sites. The thesis also employs a case study approach to examine situations in detail and follow them through time. This method has been applied to incidents at various locations that have generated responses from management or the government in the form of official enquiries, or from the community in the form of complaints which have then contributed to the reform process.

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<sup>17</sup> *ibid.*

<sup>18</sup> McGuire has provided references to many primary sources, some of which will be evaluated for their value to this thesis.

The majority of the documented data has been located in the Queensland State Archives (QSA), State Library of Queensland (SLQ), Fryer Library (Queensland University) as well as the Royal Historical Society of Queensland and local historical societies. The data required analysis<sup>19</sup> that consisted of several steps. Firstly, the various search engines available at or from the repositories assisted in discovery. If they failed to produce the desired results, broader parameters were utilised. The content categories are those that provide information that assists answering the focus questions about the reform process, which can be further delineated to-

- What was the government's perception of community attitudes to the punishment of offenders?
- What was the Government's perception of community attitudes to the management of prisons?
- What were the key issues in government debates regarding offender management?
- What were the Departmental policies regarding offender management?
- What were the industrial issues that influenced the management of the prisons?
- What were the offender incidents that reflected on the management of the prisons?

Benedetto Croce maintains that historians are often guided by their present day concerns as to the relevance of historical evidence.<sup>20</sup> Others, such as Ranke, Elton, and Denning advocate historicism, which is that each era should be examined in the 'context of the day that produced it'.<sup>21</sup> As social values change, so too does the interpretation of history, therefore it should be judged

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<sup>19</sup> AJ McMurray, RW Pace, & D Scott, *Research: A commonsense approach*, Thomson Social Science Press, Victoria, 2004, pp. 207- 212.

<sup>20</sup> RJ Evans, *In Defence of History*, Granta Books, London, 1997, p. 30, 31.

<sup>21</sup> GR Elton, *The Practice of History*, Sydney University Press, Sydney, 1967, p164; RJ Evans, *In Defence of History*, Granta Books, London, 1997, p. 75.

against the standards of the time.<sup>22</sup> Studies in other disciplines like anthropology, politics and economics, help explain the influences that affect society and insights from them should also be taken into consideration. This can inform and assist the understanding of the primary sources.

The data collection commenced by examining the available prison department annual returns since 1886<sup>23</sup> to provide an initial understanding of departmental attitudes. These annual returns contain statistics showing prisoner numbers, punishments, value of work completed by prisoners, budget expenditure and a summary of significant occurrences over the previous year. Some of these reports also provide recommendations for future expenditure or the implementation of new methods of prison management. These pieces of information assisted this research by allowing for the narrowing of searches to a theme or a time frame when changes and policies were likely to be implemented.

The variables that determined the validity of the primary sources were-

Was the document or item created at a time that can be validated?

Is this a contemporary document for the issue being examined?

Was the author or writer a participant or witness to the event or merely a third party?

What may have been their motive to generate the entry or document?

Is there any corroborating data from an alternate source?

While a negative response to any of these questions did not necessarily result in exclusion of the data, it was a consideration. A judgment was then necessary to determine the relevance to the thesis at hand and if inclusion or exclusion of the information would be appropriate. In some cases corroborating data was found by the use of official statistics; for example, if

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<sup>22</sup> K Windschuttle, *The Killing of History*, Macleay Press, Paddington, NSW, 1996, p.70, 74-75; RJ Evans, *In Defence of History*, Granta Books, London, 1997, p 17.

<sup>23</sup> These are the annual reports to the Sheriff or departmental Minister who then report the results to the Government.

required to verify overcrowding or under utilisation of an area of confinement,<sup>24</sup> either of which can hinder or help the reform process by providing or draining resources.

Preliminary examination of the resources held in QSA revealed journals, log books and reports which identify significant issues that emerged at the various prisons. The titles of these documents vary between sites, however they include-

Document Name	Type of content
Principal Turnkey's Journal, Chief Prison Officers Journal	Routine and non-routine tasks and occurrences for the day.
Reception Ledger	Names of new prisoners. Number of prisoners in the prison.
Default Book	Breaches of discipline by staff and prisoners and the punishments received.
General Orders Book	Instructions to staff on duties and procedures.
Correspondence Received Register	Incoming correspondence.
Court Book	Major prison offences and sentences by the Visiting Justice.
Ministerial correspondence	Questions and directions about prison management.

From those that are available, the discovery of issues included, but was not limited to, escapes, disciplinary action against prisoners or staff and the application of prison rules. These were then mapped against community responses; for example, media stories and letters to politicians that may have influenced public perceptions. These occurrences, when reported to the

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<sup>24</sup> S Beattie, *Legal and Justice Studies workbook*, Federation Press, NSW, 1999, p. 114.

minister responsible for the portfolio or in response to a media story, on occasions also became the subject of parliamentary debate.

Queensland's Parliamentary Votes and Proceedings and Hansard were examined to uncover the Government's attitude towards crime and punishment and how it may have led to alterations in offender management. Legislation tends to reflect the level of support that governments believe the community has for particular prison reforms. The community holds a general consensus on law and order issues such as prisoner rehabilitation, retribution and reparation for crime, and capital or corporal punishment. Governments generally prefer their policies to synchronise with this consensus. Therefore an examination of Queensland's parliamentary documents as well as newspaper reports and correspondence received by the Minister, Sheriff and Prisons Department provided some insight into how congruent Government actions were with community expectations.

The State Library of Queensland holds an extensive collection of photographs that provide alternative sources on some events, as well as on the subsequent response. Local libraries and historical societies in Brisbane, Townsville and Rockhampton were also examined because it was possible that some might have collected information and artifacts not available in the State repositories. This information generally was found in the form of material relating to the convict era.

This study reflects on the cause and effect of the *Prisons Act 1958* and how subsequent policies influenced prison discipline and management. While the department is responsible for the administration of prisons, it was anticipated that the research would reveal that external interests were instrumental in determining the policies to be implemented. The department generally was not the instigator but merely the conduit of policies. The focus of the research remained on the causal factors that drove change and has attempted to determine who the key individuals were, what the changes were and when they were implemented. Alternatively, it also looked at proposed changes that were not put into effect.

Having worked in the field of corrections for many years, the writer has been cognisant of the potential for bias and aware that it will be difficult to eliminate, however, vigilance was maintained to ensure objectivity throughout the thesis.<sup>25</sup> A writer's personal knowledge and experiences should not be permitted to skew the findings, but rather they should enhance the comprehension by allowing for a more intimate and personal understanding of the material and its context. It may be possible that official records in closed intuitions do not always contain details that may reflect negatively on the writer or the organisation. Therefore, alternative details may be gleaned from industrial relations issues, newspaper reports or investigations open to the public. The following chapters will discuss these issues and in some instances reflect on what probably occurred but was not reported. The objectivity of this thesis's writer was monitored through critical analysis of the drafts and by the independent scrutiny of the thesis supervisor. In addition to being aware of potential personal bias, it was necessary to detect bias in the records found in the archives.<sup>26</sup> The validity of these documents<sup>27</sup> was established by applying criteria that determined inclusion or exclusion.

In summary, this is a qualitative historical study of mainly primary documents recovered from public and departmental locations. The data is presented contextually in a chronological order within thematic chapters that include relevant case studies. The validity<sup>28</sup> of the research was tested by the use of different methods, including:

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<sup>25</sup> M Denscombe, *The Good Research Guide*, Open University Press, Buckingham, 1998, p. 212; M Howell & W Prevenier, *From Reliable Sources*, Cornell University Press, New York, 2001, p.148.

<sup>26</sup> In this instance archives means any places used for the storage of historical information or items; M Denscombe, *The Good Research Guide*, Open University Press, Buckingham, 1998, p. 162; RH Hoyle, MJ Harris, CM Judd, *Research methods in social relations*, 7<sup>th</sup> edn, Thomson Learning, Australia, 2002, p. 388; M Howell & W Prevenier, *From Reliable Sources*, Cornell University Press, New York, 2001, p. 68.

<sup>27</sup> RH Hoyle, MJ Harris, CM Judd, *Research methods in social relations*, 7<sup>th</sup> edn, Thomson Learning, Australia, 2002, p. 33.

<sup>28</sup> *ibid.*, p. 212; V Jupp, *The Sage Dictionary of social research methods*, Sage, London, 2006, pp. 311 – 315.



- The corroboration where possible of evidence from different sources.
- The wide reading of secondary sources.
- The exploration of alternative explanations.
- Acknowledgement of the influence of the author's background on the conclusions reached.

### ***Literature Review***

Theories in criminal justice are based on studies of human nature<sup>29</sup> and it is from these theories that policies are created. The policies can then be passed as legislation and may be described as instruments of external social control because they regulate human behaviour.<sup>30</sup> Since Queensland became a state, there have been five major re-writes of prison legislation<sup>31</sup> and the 1958 legislation occurred at the time when community attitudes towards crime and punishment were changing. As this thesis evolved, a clearer picture developed that the legislation had been used as a form of social control rather than a tool to action reform. McGuire considers social control a 'slippery concept,'<sup>32</sup> however, when one examines the legislation<sup>33</sup> that was passed from 1859 - 1945 dealing with mental illness, indigenous people, women, children and inebriates, along with that relating to gaols or criminal offenders, the question of whether it constitutes social control or social reform is pertinent. Nevertheless, this research does not focus on legislation as a form of 'social control' in the wider community, but rather on its application in the prison.

When the history of prisons in Queensland is considered, it is evident that it cannot be confined within State borders, because incarceration and punishment precede us by thousands of years. What exists today is the product of the evolution of the thoughts and practices of generations who have been

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<sup>29</sup> RL Akers, *Criminological Theories*, Roxbury Publishing, Los Angeles, 2000, p. 11.

<sup>30</sup> R White & S Perrone, *Crime and social control an introduction*, Oxford University Press, Melbourne, 1998, p. 2; RL Akers, *Criminological Theories*, Roxbury Publishing, Los Angeles, 2000, p. 101.

<sup>31</sup> These occurred in 1890, 1958, 1988, 2000 and 2006.

<sup>32</sup> J McGuire, 'Punishment and Colonial Society: A History of Penal Change in Queensland 1859 - 1930s', PhD Thesis, University of Queensland, 2001, p. 6.

<sup>33</sup> *ibid.*, p. 414.

involved in the criminal justice system. This can be traced through history to a time before it was realised there was a system, and even before crime was defined. Ranke believed that historical situations develop over time and that history is revealed through an intuitive application of the facts discovered.<sup>34</sup> Foucault, however, insisted that there was a lack of interconnectedness between any historical issues and rejected evolutionary development.<sup>35</sup> Windschuttle considered that Foucault took an interest in prisons, and for him imprisonment was an extreme form of social control used by the rising middle class who criminalised the poor and blamed them for their own poverty and idleness.<sup>36</sup> Based on Windschuttle's comments it does not appear Foucault took into consideration that crime may have been exacerbated by constant local conflicts, or of society's desire to reduce the use of corporal punishment or the preponderance of opportunistic crime with little chance of punishment. For those wishing to examine varying aspects of the history of punishment, Foucault's *Discipline and Punish* contains detail worthy of further examination, however, it is the interconnectedness that Ranke describes, principally in the local scene, which is explored through this thesis.

Many authors like Morris and Rothman, Pringle and Semple to name a few, have documented what has occurred in the history of prisons;<sup>37</sup> however, most of these relate to the situation overseas, with few addressing the Australian scene. Nevertheless, some of them offer insights that can usefully be applied to Australia. An example is the study by Gordon Hawkins who examined policy and practice in the United States of America. He discusses a number of factors, including the rhetoric of rehabilitation and its application, or lack thereof, as well as the confusion in the wider community about the purpose of prisons. He also states that there is an absence of community guidance as to what is desired in penal reform; therefore, legislators are required to use their

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<sup>34</sup> RJ Evans, *In Defence of History*, Granta Books, London, 1997, p. 25.

<sup>35</sup> K Windschuttle, *The Killing of History*, Macleay Press, Paddington, NSW, 1996, pp. 125, 131.

<sup>36</sup> *ibid.*, pp. 139 - 140.

<sup>37</sup> N Morris & DJ Rothman, *The Oxford History of the Prison*, Oxford University Press, Oxford, 1998; P Pringle, *Hue and cry*, Morrow, New York, 1955; J Semple, *Bentham's prison*, Oxford University Press, Oxford, 1993.

own judgment in decision making.<sup>38</sup> This thesis examines similar issues in the Queensland context, as well as seeking to determine if the community does make its penal reform desires known.

At the Australian national level there are some authors like Rinaldi, Finnane and O'Toole who consider the Australian scene noteworthy.<sup>39</sup> While others like Lincoln, Connors and McGuire have focused on parts of the Queensland story.<sup>40</sup> Firstly, though, to put the thesis questions into perspective, the literature review will discuss Queensland prison history then briefly place Australian prisons in their historical context. This information will help set the scene to explain the need for reform and the reasons why reform was not easily achieved through the Queensland *Prisons Act 1958*.

This commences with an historical overview to encapsulate the reasons for the use and development of different forms of punishment and to provide background to the public indifference to offender suffering. Some insights into the warders' attitude towards the management of prisons assists in the discussion of the ongoing management of offenders, as does an overview of the development of specially designed prison infrastructure. These sections will provide the context to the need for prison reform that had a window of opportunity in the *Prisons Act 1958*.

## **Introduction to Queensland's prisons**

During the depression years between the World Wars and the post war rebuilding, minimal expenditure was directed towards the prison system outside of essential maintenance. O'Toole, Morris and Rothman identify that

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<sup>38</sup> G Hawkins, *The Prison, Policy and Practice*, The University of Chicago Press, Chicago, 1976, p. 166.

<sup>39</sup> F Rinaldi, *Australian Prisons*, F & M Publishers, Canberra, 1977; Finnane, M, *Punishment in Australian society*, Oxford University Press, Melbourne, 1997; S O'Toole, *The history of Australian corrections*, University of New South Wales Press, Sydney, 2006.

<sup>40</sup> I Lincoln, 'The punishment of crime in Queensland, 1860-1890', BA Hons Thesis, University of Queensland, 1966; L Connors, 'The birth of the prison and the death of convictism: the operation of the law in pre-separation Queensland 1839 to 1859', PhD Thesis, University of Queensland, 1990; J McGuire, 'Punishment and Colonial Society: A History of Penal Change in Queensland 1859 - 1930s', PhD Thesis, University of Queensland, 2001.

by the 1950s, penal policy in Australia was catching up with post war rebuilding. Classification committees and consultant psychiatrists became a feature in most, if not all, jurisdictions.<sup>41</sup> These services are now firmly established features in Queensland prisons and are supported through legislation.

The early work by Lincoln examined events that occurred from 1859 until the *Prisons Act 1890*, the point where, in his opinion the ‘harsh colonial penal system was cast aside’.<sup>42</sup> McGuire thinks this to have been a ‘hasty assumption’<sup>43</sup> and provides an argument through his thesis that explains how even though the rhetoric in 1890 was about change, many archaic ideas and practices continued for years after the legislation.

McGuire’s extensive research examines the government’s attitude to prison management around the turn of the 20<sup>th</sup> century. He goes into detail about the findings of Queensland’s 1887 Board of Inquiry into the general management of the gaols, penal establishments and lockups of the colony, and how it appeared that there was conflict in the report between wanting to be humane but not lenient.<sup>44</sup> This inquiry then lead to the *Prisons Act 1890*, and McGuire describes how it was different from the previous prisons legislation, in particular in the introduction of the ‘mark system’ that was developed from the work of Alexander Maconochie in the 1840s on Norfolk Island.<sup>45</sup> He examined the influence of the 1890 Act over a short period of time, but

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<sup>41</sup> Classification Committees classify offenders into categories based on escape risk, sentenced or remand status and risk level from or to other offenders. Centre placement and cell accommodation is then based on this classification; N Morris & DJ Rothman, *The Oxford History of the Prison*, Oxford University Press, Oxford, 1998, p. 144; S McConville, *The use of imprisonment*, Routledge & Paul, London, 1975, p. 58; S O’Toole, *The history of Australian Corrections*, University of New South Wales Press, Sydney, 2006, pp. 70, 72, 84; JF Whitley, *Prisons Department-information contained in the departmental Report for year ending 31<sup>st</sup> December 1934*, Brisbane, 1934, p. 8.

<sup>42</sup> I Lincoln, ‘The punishment of crime in Queensland, 1860-1890’, BA Hons Thesis, University of Queensland, 1966; J McGuire, ‘Punishment and Colonial Society: A History of Penal Change in Queensland 1859 - 1930s’, PhD Thesis, University of Queensland, 2001, p. 30.

<sup>43</sup> J McGuire, ‘Punishment and Colonial Society: A History of Penal Change in Queensland 1859 - 1930s’, PhD Thesis, University of Queensland, 2001, p. 30.

<sup>44</sup> *ibid.*, p 81, 83 - 84.

<sup>45</sup> *ibid.*, p. 95 - 96; JV Barry, *Alexander Maconochie of Norfolk Island*, Oxford University Press, Melbourne, 1958, p. 69 - 79.

suggests that it was not effectively applied.<sup>46</sup> It will be argued in this thesis that this also was the case with the *Prisons Act 1958*.

In the wider Australian field of research Sean O'Toole's *The History of Australian Corrections* deals with the history of prisons throughout the country and is divided into two sections. The first introduces the history of prisons overseas, mainly in England and then leads into the convict era before explaining issues specific to Australian prisons. This is then followed by a brief history of each state. As with Rinaldi, who will be discussed shortly, there is some coverage of all the states, however the bias is towards New South Wales. Unlike Rinaldi, O'Toole covers prison architecture and design in broad terms and he acknowledges in his introduction that he has only touched on some aspects of this and further analysis is warranted and encouraged.<sup>47</sup> Neither Rinaldi nor O'Toole have explored the specifics of Queensland legislation and how it was applied. An examination of the influence of community attitudes and party politics is also absent from both texts. McGuire explains how the *Prisons Act 1890* and other legislation either extended offenders' sentences or provided diversion options. This meant certain offenders were removed from confinement in 'criminal' gaols and instead were placed in other government institutions.<sup>48</sup> As a moral or political solution to the economic problem of gaol overcrowding several types of offenders were subject to these alternate options. However, McGuire does not explore the effects the diversion of prisoners had within the prison system itself.

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<sup>46</sup> J McGuire, 'Punishment and Colonial Society: A History of Penal Change in Queensland 1859 - 1930s', PhD Thesis, University of Queensland, 2001, chapter 3.

<sup>47</sup> S O'Toole, *The history of Australian Corrections*, University of New South Wales Press, Sydney, 2006, pp. xviii, 74-86.

<sup>48</sup> For further information see J McGuire, 'Punishment and Colonial Society: A History of Penal Change in Queensland 1859 - 1930s', PhD Thesis, University of Queensland, 2001, p. 124 – 144 where he discusses the *Insanity Act 1884*, *Mental Hygiene Act of 1938*, *Backward Persons Act 1938*, *Inebriates Institutions Act 1896*, *Influx of Criminals Prevention Act 1905*, *The Children's Court Act of 1907*, *State Children's Act 1911*, amendment to the *Justices Act 1909*, *Prisoners Parole Act of 1937*, *Criminal Law Amendment Act of 1945*.

McGuire also discusses capital and corporal punishment in detail, providing a clear date for the last use of capital punishment in Queensland.<sup>49</sup> However, this same clarity is not provided (or possibly available) for corporal punishment in the gaols. Instead he explains that corporal punishment was still used on Aborigines in remote missions in the 1920s and 1930s.<sup>50</sup> The relevance to this thesis is that while judicial ordered corporal punishment had discontinued inside the gaol some prison staff may have rejected the idea that non-physical punishments were sufficient. Subsequently they may have undermined or ignored attempts to implement reform in the new *Prisons Act 1958* which they perceived to offer 'soft' options. While McGuire's is an excellent thesis many of the questions it raised are still unanswered.

Other more popular accounts of specific events in the history of Queensland prisons have been published, however, although they provide insights into the mindset of warders their value for this study is limited because they are too subjective, contain obvious bias, or simply are outside the scope of the thesis. Some of these are: *Nor Iron Bars a Cage* by RJ Stephenson, which is about his life as a warder in Queensland; *Escape from Boggo Road Gaol* by J Sim and C Stevenson, which is about various escapes; and *Prisoners of Toowong Cemetery* by C Dawson which is about those who died in prison or were executed.<sup>51</sup> Another interesting document that falls outside the scope of the thesis is a paper presented by Tony Venson about his time as the person responsible for implementing prison reform in New South Wales in the 1970s. He describes the difficulties he faced while battling an entrenched staff sub-culture.<sup>52</sup> This thesis examines whether similar situations occurred in Queensland. To explain the 1958 legislation consideration must initially be

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<sup>49</sup> J McGuire, 'Punishment and Colonial Society: A History of Penal Change in Queensland 1859 - 1930s', PhD Thesis, University of Queensland, 2001, p. 284 - 285.

<sup>50</sup> *ibid.*, 278 - 279.

<sup>51</sup> JR Stephenson, *Nor Iron Bars a Cage*, Boolarong, Brisbane, 1982, p. 10; J Sim, & C Stevenson, *Escape from Boggo Road Gaol*, Jack Sim, Brisbane, 2005, p. 3; C Dawson, *The prisoners of Toowong Cemetery*, Boggo Road Gaol Historical Society, Brisbane, 2006.

<sup>52</sup> T Vinson, *Reforming Prisons: A 1970s Experience*, Paper presented at the History of Crime, Policing and Punishment Conference convened by the Australian Institute of Criminology in conjunction with Charles Sturt University and held in Canberra, 9-10 December 1999.

given to the preceding years to contextualise the reasons for the Act and the way in which reforms were applied. McGuire's research provides a substantial basis for understanding the period between the 1890 and 1958 prison legislations. This research will consolidate some of his themes and expand on others that support or negate the contentions of the thesis.

There is also some scattered information. Goodale, Siegel and Barbieri write about how new prisons were located in 'out of the way' places,<sup>53</sup> and Thies examines the issue of community engagement, and how to stimulate community interest and gain support to establish prisons in suitable locations.<sup>54</sup> This is in the American context; however, it may be reflected historically in what occurred in some Queensland prison experiences, especially when prisoner disturbances caused the community to fear living in close proximity to prisons. Yet some communities saw a prison in their community as a sign of progress. An example of this is the study by RJ McConnell who examined the first twenty years of the law in the Rockhampton district.<sup>55</sup> In her doctoral thesis the establishment of a prison was seen as a symbol of progress towards a civilised society. McConnell's thesis provides an informative insight in the few pages that are dedicated to the gaol, yet this detail is lost within a discussion that is directed towards the application of the law in general.

Having briefly contextualised some of the literature on the international and Australian experience of penal history, it is now time to consider that which affected the situation in Queensland.

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<sup>53</sup> MR Goodale, HH Siegel, & LG Barbieri, 'Building prison on wetlands site offers challenge for Connecticut', *Corrections Today*, April 1994, p. 116.

<sup>54</sup> JM Thies, 'Prisons and host communities: debunking the myths and building community relations', *Corrections Today*, April 2000, p. 136.

<sup>55</sup> RJ McConnell, 'Marks of a Civilisation: A Social History of the Law In the Rockhampton District 1858-1878', PhD Thesis, Central Queensland University, Rockhampton, 2002, pp. 258 - 275.

## **Early attitudes to prison management**

Although prisons did not exist in Queensland prior to 1824, attitudes towards wrong doers were being shaped in society as a whole and within individuals who would administer punishment in the colony and eventually its prisons. It is the exposure to official political attitudes and reformers' ideologies that provided the blend of ideas that would shape prison policy. At the same time, the administrators themselves for the first few decades were military men who had been exposed to the horrors of war.<sup>56</sup> They were desensitised, to a degree, to human suffering, while managing prisoners who were themselves callous and generally repeat offenders. Dealing with this calibre of offender, while at the same time contending with the harshness of frontier life, provided a unique set of circumstances for penology to develop within the colony. The 1970 Milgram experiment found that people were willing to inflict pain on others when instructed by a person perceived to be in authority.<sup>57</sup> The same effect could apply to staff guarding offenders when 'get tough on crime', 'deterrence' and 'retribution' themes were prevalent at the different times in prison history. Several examples will be provided in this thesis where senior staff were party to or aware of the use of force which was not always within the realm of justifiable use. Once attitudes and practices were instilled within those operating the convict settlement and subsequent prisons, they tended to become insulated and any changes, in attitude or acceptable behaviour, lagged behind the rest of society. Unless an administrator with a particularly enlightened attitude was appointed at the right time, the treatment of offenders behind the walls of Australian prisons was generally only altered through public scrutiny brought about by the Royal Commissions and official Enquiries in both this country and England. Progress within similar fields in different locations has been recognised by historians as operating on different

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<sup>56</sup> Department of Education. *Life in convict Brisbane*, Brisbane, 1983; J Harrison & JG Steele, *The Fell Tyrant or the suffering convict*, Royal Historical Society of Queensland, Brisbane, 2003, p. 7.

<sup>57</sup> M Bridgstock, D Burch, J Forge, J Laurent & I Lowe, *Science Technology and Society an introduction*, Cambridge University Press, Cambridge, 1998, p. 66 - 69.



time scales. For example, changes in the treatment of prisoners in England, Europe and America did not always coincide with those in Australia.<sup>58</sup>

### **Early management of prisoners in Australia**

John Thomas Bigge wanted convicts kept in constant labour<sup>59</sup> and to reinforce the deterrent factor his influential 1823 report recommended that any new penal settlements established for reoffenders should be far removed from Sydney.<sup>60</sup> Bigge's recommendations were implemented and this opened the way for Moreton Bay to be established as a place of secondary confinement. It also provided the foundation for the harsh treatment given to those sent there as a result of further crimes committed in New South Wales.<sup>61</sup> As Forsyth points out the application of this terror included the banning of the use of draught beasts and replacing these with convict labour.<sup>62</sup> Agitation for the abolition of transportation became insistent after the handing down of the Molesworth Report in 1837, and in the eastern seaboard colonies it ceased following the discovery of gold in the 1850s.<sup>63</sup> Convictism was influential in

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<sup>58</sup> S O'Toole, *The history of Australian Corrections*, University of New South Wales Press, Sydney, 2006, pp. 53-54; K Windschuttle, *The Killing of History*, Macleay Press, Paddington, NSW, 1996, p. 111; RJ Evans, *In Defence of History*, Granta Books, London, 1997, p. 153.

<sup>59</sup> S O'Toole, *The history of Australian Corrections*, University of New South Wales Press, Sydney, 2006, pp. 33; N Morris & DJ Rothman, *The Oxford History of the Prison*, Oxford University Press, Oxford, 1998, pp. 247.

<sup>60</sup> N Morris & DJ Rothman, *The Oxford History of the Prison*, Oxford University Press, Oxford, 1998, pp. 247, 253; WD Forsyth, *Governor Arthur's convict system in Van Diemen's Land 1824-36*, Longman Green, New York, 1930, pp. 89-92, 134-5; JS Kerr, *Design for convicts*, Star Printery, Erskineville, 1984, p. 57; WR Johnston, *A Documentary history of Queensland*, University of Queensland Press, Brisbane, 1988, p. 32; J Harrison & JG Steele, *The Fell Tyrant or the suffering convict*, Royal Historical Society of Queensland, Brisbane, 2003, p. 2.

<sup>61</sup> N Morris & DJ Rothman, *The Oxford History of the Prison*, Oxford University Press, Oxford, 1998, p. 247; WD Forsyth, *Governor Arthur's convict system in Van Diemen's Land 1824-36*, Longman Green, New York, 1930, pp. 134-5; JS Kerr, *Design for convicts*, Star Printery, Erskineville, 1984, p. 57; WR Johnston, *A Documentary history of Queensland*, University of Queensland Press, Brisbane, 1988, p. 32; J Harrison & JG Steele, *The Fell Tyrant or the suffering convict*, Royal Historical Society of Queensland, Brisbane, 2003, p. 2.

<sup>62</sup> WD Forsyth, *Governor Arthur's convict system in Van Diemen's Land 1824-36*, Longman Green, New York, 1930, pp. 89-92.

<sup>63</sup> British Parliamentary Papers. *Subject sets on crime and punishment, transportation and penal servitude*. 1969, p. 9; N Morris & DJ Rothman, *The Oxford History of the Prison*, Oxford University Press, Oxford, 1998, pp. 258, 259, 261; H Mannheim, *Pioneers in criminology*, Patterson Smith, New Jersey, 1973, p. 101; S O'Toole, *The history of*

setting the tone for the early management of Queensland's prisons, which then provided the foundation for prison management in the period under review in this thesis. Another aspect significant to the origins of Queensland's prisons can be found in the designs that originated overseas.

## **Prison design in Australia**

The use of classification and separation was a significant consideration in section 18 of the *Prisons Act 1958* and building design influenced how these could be implemented. However, based on historical evidence, practicalities in the form of budgetary considerations and overcrowding were probably just as influential.

O'Toole in *The history of Australian Corrections* follows the causality from the start of the London police to the early Australian prisons. He says that as crime continued to rise, in 1820 the new police force was created in London and within ten years it was compulsory for every major city to have its own police force.<sup>64</sup> By 1833 there was an increase in transportation due to several factors which included harsher property laws and the new police force, resulting in a larger convict population that caused further strain on the resources of the colony. When it became necessary to build prisons in Australia, they were designed for practicalities and reflected the structural features that were in favour at the time in Europe and the United States.<sup>65</sup> Kerr, in *Out of Sight, Out of Mind* asserts that the colonial architects were not innovative in designing structures that supported contemporary prison principles; rather, they were more interested in copying overseas structures that were aesthetically appealing and not necessarily functional.<sup>66</sup> Kerr's book is an invaluable resource that focuses on the architectural prison designs in use around Australia. The designs used in Queensland will be considered in

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*Australian Corrections*, University of New South Wales Press, Sydney, 2006, pp. 87-88;  
JB Hirst, *Convict Society and its enemies*, George Allen & Unwin, Sydney, 1983, p. 199.

<sup>64</sup> S O'Toole, *The history of Australian Corrections*, University of New South Wales Press, Sydney, 2006, pp. 14, 50.

<sup>65</sup> *ibid.*, p. 74; P Pringle, *Hue and cry*, Morrow, New York, 1955, p. 42.

<sup>66</sup> JS Kerr, *Out of Sight, Out of Mind*, S.H. Ervin Gallery, Sydney, 1988, p. 9.

Chapter 2, where they will be discussed to determine if they supported or hindered the reform process from 1958.

Reports in the 1830s identified that the New South Wales prison system was approximately 60 years behind contemporary English practices, including in the failure to use the separate or silent systems.<sup>67</sup> This was considered, in part, to be because transportation had been utilised to relieve the pressure in England and provided the opportunity there for reforms to be implemented. Meanwhile, the penal colonies were required to cope with the large influx of offenders with limited resources, until 1867 when transportation finally ceased completely.<sup>68</sup>

O'Toole states that prisons were first built in Australia in the 1700s as wooden structures that were unremarkable and 'constructed without a specific design for containment of prisoners'.<sup>69</sup> This changed in the 1800s with masonry gaols being built in several locations around the country, however, these still consisted of large wards instead of individual cells. There was a 'shift from physical to psychological punishment' and O'Toole describes how this was facilitated by designs that utilised single cells radiating away from a central hub,<sup>70</sup> similar to Pentonville. The rehabilitation or treatment of offenders was not supported to the extent that it required the expenditure of funds, while the design of cells and buildings to assist in rehabilitation was yet to be adopted.

In 1977 Fiori Rinaldi wrote that most prisoners in Australia were incarcerated in 'large antiquated prisons',<sup>71</sup> which Chappell described as scars from the

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<sup>67</sup> D Grant, *Prisons. The continuing crisis in New South Wales*, The Federation Press, NSW, 1992, p. 40.

<sup>68</sup> Queensland was included in New South Wales at this time until its separation in 1859; D Grant, *Prisons. The continuing crisis in New South Wales*, The Federation Press, NSW, 1992, pp. 39 - 40; N Morris & DJ Rothman, *The Oxford History of the Prison*, Oxford University Press, Oxford, 1998, pp. 262, 263; M Finnane, *Punishment in Australian society*, Oxford University Press, Oxford University Press, Melbourne, 1997, pp. 6 - 7; C Harding, *Imprisonment in England and Wales*, Croom Helm, London, 1985, p. 56.

<sup>69</sup> S O'Toole, *The history of Australian Corrections*, University of New South Wales Press, Sydney, 2006, p. 75.

<sup>70</sup> *ibid.*, p. 76.

<sup>71</sup> F Rinaldi, *Australian Prisons*, F & M Publishers, Canberra, 1977, pp. 8, 83 - 105.

convict era which should be permanently removed.<sup>72</sup> Certainly at the time Rinaldi wrote his book, Queensland was using two antiquated prisons, Brisbane and Townsville prisons, but he also acknowledged that other prisons in the state had been built since 1960. Justice Lionel Murphy of the High Court regarded Rinaldi's book as something that might 'provoke disputation and disagreement' but thought that it served 'to focus attention on the subject'.<sup>73</sup> Rinaldi discussed prison conditions in general terms across all jurisdictions; however, he did not go into depth when dealing specifically with Queensland. For instance, in the chapter regarding discipline it primarily speaks about New South Wales and Victoria with a few sentences about Queensland's use of bread and water as a punishment.<sup>74</sup> The book is an excellent starting point for research because it provides some direction and a foundation on which to build, but further attention needs to be directed towards Queensland's history. It is the work of McGuire that lays the substantial foundation for this thesis by way of his detailed examination of Queensland legislation, and the events and issues that occurred between 1859 and the 1930s.<sup>75</sup>

### **Some significant prison figures**

McGuire believes that due to the absence of a significant welfare lobby until the 1930s, Queensland maintained a neo-classical system of penalties. In addition, the Government was hesitant to expend funds on rehabilitative practices that did not provide political advantage or a measurable financial return that would contribute to self-sufficiency, therefore, innovation was slow to be implemented.<sup>76</sup> He considered that the development of criminology in other states, in particular New South Wales under the leadership of Frederick Neitenstein at the turn of the 20<sup>th</sup> century, was influential in

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<sup>72</sup> D Chappell, *International Developments in Corrections: Australia in a Bicentennial Year*, *The Prison Journal*, 1988, Spring-Summer, Vol. LXVIII, number 1, p. 39.

<sup>73</sup> F Rinaldi, *Australian Prisons*, F & M Publishers, Canberra, 1977, p. v.

<sup>74</sup> This indicates that hard labour has not been defined in any other jurisdictions; F Rinaldi, *Australian Prisons*, F & M Publishers, Canberra, 1977, pp. vi, 8, 83 - 105.

<sup>75</sup> J McGuire, 'Punishment and Colonial Society: A History of Penal Change in Queensland 1859 - 1930s', PhD Thesis, University of Queensland, 2001.

<sup>76</sup> *ibid.*, pp. 145, 165.

Queensland's form of penal pragmatism.<sup>77</sup> Neitenstein reformed the New South Wales prison system by reducing overcrowding and 'paying special attention to women, young offenders, inebriates and the mentally ill' and was regarded as a leader in corrections by his contemporaries.<sup>78</sup> Nevertheless, the preference in Australia to employ ex-military personnel<sup>79</sup> reinforced paramilitary discipline within prisons and the inclination towards physical work and punishment.

At the turn of the century Queensland also was concerned about the number of offenders who had served sentences interstate and then moved to Queensland. As a result, the Government passed the *Influx of Criminals Prevention Act 1905*, which was repealed a few years later. It was replaced with indeterminate sentences for repeat offenders<sup>80</sup> and was influenced by Lombroso's determinism and Garofalo's environmentalism.<sup>81</sup> Raffaele Garofalo believed criminals had a predisposition towards crime, provided the opportunity presented itself to commit the crime,<sup>82</sup> but if removed from that opportunity the crime would be prevented. McGuire considered that new principles of criminology were embraced after 1944 when provisions in the *Mental Hygiene Act 1938* and the *Backward Persons Act 1938* were utilised. An example is that sexual offenders who were deemed to be 'mentally defective' were removed to an alternate institution for 'investigation, treatment and observation'.<sup>83</sup> Yet this application of the criminological principles' was limited to the 'mentally defective' and did not flow on to the remainder of the prison population.

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<sup>77</sup> *ibid.*, pp. 116 - 119.

<sup>78</sup> O'Toole, *The History of Australian Corrections*, University of New South Wales Press, 2006, Sydney, p. 71.

<sup>79</sup> J McGuire, 'Punishment and Colonial Society: A History of Penal Change in Queensland 1859 - 1930s', 2001, PhD thesis, University of Queensland, Brisbane, p. 98.

<sup>80</sup> *ibid.*, pp. 135 - 139.

<sup>81</sup> *ibid.*, p. 138.

<sup>82</sup> EA Fattah, *Criminology: Past Present and Future. A Critical overview*, MacMillan Press, London, 1997, p. 213.

<sup>83</sup> J McGuire, 'Punishment and Colonial Society: A History of Penal Change in Queensland 1859 - 1930s', 2001, PhD thesis, University of Queensland, Brisbane, p. 143.

Wimshurst drew attention to the focus that existed on the family in Queensland in the interwar years, which resulted in the provision of industrially appropriate work in prisons to support the family. Lynn and Armstrong made similar findings in Victoria for this period, and it seemed to be a response to the high numbers of maintenance defaulters.<sup>84</sup> Accordingly, there were three penal philosophies between the wars, the domestic, work ethic and medical approaches, each of which were intrinsically interwoven.<sup>85</sup> The domestic approach found expression in the diversion of women, where possible, from custody so they could maintain the family unit, while those in prison were trained in domestic duties to provide them with employable skills when released. Male ‘maintenance defaulters’ were targeted for redemption from a life of crime by providing them with opportunities on honour farms so they could return to the community as ‘bread winners’. The work ethic approach was applied by providing meaningful prison work in the manufacturing and later rural industries in the belief that skilled workers would turn away from crime. The alternative medical approach was focused outside the prison where social deviants who were suffering mental ill-health or addictions were diverted to other institutions for treatment.<sup>86</sup> Beyond attempting to instill a work ethic in the short sentence prisoners or those who were otherwise drawn from the ‘idle, dirty and thriftless’, Wimshurst did not identify any other form of ‘treatment, therapy or rehabilitative efforts’ in the official records.<sup>87</sup> At the end of his paper he states that ‘contemporary debates about appropriate models of punishment, rehabilitation and treatment appear to have had little impact on the realities of life for prisoners between the wars’.<sup>88</sup> With the Labor Government in Queensland remaining in power until 1957, it was unlikely that serious reformatory reviews would be undertaken without some form of catalyst generating an urgent need.

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<sup>84</sup> P Lynn & G Armstrong, *From Pentonville to Pentridge: A History of Prisons in Victoria*, 1996, Jenkin Buxton, Melbourne, p. 129 - 130.

<sup>85</sup> K Wimshurst, ‘Punishment, Welfare and Gender Ordering in Queensland, 1920-1940’, *The Australian and New Zealand Journal of Criminology*, 2002, vol. 35, issue 3, p. 308.

<sup>86</sup> *ibid.*, pp. 308 - 329.

<sup>87</sup> *ibid.*, pp. 315, 324.

<sup>88</sup> *ibid.*, p. 327.

In some of the mid-19<sup>th</sup> century prisons, reformers like G M Obermaier in Bavaria and M Monterinos in Spain were discontinuing punishments and punitive management techniques; instead, they were encouraging self-respect, industry and education to promote reintegration to society upon release.<sup>89</sup> These ideas were revolutionary at the time and Max Grünhut, a leading contemporary criminologist,<sup>90</sup> believed that they were effective in practice and should be integrated into the penal philosophies of the 1940s. He considered that compulsory education had been influential in raising social standards and as a consequence, a responsibility had been placed on the penal policy makers to ‘check anti-social behaviour’, while he also realised that there would be a time delay in its implementation.<sup>91</sup>

Savelsberg, Cleveland and King argue that control theories were in decline after the 1950s<sup>92</sup> and Newbold identified a worldwide move towards scientific criminology that resulted in rapid change in New Zealand’s prisons. This reform resulted in a shift of power towards offenders where elite groups of prisoners maintained control or manipulated prisoners’ co-operation for their own self-serving interests. The organisational response was to strictly enforce discipline that resulted in the disruption of prisons.<sup>93</sup> According to Cullen, by the 1970s American criminologists were advocating a ‘nothing works’ philosophy in the management of offenders and, as a result, American prisons followed a punitive oriented philosophy.<sup>94</sup> He formed this opinion following a report that reviewed 231 prison programs delivered between 1945 and 1967 and found that ‘rehabilitative efforts had no appreciable effect on recidivism’.

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<sup>89</sup> M Grünhut, *Penal Reform, A Comparative Study*, Clarendon Press, Oxford, 1948, pp. 64 - 72; Manuel Montesinos was Director of the Prison of Valencia in Spain in 1835, G M Obermaier was head of Bavarian prisons at Kaiserslautern (1830-41) and Munich (1842-62); D Garland, *Punishment and Modern Society: A Study on Social Theory*, Clarendon Press, Oxford, 1990, p. 95.

<sup>90</sup> R Hood, ‘Hermann Mannheim and Max Grünhut: Criminological Pioneers in London and Oxford’, *British Journal of Criminology*, vol. 44, no. 4, 2004, pp. 469 – 495.

<sup>91</sup> M Grünhut, *Penal Reform, A Comparative Study*, Clarendon Press, Oxford, 1948, p. 457.

<sup>92</sup> JJ Savelsberg, LL Cleveland & RD King, ‘Institutional Environments and Scholarly Work: American Criminology, 1951 – 1993’, *Social Forces*, vol. 82, no. 4, June 2004.

<sup>93</sup> G Newbold, ‘What works in prison management: Effects of administration changes in New Zealand’, *Federal Probation*, vol. 56, no 4, Dec. 1992.

<sup>94</sup> FT Cullen, ‘The Twelve People Who Saved Rehabilitation: How the Science of Criminology made a Difference’, *Criminology*, vol. 43, no. 1, Feb. 2005.

As a consequence, it was widely accepted that rehabilitative programs were a waste of resources and the focus needed to be on punishment and incapacitation.<sup>95</sup> This may have been the case when Eric Gayford Lloyd, Deputy Opposition Leader in Queensland from 1957 to 1966, found it difficult to see any value in the work of psychologists or psychiatrists in the rehabilitation of prisoners and instead advocated the employment of welfare officers to provide practical assistance.<sup>96</sup>

Due to social and political turmoil, and the questioning of institutional legitimacy<sup>97</sup> that occurred in the 1960s and '70s, critics of the prison system reported that wardens were more interested in coercing order rather than providing any rehabilitative assistance to prisoners. The excessive use of isolation cells and coercive weapons, according to Russell and Stewart, increased the likelihood of mental illness or the exacerbation of pre-existing conditions among prisoners.<sup>98</sup> Later, other researchers, like Palmer, Andrews and Bonta began refuting the 'nothing works' doctrine and identified studies that showed many programs reduced recidivism and, hence, the prisoner population.<sup>99</sup> Cullen believes that the public are basically punitive, yet they support the rehabilitation of offenders because it is through this rehabilitation that the prison system is humanised.<sup>100</sup>

McGuire identifies some of the foundational decisions made at the turn of the century that subsequently influenced policy in 1958. These included the diversionary legislation that removed offenders from inside prison and placed them in other institutions. When the reader understands that juveniles, inebriates and the insane had been removed from prisons it is easy to wonder

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<sup>95</sup> *ibid.*

<sup>96</sup> Eric Gayford Lloyd was the member for Kedron from 1951 until 1972 and Opposition Leader from 1957-1966; Hansard, Prisons Bill, 'Initiation in Committee', 4/3/1958 - 3/12/1958, p. 1488.

<sup>97</sup> E Pearlman, 'Grassrooting the System', 1976, listed in '25 years of Social Policy', *Social Policy*, vol. 25, no. 4, Summer 1995, p. 47.

<sup>98</sup> M Russell & J Stewart, 'Disablement, Prisons, and Historical Segregation', *Monthly Review: An Independent Socialist Magazine*, vol. 53, no. 3 Jul/Aug 2001.

<sup>99</sup> FT Cullen, 'The Twelve People Who Saved Rehabilitation: How the Science of Criminology made a Difference', *Criminology*, vol. 43, no. 1, Feb. 2005.

<sup>100</sup> *ibid.*



if a treatment model had in fact been adopted. It must be remembered that these types of offenders were not necessarily criminals. They were detained in a criminal institution for expedience and this divergence removed these vulnerable groups to other facilities where they could be dealt with more appropriately. This also reduced the prison population and allowed the authorities to focus on criminal offenders, where the redemption of the prisoner was restricted to a regulated daily routine and industry.

It will be seen in the following chapters that prison labour had moved away from the meaningless repetitive nature of the treadmill and shot drill towards some manufacturing and labouring work. McGuire maintains his focus on the macro level, for instance relating how various superintendents and Comptroller-Generals had military backgrounds, but does not delve into the application of this military experience in the prison. Based on the research conducted by McGuire, in the early 1900s there was an interest in the positivist school of criminology and the Queensland authorities provided more data than was requested by a supporter of Lombroso. Then, in 1912, Vincent Lesina, in his political speech arguing for the abolition of capital punishment, cited Lombroso, Ellis and others as being in favour of the treatment of criminals in a scientific manner.<sup>101</sup> The restricted prisons' budget and a Departmental focus on frugal spending, established a mindset of prioritising spending on security and self-sufficiency rather than on treatment for prisoners.

McGuire considered that the prisoners' attempts to preserve some sense of 'self, to maintain individuality and influence over their environment, meant that there would always be the manipulation of social interactions and resistance to authority.<sup>102</sup> The inconsistent attention given to youthful prisoners, women and indigenous offenders was to result in several decisions being made that did not address underlying issues. The youth were taken out of the prison and placed into reformatories and industrial schools, yet this

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<sup>101</sup> J McGuire, 'Punishment and Colonial Society: A History of Penal Change in Queensland 1859 - 1930s', 2001, PhD thesis, University of Queensland, Brisbane, p. 121.

<sup>102</sup> *ibid.*, p. 196.

separation did not spread to include older teenagers or young adults. Women were segregated in individual cells in a purpose built prison, and when the male prison suffered from overcrowding, the treatment of women regressed to association wards because it was considered more expedient for single cells to be used for men. Indigenous prisoners suffered as a result of racism and cultural insensitivity and were treated as inferior beings who were unworthy of the preferred jobs inside prisons<sup>103</sup> which then further exacerbated their sense of isolation. The writer of this thesis recognises these as significant issues that are worthy of specific research reaching to the modern era. Unfortunately, the detail required to do these issues justice is outside the scope of this thesis and will need to be addressed by others willing to further these under researched areas.

McGuire and Wimshurst show that the Government's discourse of prison self-sufficiency or cost recovery, screened under the rhetoric of rehabilitation through industrial labour, was a significant penal theme until the 1940s. This study of the *Prisons Act 1958* shows that this theme persisted and continued to influence various institutional decisions well beyond the 1940s.<sup>104</sup> McGuire's thesis provides insights into the attitudes, behaviours and practices that were prevalent among Ministers and prison administrators during the 1940s, and into the discussions and decisions that influenced the existing and desired practices that were enshrined in the 1958 legislation. The various pieces of diversion legislation that removed offenders from prisons and the implementation of other reforms poses the question of whether opportunities were maximised while they were available or whether the *Prisons Act 1958* was a missed opportunity in prison reform.

The above authors have provided glimpses into the history of Queensland prisons, while a small body of focused research was produced in 1966 by Lincoln in his BA Honors thesis, and more significantly in the PhD research

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<sup>103</sup> *ibid.*, pp. 285 - 286, 323 - 325.

<sup>104</sup> *ibid.*, pp. 377 - 378.

of Connors (1990) and McGuire (2001).<sup>105</sup> McGuire will be referred to several times throughout this study due to his considerable contribution to knowledge in the area. However, his study focused on aspects of diversion from prisons to other government institutions and the significant changes in prisons up to the 1930s. This leaves the 1940s to 1960's largely untouched, which is where this thesis will make its contribution to knowledge. McGuire's thesis does not canvas the need for reform, the opportunities that were lost or how timely were the changes that occurred following the *Prisons Act 1958*. These and other related questions are addressed here. McGuire defined the first three phases of Queensland's prison history as the convict period from 1824 to 1842, free settlement until separation from 1842 until 1859, which has been researched by Libby Connors, and then the phase researched by him, from 1859 to the 1930s.<sup>106</sup> This thesis, therefore, might be considered to encompass the fourth phase of Queensland's prison history.

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<sup>105</sup> I Lincoln, 'The punishment of crime in Queensland, 1860-1890', BA Hons Thesis, University of Queensland, 1966; L Connors, 'The birth of the prison and the death of convictism: the operation of the law in pre-separation Queensland 1839 to 1859', PhD Thesis, University of Queensland, 1990; J McGuire, 'Punishment and Colonial Society: A History of Penal Change in Queensland 1859 - 1930s', PhD Thesis, University of Queensland, 2001.

<sup>106</sup> J McGuire, 'Punishment and Colonial Society: A History of Penal Change in Queensland 1859 - 1930s', PhD Thesis, University of Queensland, 2001, p. 3.

## **Chapter 1 Influences and Issues: a Thematic Overview of Queensland Prison History**

This chapter provides an historical context to factors that influenced the development of Queensland prison management to 1957. It commences with a brief overview of the convict era when, under the military guard, there was a regime of strict discipline which at the time was recommended for prison management.<sup>1</sup> Management techniques also were influenced by the infrastructure limitations, including design, location and capacity, so these will be introduced briefly before this is discussed in detail in Chapter 2. The historical use of punishment and its application to maintain discipline will be considered as the foundation for the practices to be discussed in subsequent chapters, this will include the abuse of punishment in the form of unofficial sanctions. It will be seen that this was partly a result of the accepted level of violence in the community and low recruitment skill level for the role of prison officer. In the 1950s, recruit training and professional development were introduced in an attempt to improve the quality of prison staff, which was intended to allow change and permit an improved focus on prisoner rehabilitation. One contemporary method used to achieve rehabilitation was prison employment.

Initially prison labour was inextricably connected with punishment before being viewed as a method of providing vocational skills while contributing to budget savings and cost recovery. The other method of rehabilitation introduced in this chapter is parole, during which a prisoner would remain under supervision as they reintegrated to the community while completing their sentence. This chapter will suggest that the historical context resulted in a conservative prison administration that was focused on containment and

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<sup>1</sup> Discipline was considered a key management and rehabilitation tool and the first report of the Society for the Improvement of Prison Discipline, published in 1818, warned there would be major consequences if prison discipline were neglected. It also stated severe punishment was necessary to change the habits of criminals and, other deterrents, together with the fear of repeated punishment, were required to reduce criminality. *Report of the Committee of the Society for the Improvement of Prison Discipline and for the Reformation of Juvenile Offenders*, London, 1818, pp. 57.

discipline, with change, in the shape of rehabilitative reform, having to contend with this background.

### ***Prison history***

Prison management in Australia was influenced by the conditions and regulations established in England and applied in the convict settlements. These conditions had improved because of the reforms commenced in the 18<sup>th</sup> Century by influential individuals and groups such as John Howard, Elizabeth Fry, the Howard League and the Society for the Improvement of Prison Discipline (SIPD). The SIPD's second report, published in 1820, highlighted the beneficial effects of prison discipline, stating 'humane treatment, constant inspection, moral and religious instruction, judicious classification, and well regulated labour seldom fail, under the divine blessing, to reclaim the most guilty'.<sup>2</sup> The Society supported the use of the 'discipline mill' or also known as the treadmill, which had been invented in 1818 and was introduced into some prisons in England as a form of constant occupation.<sup>3</sup> One of these treadmills was installed in the convict settlement of Moreton Bay, part of which still exists as the Brisbane Observatory. The Society's influence was extensive as its patron was HRH The Duke of Gloucester, KG, with many parliamentarians either members or supportive of its work.<sup>4</sup> Consequently, the SIPD exerted extensive influence on prison management and the treatment of prisoners in England and the penal colonies.

The British Government's attitude towards convicts and the penal colony of New South Wales was clearly conveyed by Earl Bathurst to John Thomas Bigge, prior to Bigge's departure from Britain to investigate the administration of the colony. Bathurst affirmed the colony had not been established for any territorial or commercial advantage; rather, it was intended to be a place far removed from England where sufficiently severe punishment would deter offenders. The administrators were to ensure discipline was

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<sup>2</sup> *Report of the Committee of the Society for the Improvement of Prison Discipline and for the Reformation of Juvenile Offenders*, London, 1820, p. v – vi.

<sup>3</sup> *ibid.* pp. xvi, xix; The 'discipline mill', also known as the tread mill or stepping mill, had been introduced to Cold Bath Fields Prison at this stage.

<sup>4</sup> This support is indicated by the list of donations and donors listed in the reports.

enforced to an extent that transportation would be viewed as an ‘object of real terror’.<sup>5</sup> It was the responsibility of the Governor of New South Wales and the settlement commandant to provide sufficiently severe punishment to ensure even the worst offenders ‘viewed it with dread’.<sup>6</sup> To enhance this perception of ‘dread’, Bigge recommended repeat offenders and convicts who were either not useful to their masters, were guilty of misconduct, had a bad character or were cruel or depraved should be sent away from the general population<sup>7</sup> to settlements such as the one later established at Moreton Bay for ‘secondary punishment’.

Bigge’s recommendation was consistent with the view of the SIPD, that prisons should never be placed in the centres of cities or towns.<sup>8</sup> However, isolation from the general community and the nature of recalcitrant convicts were difficult challenges for the colony’s Commandants. The Moreton Bay Penal Settlement, which later became the Brisbane township, soon gained a terrifying reputation which caused it to be held in dread. The Commandant was responsible for managing difficult convicts at a remote location with a low ratio of marines to convicts, while maintaining a reasonable level of self-sufficiency. He was also expected to maintain strict discipline, but because policies were ambiguously defined, decisions were not always consistent with the intentions of the Governor of New South Wales or the British Government. The difficulty was compounded by the ‘tyranny of distance’;<sup>9</sup> consequently, many decisions were made at the discretion of the Commandant whose difficulties were exacerbated by the marines’ refusal to supervise convicts.<sup>10</sup>

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<sup>5</sup> Australiana Facsimile Editions no. 68. Copy of a letter from Earl Bathurst K.G. to John Thomas Bigge, Esq. Dated Downing Street, 6 January 1819, Adelaide, 1966, pp. 1 – 4.

<sup>6</sup> *ibid.*, p. 175.

<sup>7</sup> *ibid.*, pp. 163-164; AGL Shaw, *Convicts & the Colonies*, London, 1966, p. 189.

<sup>8</sup> The Society for the Improvement of Prison Discipline, *Remarks on the form and construction of prisons with appropriate designs*, 1826, London, p. 36.

<sup>9</sup> G Blainey, *The Tyranny of Distance*, Sun Books, Melbourne, 1966, pp. 35, 50.

<sup>10</sup> JB Hirst, *Convict Society and its enemies*, George Allen & Unwin, Sydney, 1983, pp. 80, 92.

Prison policy is shaped by a blend of politics and penological theory and practice, making it a product of its time and location. Pain and suffering were regarded as normal and inevitable in the early 19<sup>th</sup> Century<sup>11</sup> and for the first few decades the administrators at Moreton Bay were military men who had been exposed to the horrors of war.<sup>12</sup> Thus, many of them were relatively desensitised to human suffering. In addition, the prisoners were callous and generally repeat offenders. Dealing with them while simultaneously contending with the harshness of frontier life provided a unique set of circumstances for penology to develop. At the time corporal punishment was considered appropriate for offences committed by military personnel. Hence this acceptance of violence contributed to its use as a specific and general deterrent to convicts. When military and paramilitary personnel were responsible for prisoners, the maintenance and enforcement of discipline were considered to be a key component of managing the colony's prisons. Some of the punishments included confinement in a dark cell, the lash and the shot drill which will be described shortly. Since specialist staff were needed to enforce discipline, employing appropriate personnel was a key component of prison discipline. Until relatively recently (see Chapter 6 for a detailed discussion), prior knowledge and life experience sufficed as training. These specialist staff were initially recruited from the convict ranks, then the military (both during and after military service), the police force and eventually the general population: each recruitment pool had its own unique problems.

During the convict period, military personnel sent to New South Wales considered their purpose was to protect the colony from attack and insurrection. Consequently, they had little interest in disciplining convicts under their control.<sup>13</sup> Therefore, to maintain discipline it was necessary to identify suitable overseers from amongst the 'idle, violent' and often repeat

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<sup>11</sup> AGL Shaw, *Convicts and the Colonies*, Faber and Faber, London, 1966, p. 358.

<sup>12</sup> Department of Education, *Life in convict Brisbane*, Brisbane, 1983; J Harrison & JG Steele, *The Fell Tyrant or the Suffering Convict*, Royal Historical Society of Queensland, Brisbane, 2003, p. 7.

<sup>13</sup> JB Hirst, *Convict Society and its Enemies*, George Allen & Unwin, Sydney, 1983, pp. 80, 92.

offenders who made up the convict population. In penal settlements, the convicts were divided into two classes based on the length of time they had been incarcerated. Convicts in the first class received tobacco, lighter duties and were allowed to work as clerks, officer's servants, constables or overseers.<sup>14</sup> After Moreton Bay was opened to free settlement, convict overseers were eventually replaced by turnkeys<sup>15</sup> or warders who maintained prison security. The general standard of warders was low and those who remained in the job were those who could comply with prison regulations while operating within the bounds of what was acceptable behaviour within the prison. This allowed a prison sub-culture to develop, the implications of which will be discussed in chapters 5 and 6 where the application of prison discipline and rehabilitation will be considered.

The type of staff responsible for prisoners depended on the location and size of the prison or gaol. For example, the water police stationed on the Prison Hulk *Proserpine*, which was moored in the mouth of the Brisbane River during the 1860s, were responsible for prisoners on the hulk. They also supervised prisoners constructing the St. Helena Penal Establishment which was located on an island near the mouth of the Brisbane River. The police officer in charge, John McDonald, was also Keeper of the Hulk and was appointed as St Helena's first prison Superintendent on 14 May 1867. Between 1867 and 1869, soldiers of the 50<sup>th</sup> Regiment Military Guard assisted with prisoner supervision on St. Helena<sup>16</sup> and these military guards were expected to ensure the security of the prison, maintain order and suppress insubordination.<sup>17</sup> They were issued with live rounds and performed their duties with fixed bayonets. Although they were required to cooperate with the Superintendent, McDonald complained about their performance on several

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<sup>14</sup> AGL Shaw, *Convicts and the Colonies*, Faber and Faber, London, 1966, p. 204.

<sup>15</sup> The earliest appointment listed in 'The Letter book of the Sheriff' shows turnkey Henry Cox appointed 9 Oct. 1861, 'Letter book of the Sheriff/Comptroller-General'. Appointments to HM Gaol Brisbane, QSA., item 89466.

<sup>16</sup> J Hopkins-Weise & R Pratt, *Brisbane's 50<sup>th</sup> (Queen's Own) Regiment Detachments, 1866-69: and the Saint Helena Penal Establishment Military Guard*, Hopkins-Weise & Pratt, Brisbane, 2004, p. 27.

<sup>17</sup> COL/A91 in letter 67/1254, dated 14 May 1867, QSA., microfilm Z6833; *General Regulations, Penal Establishment, St Helena Island 14 May 1867 Regulation V*, QSA., Letter 67/1254, microfilm Z6833.



occasions and found it difficult to maintain prison discipline. He believed the military guards were uninterested and having a Lance Corporal in charge was insufficient authority to enforce the necessary duties and discipline on the guard.<sup>18</sup> Their lack of enthusiasm for supervising criminals is understandable, as British soldiers were not generally used for prison security. This problem resolved itself when the 50<sup>th</sup> Regiment was recalled on 11 March 1869 and their prison responsibilities were allocated to a police sergeant and eleven constables. The police contingent remained until December 1872, when it was replaced by warders<sup>19</sup> who supervised the Colony's main gaols including St. Helena, Brisbane, Toowoomba and Townsville, while police continued to supervise prisoners in the police gaols.

After the convict period, and 1869 on St. Helena, the military were not again directly responsible for prisoner management in Queensland. However, various superintendents possessed a military or police background and consequently applied a strict disciplinary administration. Early examples of this were McDonald and his successor as superintendent of St. Helena's prison, William Townley. Townley was a Scotch Militia and British Army Officer<sup>20</sup> who later became responsible for managing the Colony's prisons with the title, Sheriff and Inspector of Prisons.<sup>21</sup> This was changed when a new position and title of Comptroller-General of Prisons was created in 1893.<sup>22</sup> As Riley and Wilder found, even in modern times preference was

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<sup>18</sup> COL/A98 in letter 2832, dated 31 Oct. 1867, QSA., microfilm Z6944; COL/A100 in letter dated December 1867, QSA., microfilm Z6992; COL/A105 in letter 1406, dated 11 May 1868, QSA., microfilm Z698; COL/A101 in letter 337, dated 1 Feb. 1868, QSA.; J McDonald, 'Letter to officer in charge of the military guard regarding carrying of prisoners letters and messages', 11 May 1868, in letter 68/1406, QSA., microfilm Z6998.

<sup>19</sup> J Hopkins-Weise & R Pratt, *Brisbane's 50<sup>th</sup> (Queen's Own) Regiment Detachments, 1866-69: and the Saint Helena Penal Establishment Military Guard*, Hopkins-Weise & Pratt, Brisbane, 2004, pp. 45 – 46.

<sup>20</sup> 'Captain William Townley, Sudden death yesterday morning. A distinguished public servant', *The Brisbane Courier*, 14 May 1909, p. 5.

<sup>21</sup> Townley's initial title as head of the Department was Sheriff and Inspector of Prisons', W Townley, *Sheriff's report upon the gaols of the colony for the year 1888*, Brisbane, 1889, p. 1.

<sup>22</sup> C Pennefather, *Comptroller-General of Prisons' report upon the gaols of the colony for the year 1893*, Brisbane, 1894. Comptroller-General is the title of the person appointed by the Governor in Council to be in charge of the Queensland Prisons Department.

given to applicants who possessed a military background.<sup>23</sup> The use of police officers as warders or superintendents was a long-standing practice in Queensland, as we saw with the Water Police responsible for the Prison Hulk *Proserpine*<sup>24</sup> in the 1860s. This practice was to continue with police having dual roles. Even in the 1950s, a Police Sergeant was appointed as the Rockhampton Prison Superintendent.<sup>25</sup>

On occasions, the emphasis on maintaining adequate standards of security in Queensland prisons necessitated employing or retaining substandard staff. For instance, warders from Brisbane who suffered from alcoholism were transferred to the alcohol free prison island of St Helena; any alcohol found was disposed of and the offending warder was brought before the Visiting Justice who could reprimand, fine<sup>26</sup> or dismiss him.<sup>27</sup>

The history of prison staffing reveals a conflict of competing ideologies that passed from one generation to the next, while the lack of formal training made it difficult for prison administrators to establish desired standards among the rank and file. The need for appropriate recruitment and the professional development of existing officers will be discussed later in this chapter and further in chapters 2, 5 and 6, in the context of resistance to change by the prison sub-culture. However, staff represent only one determinant of the management of a prison system, another is infrastructure and the ways in which it supported or conflicted with contemporary thinking in penology.

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<sup>23</sup> FE Riley & BA Wilder, 'Hiring correctional staff with the right stuff', *Corrections Today*, June 2002, vol. 64, no. 3, p. 88.

<sup>24</sup> J Rice, 'The Queensland Water Police, A proud service since 1859', 2006, viewed 7 April 2009, <[http://mywebsite.bigpond.com/ijpj/Police\\_Pages/history.html](http://mywebsite.bigpond.com/ijpj/Police_Pages/history.html)>.

<sup>25</sup> P Glynn, Memorandum regarding investigation into 'Rockhampton Gaol- Superintendence of- Escape of prisoners from,' 17 July 1951, QSA., A/45480, item 319822; 'Defaulters Book', QSA., A/19923, item 271698, pp. 234 – 236.

<sup>26</sup> 'HM Penal Establishment, St Helena. Warder's defaulters' book. 20 May 1867 – 6 April 1916', p. 3, QSA., microfilm Z2041.

<sup>27</sup> P Hocken, 'St Helena. From hell hole to an island of beauty', *The Queensland Police Union Journal*, July 2001, p. 30; *General Regulations Penal Establishment, St Helena Island 14 May 1867 Regulation IV (4) & (6)*, QSA., letter 67/1254, microfilm Z6833.

## ***Infrastructure***

O'Toole maintains that the Australian prison system and its infrastructure were almost forgotten between the First World War and the 1950s, when prison conditions deteriorated progressively because of a lack of Government funding.<sup>28</sup> When considering the gaol infrastructure that existed at the time of the *Prisons Act 1958*, it is necessary initially to examine the reasons why gaols were constructed, where they were, to understand some of the limitations.

The first gaol in Queensland was built within the precincts of the Moreton Bay convict settlement, but once Moreton Bay was opened to free settlement it was thought undesirable to have a gaol in the centre of Brisbane. Consequently, the New South Wales Government<sup>29</sup> built a new prison away from the township. The new prison, opened on 5 November, 1860,<sup>30</sup> was located on the outskirts of the growing township in the area known today as the suburb of Petrie Terrace. The opening to free settlement increased both the local population and subsequently the offender population, resulting in the gaol rapidly becoming overcrowded. To deal with this, the Queensland Government chose the solution Britain had employed and purchased two ships, the *Proserpine* and *Margaret Eliza*, to be used as prison hulks while another prison was built on St. Helena Island utilising prisoner labour from the *Proserpine*.<sup>31</sup>

Prisons generally were constructed to standard designs, but for various reasons these standards were not always adhered to (Fig. 1.1 and 1.2). Some of the prisons built in Australia followed the Auburn radial design (see Chapter 2) that had been promoted in England by the SIPD, and this was

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<sup>28</sup> S O'Toole, *The History of Australian Corrections*, University of New South Wales Press, Sydney, 2006.

<sup>29</sup> The approval process began under New South Wales because Queensland had not yet become a separate State.

<sup>30</sup> 'Local Intelligence, The New Gaol', *The Moreton Bay Courier*, 6 November, 1860.

<sup>31</sup> C Galea, 'Convicts to Corrections: A study of significant, selected periods in prison history in the Brisbane area from 1824 to 1989', Master's thesis, Charles Sturt University, Wagga Wagga, 1997, p. 36.

reflected in some New South Wales buildings constructed in the 1830s.<sup>32</sup> The SIPD espoused several variations to the radial design depending on the number of prisoners who were to be detained in the facility. These variations consisted of two or more accommodation wings linked to a central building or, for a larger facility, radiating from two separate central buildings, which could then be operated as separate prisons.<sup>33</sup> The SIPD recommended several other designs to be discussed in more detail in the next chapter; however, it was to be several decades before the radial design was adopted in Queensland.



Figure 1.1 Prisoners' Barracks<sup>34</sup>



Figure 1.2 Petrie Terrace Prison<sup>35</sup>

In 1887, the Sheriff reported that offenders were classified at the Petrie Terrace Prison and treated accordingly 'as far as practicable' but was

<sup>32</sup> JS Kerr, *Out of Sight, Out of Mind*, S.H. Ervin Gallery, Sydney, 1988, p. 1.

<sup>33</sup> The Society for the Improvement of Prison Discipline, *Remarks on the form and construction of prisons with appropriate designs*, London, 1826, pp. 50 – 57.

<sup>34</sup> J Hogan, *The Windmill of Brisbane Town*, The National Trust of Queensland, Brisbane, 1978, p. 27.

<sup>35</sup> Picture of Petrie Terrace Prison, viewed 1 April 2009, <<http://elibcat.library.brisbane.qld.gov.au/uhtbin/hyperion-image/BCC-B120-24738>>.

dissatisfied that the cell design allowed them to communicate with each other.<sup>36</sup> The cell design in St. Helena prison differed from previous designs used in Queensland by having cells opening inward into a hallway.<sup>37</sup> While cells facing inwards provided another barrier to escape (Fig. 1.3) they did allow prisoners to see and communicate with those opposite.

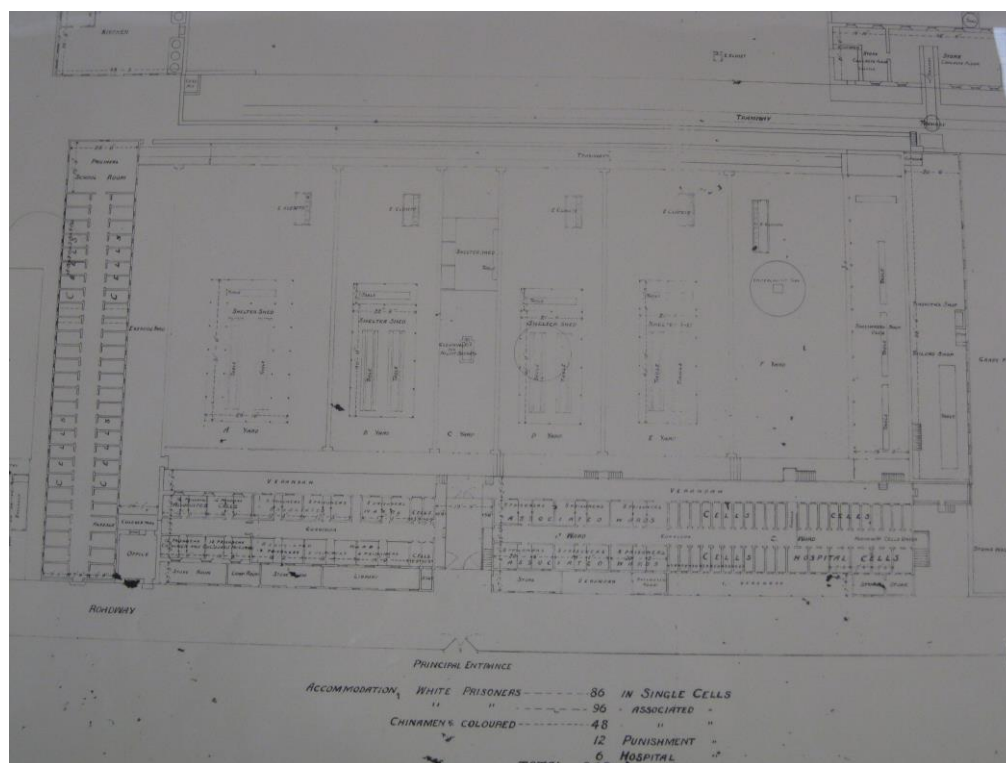


Figure 1.3 Layout of St. Helena Prison.<sup>38</sup>

On the mainland, the level of public support for the prison at Petrie Terrace declined as the boundaries of Brisbane continued to expand and newspaper articles critical of its situation began appearing.<sup>39</sup> It was decided to construct a new prison across the river, well out of sight of the township. This new prison (Fig. 1.4)<sup>40</sup> opened in 1883<sup>41</sup> and remained at Boggo Road (later renamed

<sup>36</sup> AE Halloran, *Sheriff's report upon the Gaols of the colony for the year 1886*, Brisbane, 1887, p. 2.

<sup>37</sup> The Petrie Terrace prison had cells facing outwards with the doors opening onto an external landing.

<sup>38</sup> St Helena Prison plan, 16 Oct 1907, QSA., item 117588.

<sup>39</sup> 'The Brisbane Gaol', *The Brisbane Courier*, 11 Mar. 1879, p. 3; *The Brisbane Courier*, 6 Aug. 1879, p. 4; *The Brisbane Courier*, 21 Oct. 1881, p. 2.

<sup>40</sup> Plan for the New Gaol South Brisbane, 3 May 1889, QSA., 1/6/PRV 14366.

<sup>41</sup> 'The new gaol', *The Brisbane Courier*, 3 July 1883.

Annerley Road) for a century, despite it eventually being subsumed within suburban Brisbane.

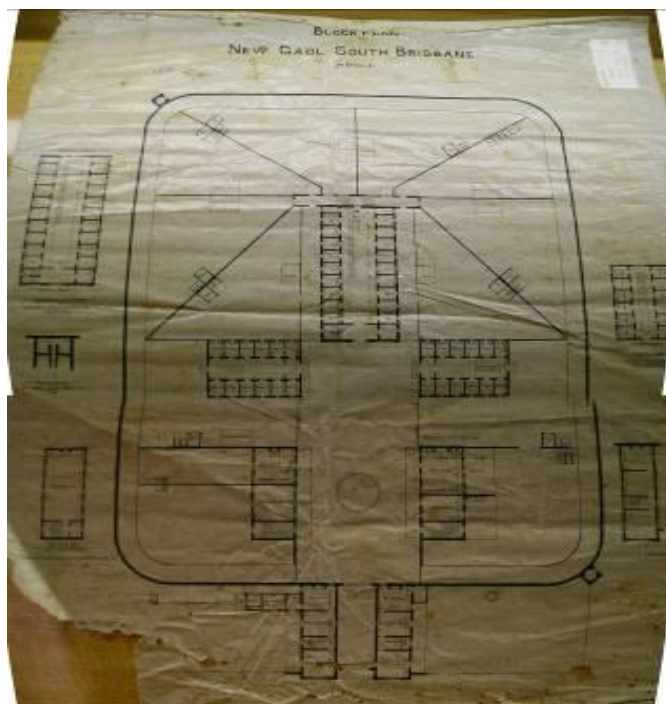


Figure 1.4 Plan of Brisbane Prison<sup>42</sup>

The prisons constructed in Townsville and Brisbane in the 1890s and the Brisbane Women's prison in 1901 adopted the SIPD radial design while the prison farms of the 1930s and 1940s, arranged the prisoner tents and huts in an orderly military fashion. The police gaols in Mackay and Roma used different designs which consisted of a building with a few cells surrounded by a high wooden fence.

HM Prison Thursday Island, a prison in a remote location, was attached to the police station (Fig. 1.5) and operated from circa 1886 to 1981, when it was demolished to make way for a combined police and prison complex,<sup>43</sup> although the prison component did not eventuate.

<sup>42</sup> Plan for the New Gaol South Brisbane, 3 May 1889, QSA., 1/6/PRV 14366.

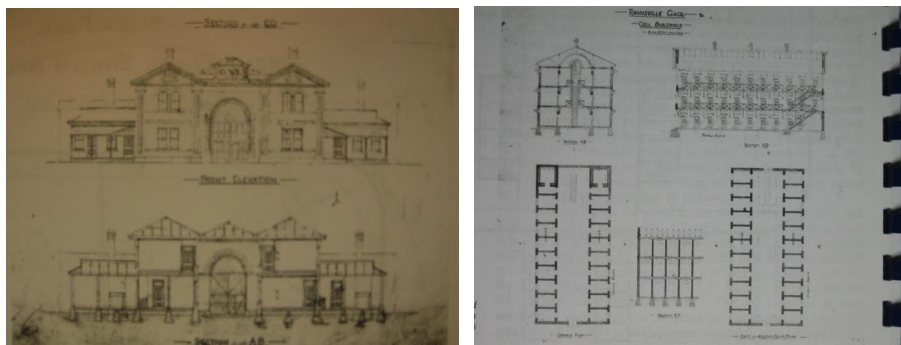
<sup>43</sup> EJ Collins, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June, 1981*, Brisbane, 1982.



Figure 1.5 HM Prison Thursday Island<sup>44</sup>

In 1893, HM Prison Townsville, Stewart's Creek (Figs. 1.6 and 1.7) started taking inmates from the gaol located in what became Townsville's inner suburb of North Ward. The 1893 prison (described below from the annual report) was more distant from the town centre than the previous prison.

The erection of a new prison has been commenced and is well advanced towards completion...The site of the new gaol is on the old Sheep Quarantine Ground, Stewart's Creek, and is about five mile from town...The gaol buildings are being erected conveniently near the railway line, so that rapid and easy transit to and from Townsville will be available...The site upon which the new gaol at Townsville is being erected has the advantage of having a hill in its near vicinity from which stone can be obtained, and the quarrying of which will afford useful hard work for the prisoners.<sup>45</sup>



Figures 1.6 and 1.7 HM Prison Townsville, Stewart's Creek.<sup>46</sup>

<sup>44</sup> C Pennefather, *Report of the Comptroller-General of Prisons for the Year 1915*, Brisbane, 1915.

<sup>45</sup> W Townley, *Sheriff's report upon the Gaols of the colony for the year 1890*, Brisbane 1891, p. 2.

<sup>46</sup> JS Kerr, *Out of Sight, Out of Mind*, S.H. Ervin Gallery, Sydney, 1988, p. 116.

The Comptroller-General, Charles Pennefather, described it as the ‘best constructed prison in the colony’ after prisoners had been moved from the previous North Ward facility in 1894.<sup>47</sup> Since then, the prison has been altered, refurbished and rebuilt several times on the same site and it is still in operation today.

Queensland women’s prison was built next to the men’s gaol on Boggo Road and it opened in 1902. Pennefather described it as being ‘constructed on modern principles, admitting of a system of proper classification and separation being carried out effectively, which hitherto it has not been possible to do, and which I regard as the best means towards reformation and deterrence’.<sup>48</sup> When overcrowding in the men’s prison became a problem again in 1921, the women were moved to other buildings on the prison reserve<sup>49</sup> to enable administrators to again classify and separate male prisoners.<sup>50</sup> It was found that at the new location the women could not be suitably segregated. The Comptroller-General, William Gall’s comments in the Annual Reports of 1927–1930 reveal he did not recommend expansion of the existing facilities and considered Brisbane Prison was no longer in a suitable location because of the surrounding residential population. Gall recommended a rural location be developed by prison labour and he recognised Queensland could not afford the funds at the time<sup>51</sup> due to the poor state of the Australian economy.<sup>52</sup> This changed in subsequent years when four prison farms<sup>53</sup> and a ‘rural’ prison<sup>54</sup> were constructed.

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<sup>47</sup> C. Pennefather, *Comptroller-General of Prisons report upon the Gaols of the Colony for the year 1893*, p. 1.

<sup>48</sup> C Pennefather, *Report of the Comptroller-General of prisons for 1903*, Brisbane, 1903, p. 8.

<sup>49</sup> Unknown, Prisons Department-information contained in the *Report for the Year ending 31<sup>st</sup> December 1921*, p. 1.

<sup>50</sup> *ibid.*

<sup>51</sup> W Gall, *Prisons Department- Information contained in the Report for the Year ending 31<sup>st</sup> December, 1927*, p. 7; W Gall, *Prisons Department- Information contained in the Report for the Year ended 31<sup>st</sup> December, 1929*, p. 6; W Gall, *Prison Department- Information contained in the Report for the Year ended 31<sup>st</sup> December, 1930*, p. 7.

<sup>52</sup> G Greenwood, *Australia, A Social and Political History*, Angus and Robertson, Sydney, 1955, pp. 340–344.

<sup>53</sup> Palen Creek, Numinbah, Whitenbah and Stone River prison farms.



The first prison farm in Queensland, Palen Creek, was established near the township of Rathdowney in 1934. The Home Secretary, Ned Hanlon, described the farm as an ‘innovation in Queensland prison methods’, it placed the prisoners on their honour to not abuse the faith entrusted in them by escaping or committing other offences that would result in their return to the secure prison.<sup>55</sup> Palen Creek was sufficiently successful that the government opened another prison farm, Numinbah, in the Gold Coast hinterland in 1940.<sup>56</sup> This was followed in 1941 by separate buildings at the northern end of the property (later named Whitenbah),<sup>57</sup> which existed until 1949 when it was closed due to maintenance costs of the internal road between it and Numinbah.<sup>58</sup> Another farm near north Queensland’s Stone River was opened in 1945,<sup>59</sup> but closed in 1961 because its remoteness caused difficulties with staffing and prisoner training.<sup>60</sup>

As early as 1894, Pennefather recognised that the gaols in southern Queensland had insufficient capacity and thought a location somewhere between Brisbane and Ipswich would be ideal for a new prison.<sup>61</sup> Yet it was not until 1957, when a replacement for HM Prison Brisbane was being considered, that land was purchased at Wacol (a suburb between Brisbane and Ipswich). At the time consideration was given to constructing separate accommodation for ‘(a) violent, hardened and dangerous prisoners whom it is considered are not likely to reform; (b) the criminal mentally sick who will

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<sup>54</sup> HM Prison Wacol and the Security Patients Hospital.

<sup>55</sup> *Courier Mail*, 1 Nov. 1934; JF Whitney, *Prisons Department-information contained in the report for year ending 31<sup>st</sup> December 1934*, Brisbane, 1934; A similar trust system on a farm was in operation in Florida and reported in *The Literary Digest*, 28 July 1923.

<sup>56</sup> JF Whitney, *Prisons Department-information contained in the report for year ending 31<sup>st</sup> December 1939*, Brisbane, 1940.

<sup>57</sup> JF Whitney, *Prisons Department-information contained in the report for year ending 31<sup>st</sup> December 1941*, Brisbane, 1941, p. 2.

<sup>58</sup> W Rutherford, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June, 1949*, Brisbane, 1949, p. 4.

<sup>59</sup> JF Whitney, *Prisons Department-information contained in the report for year ending 31<sup>st</sup> December 1944*, Brisbane, 1944.

<sup>60</sup> JF Whitney, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June, 1962*, Brisbane, 1962.

<sup>61</sup> C. Pennefather, *Comptroller-General of Prisons report upon the Gaols of the Colony for the year 1893*, Brisbane, 1894, p. 3.

not respond to treatment; and (c) the criminally mentally sick who are essentially behaviour problems and not suited for specialist psychiatric treatment'.<sup>62</sup> The final result, however, was that Wacol prison became a medium-security facility containing medium and low-security prisoners with many working outside the prison on the surrounding farm. The prison had a hollow square design<sup>63</sup> (Fig. 1.8) without a high, visually impenetrable perimeter wall. Accommodation cells were constructed as a part of the outer wall<sup>64</sup> and all prisoners were able to see the outside world through their cell windows<sup>65</sup> while some were also permitted to use the external sports oval (Fig. 1.9).



Figure 1.8 Aerial view of Wacol prison<sup>66</sup>

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<sup>62</sup> TJ Quinn, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June, 1957*, Brisbane, 1957, p. 2 – 4; Hansard 04/03/1958 – 3/12/1958, *Prisons Bill*, Brisbane, p. 1490. QSL.

<sup>63</sup> Refer to Chapter 2 for the discussion of prison designs.

<sup>64</sup> The outer cell wall was considered the primary structural security measure as the perimeter fence was constructed of chain and barbed wire and offered a limited barrier.

<sup>65</sup> Previously cell windows were small and located high on the cell wall. If the prisoner did manage to look outside many windows were located below the height of the solid perimeter wall.

<sup>66</sup> QCSA historical collection, 'Aerial view of Wacol Prison', c. 1960.



Figure 1.9 Wacol accommodation cells in the background<sup>67</sup>

The next prison built during this era was in Rockhampton. The Rockhampton gaol has changed its size and location several times during its history, with the North Street prison (Fig. 1.10) replaced by four cells at Rockhampton Police Gaol in 1959.<sup>68</sup> Within a few years, a new prison was built outside Rockhampton on a site acquired in 1966 that had ‘varying degrees of security embodied in the construction to suit modern penal requirements’.<sup>69</sup> This and other designs will be discussed in detail in Chapter 2.

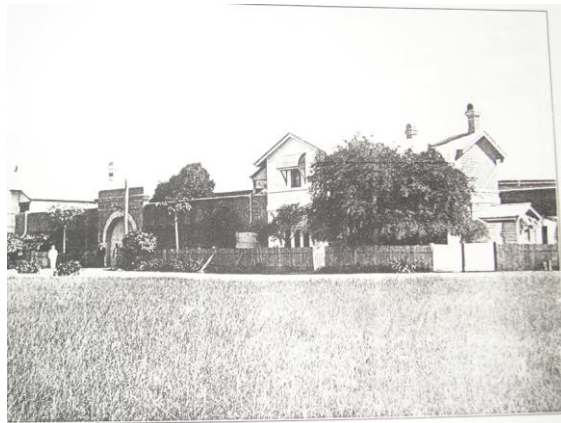


Figure 1.10 Entrance of Rockhampton Prison in 1913<sup>70</sup>

<sup>67</sup> MH Lewis, *Prisons Department Annual Report 1984*, Brisbane, 1984.

<sup>68</sup> Three cells for males and one for females; S Kerr, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June, 1959*, Brisbane, 1959, p. 3.

<sup>69</sup> S Kerr, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June, 1966*, Brisbane, 1966, p. 1.

<sup>70</sup> C Pennefather, *Report of the Comptroller-General of Prisons for the Year 1913*, Brisbane, 1913.

As Queensland's prison infrastructure was expanded and renovated, the hollow square design was also used in the construction of the Prisons Department administered Security Patients Hospital in 1963, and the reconstructed Brisbane Prison in the 1970s (Fig 1.11).



Figure 1.11 HM Prison Brisbane<sup>71</sup>

The opportunity to use new designs that recognised prisoners as people and supported a rehabilitative model was not fully exploited for many years. Prior to the mid-20<sup>th</sup> Century, the primary purpose of imprisonment was to remove offenders from society as retribution. This outlook began to change in Western jurisdictions when the Scandinavian model of unit management gave rise to a new vision for imprisonment that introduced the concept of dynamic security.<sup>72</sup> Sue King maintains that unit management, which requires regular interaction between officers and offenders, has been influential in humanising prisoners<sup>73</sup> and this was made viable by new trends in prison design. The change of government in 1957 offered Queensland a wonderful opportunity to instigate reform and commit to a rehabilitative model. But until that

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<sup>71</sup> Queensland Prison Service, cover page photo of HM Prison Brisbane, *Annual Report 1987*, Brisbane 1987.

<sup>72</sup> S King, 'The Changing of the Guard: the prison officer as manager and peacemaker', Conference Paper presented to the Australian and New Zealand Society of Criminology Conference, Hobart, February 2006, pp. 2 – 3.

<sup>73</sup> S King, 'Women and the changing work of prison officers', paper presented at the Women in Corrections: Staff and Clients Conference, convened by the Australian Institute of Criminology and the Department for Corrective Services SA held in Adelaide, 31 October to 1 November 2000, p. 5.

commitment occurred the dominant philosophy in prison management remained one of containment and retribution, with discipline remaining a key component in its administration.

### ***Reform through deterrence***

Time in prison can be made more unpleasant by the misapplication of discipline and while some punishment is necessary and appropriate, closed institutions are susceptible to the abuse of power and the unjustifiable application of sanctions. Chapters 3 and 5 will examine this issue in detail, but to understand the role of discipline in the *Prisons Act 1958*, it is first necessary to consider its earlier application in prisons. Historically, there had been apathy toward offenders' plight which resulted in a lack of transparency with regards to the application of prison discipline. A common view in the late 19<sup>th</sup> Century was that the prison system had 'nothing to do with moral reformation...what it has to do with is to make [the prisoner] suffer, and so to suffer that, if possible, [the prisoner] shall be deterred from a repetition of the wrong'.<sup>74</sup> The upper house of the Queensland Parliament expressed the view that rebellions, similar to those by prisoners at St. Helena Prison in 1889, could legitimately be quelled by using firearms.<sup>75</sup> Therefore, it sanctioned the use of measures up to and including lethal force to resolve prison disturbances by groups or individuals. This sentiment will be seen repeatedly in the coming chapters and contributed to the apathy towards the prisoners' plight when disturbances were not resolved peacefully.

Forms of punishment used at St. Helena and Brisbane in the late 19<sup>th</sup> Century and into the 20<sup>th</sup> Century included separate confinement in dark underground cells;<sup>76</sup> flogging with the cat-o'-nine tails; the gag, which involved fastening a wooden peg in a prisoner's mouth and; the shot drill, where prisoners lifted

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<sup>74</sup> R Evans, 'Union Prisoners, 1981', in R Evans & C Ferrier (eds), *Radical Brisbane, an Unruly History*, The Vulgar Press, Carlton North, 2004, p. 96.

<sup>75</sup> *ibid.*

<sup>76</sup> These cells were known as the 'Black Peter' and their replacement was called the 'Detention Unit'. These continued to be used in Brisbane Prison until the 1980s.

and moved cannon balls a few feet at a time.<sup>77</sup> Other punishments included leg irons<sup>78</sup> and half rations or bread-and-water diets.

The 1818 report of the Committee of the SIPD stated prison discipline must be enforced to prevent ‘most destructive consequences’ and the use of imprisonment was for ‘repression of the offence and reformation of the offender’. It reasoned that deterrence could not be achieved by fear alone but also required ‘dominion over the mind’, which could be achieved through establishing ‘religious and moral principles’ and instilling ‘sober and industrious’ habits.<sup>79</sup> That punishment should involve anything less than ‘just and salutary terrors’ was an affront to the SIPD who affirmed their support of classification, industry and discipline.<sup>80</sup> This attitude was reflected in prison management for many years and can be found in the practices and regulations in England, Australia and Queensland.

The retributive attitude held overseas was to continue, with the British Prison Commissioner believing that English prisons in 1923 were not intended to be pleasant places; rather, they should keep mind and body active through industry and education, while removing any unnecessary degradation within the prison and have this supported by the gradual introduction of limited trust.<sup>81</sup> While there was a move away from terms such as ‘just and salutary terrors’ and the use of ones like ‘limited trust’, the attitude appears similar to that of the SIPD a century before, however, there was more discussion of prison reforms and changes to policies in the coming decades.

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<sup>77</sup> P Hocken, ‘St Helena. From hell hole to an island of Beauty’, *The Queensland Police Union Journal*, July 2001, p. 28; R Evans, ‘Union Prisoners, 1981’, in R Evans & C Ferrier (eds), *Radical Brisbane, an Unruly History*, The Vulgar Press, Carlton North, 2004, p. 95.

<sup>78</sup> R Evans, ‘Union Prisoners, 1981’, in R Evans & C Ferrier (eds), *Radical Brisbane, an Unruly History*, The Vulgar Press, Carlton North, 2004, p. 95.

<sup>79</sup> *Report of The Committee of the Society for the Improvement of Prison Discipline, and for the Reformation of Juvenile Offenders*, London, 1818, pp. 5 - 7.

<sup>80</sup> *Report of The Committee of the Society for the Improvement of Prison Discipline, and for the Reformation of Juvenile Offenders*, London, 1821, pp. 8 - 10.

<sup>81</sup> A W Munro, ‘Notes for the Honourable The Minister for Justice on the Probation and Parole Bill’, undated, p. 1, QSA., JUS/W64, item 20379.

### ***Improve the staff standard***

Policy implementation requires staff committed and trained in its application. In the 1950s, prison administrators appeared to be promoting a more modern approach to prison management by signaling their intention to employ a higher standard of staff and provide additional training for existing prison officers. The professional needs of prison staff were recognised in various jurisdictions for decades prior to the *Prisons Act 1958*.

In an address to the 1920 American Correctional Association Congress of Correction, the Secretary of the Pennsylvania Prison Society, AH Votow, stated prison staff needed to be ‘men and women of strong human sympathies, deep understanding of human nature, firmness combined with the utmost kindness, and capacity for inspiring others with ambitions for loftier ideals... the supreme aim of prison discipline is the reformation of criminals, not the infliction of vindictive suffering’.<sup>82</sup> While Votow’s comments represent the ideal, he acknowledged the entrenched attitudes of prison staff and the difficulties in implementing positive reforms. In this era, there were progressive thinkers in Australia as well. For example, in a letter to the Tasmanian Attorney General in 1924, the Superintendent of Hobart Gaol wrote of prison reform and commented that the prison system in Tasmania was old-fashioned and punitive rather than reformatory. He believed many of its administrators had been trained in the old school of discipline and it would be difficult for them to change (even if they were willing to) due to the design of the old prison buildings.<sup>83</sup> In 1926, Berkeley Lionel Dallard, the Under Secretary for Prisons in New Zealand said, ‘there was too great a tendency to cling to the old penal methods, and some provision should be made for the training of staff in modern principles of penology’.<sup>84</sup> When commenting on New Zealand prisons, Pratt stated that due to ‘organisational deficiencies and institutional resistance to reform’, reforms were suppressed and prison staff

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<sup>82</sup> F E Riley & B A Wilder, ‘Hiring Correctional staff with the right stuff’, *Corrections Today*, June 2002, vol. 64, issue 3, p. 88.

<sup>83</sup> Letter from the Superintendent HM Gaol Hobart to the Attorney-General 28 July 1924, p. 1. QSA., A-8724, item 267662.

<sup>84</sup> J Pratt, *Punishment in a perfect society, The New Zealand Penal System 1840-1939*, Victoria University Press, Wellington, 1992, p. 227 - 228.

continued to operate in the same way as previously.<sup>85</sup> A reluctance to change can be found in different jurisdictions and ultimately Queensland's prisons did not operate in a vacuum.

Prison staff moved in and out of prisons on a regular basis while living in the community and prisoners were received and discharged. Both staff and discharged prisoners relocated to different jurisdictions taking and bringing their experiences and beliefs with them. Garland maintains that institutions affect and are affected by the social forces that surround them<sup>86</sup> creating a prison sub-culture which will be discussed in Chapter 5. Garland defines culture as the 'configuration of value, meaning and emotion' and says it is one factor that determines punishment in prisons.<sup>87</sup> If this is correct, then the application of policy should reflect socially acceptable norms, but what are these norms, as 'social norms' vary among different groups in society and this gives rise to subcultures. Consequently, the application of policy can be manipulated by employing staff who hold similar beliefs to their employers or who have the potential to be indoctrinated to conform to particular subcultures. These subcultures then determine how prison rules are enforced and pressure new staff to comply with that application of policy. The employment of prison officers predisposed to the desired level of enforcement assists induction and training; however, if staff resist reforms, then there is the potential to perpetuate existing problems. The standard of prison applicants following World War II was understandably low. Many were migrants who possessed limited education, low levels of English literacy and the prison working conditions were poor.<sup>88</sup> These factors added to the tension between enforcing discipline and encouraging rehabilitation.

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<sup>85</sup> *ibid.*

<sup>86</sup> D Garland, *Punishment and Modern Society, A study in Social Theory*, Clarendon Press, Oxford, 1990, p. 283.

<sup>87</sup> *ibid.* p. 249.

<sup>88</sup> 'Four Senior Jail Men Quit in Week', *The Sunday Mail*, 28 Mar. 1965.



For many years the educational criterion to become a prison officer was a grade five level of education or equivalent.<sup>89</sup> While education in Queensland was compulsory to grade seven, not everyone achieved this because of the disruptions of World War II. Schooling was not compulsory in Queensland coastal towns between 1942 and October 1944, many women and children were evacuated from these areas and several schools were utilised by American troops.<sup>90</sup> Therefore, following the war, some people entered the workforce after only four years of schooling, which reduced the education standard of the employment pool. This problem was compounded by the number of post-war migrants who had varying levels of written and spoken English.

### ***Officer recruitment***

Following World War II, the cry was 'populate or perish' and Australia provided free assisted passage to British ex-servicemen and their dependents.<sup>91</sup> Consequently, in 1949, of the total migrant intake of 168 000 people, approximately one third (54 000) were from Great Britain and 75 000 were displaced persons from mainland Europe.<sup>92</sup> Alan Whiteside Munro, Liberal member for Toowong, said the new settlers should be made into good Australians so they 'became the right type of people'.<sup>93</sup> This political agenda continued and at the 1957 Queensland Country Party Conference, former Australian Country Party leader, Sir Earle Page, stated 'the most urgent task in Australia is the rapid development of her own resources and the increase of her population'.<sup>94</sup> According to Borrie, this received wide community support

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<sup>89</sup> Qualifications required by candidates for wardership in the Prison Service: 'Candidates shall have passed the fifth class education standard'. Queensland Prison Service, 'Application for admission into the Prison Service of Queensland', 3 July 1933. QSA., A19949.

<sup>90</sup> H McQueen, *Social Sketches of Australia 1888-1975*, Penguin Books, Victoria, 1978, p. 164.

<sup>91</sup> M Armit, J Larkins, D Godfrey & G Benjamin, *Australia and Immigration 1788 to 1988*, Australian Government Publishing Service, Canberra, 1988, p. 30.

<sup>92</sup> Parliamentary Debates, *Official Record of the Debates of the Legislative Assembly during the first session of the Thirty-Second Parliament*, 17 August 1950, p. 118.

<sup>93</sup> *ibid.*

<sup>94</sup> J Flemming, 'New Governments in Queensland: Industrial Relations, 1957-1961, 1989-1990', PhD thesis, Griffith University, Brisbane, 1998, p. 32.

and because Great Britain had its own labour shortages, it was decided to widen the migration pool to include much of Europe, although assisted passage was rarely provided to non-British persons.<sup>95</sup> This focus on increasing migration resulted in approximately two million European migrants entering Australia over two decades to expand the industrial workforce.

These migrants were over-represented in the unskilled labour force, which received below average wages, poor housing and poor education.<sup>96</sup> Due to the large numbers of migrants, accommodation was in short supply which resulted in many living in slums, tents and temporary fibrous cement (fibro) dwellings.<sup>97</sup> One migrant wrote of his experiences in Queensland in the early part of the 20<sup>th</sup> Century and said 'to the English and Australians only Anglo-Saxons are white' and in English-speaking countries they follow the 'law of the fang and the cudgel'.<sup>98</sup> From his experience in the general workforce, he believed one could gain respect only through physical strength and fighting prowess. The Prisons Department provided long-term employment for unskilled workers who brought with them the attitudes and behaviours of these disadvantaged socioeconomic groups.

It has been argued such classes often have little commitment to the dominant moral order and their conduct is driven more by economic necessity.<sup>99</sup> They were accustomed to having few possessions, defending their families or possessions and were unsympathetic to those who disregarded or threatened these values. The punitive nature of imprisonment was not restricted to

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<sup>95</sup> D Cocks, *People Policy, Australia's population choices*, University of New South Wales Press, Sydney, 1996, p. 3; K Healey, *Racism & Reconciliation, issues for the Nineties*, The Spinney Press, Sydney, vol. 28, p. 3; D McMaster, 'White Australia to detention: restriction and racism', *Mots Pluriels*, no. 21, May 2002, viewed 24 Feb. 2009, <<http://www.arts.uwa.edu.au/MotsPluriels/MP2102dm.html>>.

<sup>96</sup> R W Connell and TH Irving, *Class Structure in Australian History*, Longman Cheshire, Melbourne, 1980, p. 293.

<sup>97</sup> H McQueen, *Social Sketches of Australia 1888-1975*, Penguin Books, Victoria, 1978, pp. 180, 216.

<sup>98</sup> K Windle, 'Murder at Mount Cuthbert: A Russian revolutionary describes Queensland life in 1915-1919', *AUMLA: Journal of the Australasian Universities Modern Language Association*, Sydney: Nov 2008, issue 110.

<sup>99</sup> D Garland, *Punishment and Modern Society. A Study in Social Theory*. Clarendon Press, Oxford, 1990, p. 94.

Australia, but was reinforced by migrants who belonged to the same employment pool from which British prison staff were drawn. Within the United Kingdom prison system, discipline was intended to be ‘maintained with firmness, but with no more restriction than is required for safe custody and well-ordered community life’. Yet, Norman Howarth Hignett, an ex-coroner<sup>100</sup> who spent time in custody, believed the prison system was ‘at worst starkly punitive, and at best barren and meaningless’.<sup>101</sup> He also maintained that discipline often was enforced using a variety of unofficial sanctions (see Chapter 5 for further discussion). Many migrants in Queensland were able to gain employment in the prisons, but there was little incentive for them to remain long term<sup>102</sup> which contributed to the high staff turnover.<sup>103</sup>

### ***Spare the rod***

Another factor that influenced the attitudes of Queensland prison staff was the prevalence of violence on the streets where during the 1940s and 50s the use of force by law-enforcement agencies was not uncommon. From the prison perspective, the fear of loss of face, or worse still loss of control of a prison and the retributive attitudes towards crime and punishment were the main reasons for maintaining a firm standard of discipline.<sup>104</sup> Many prison officers, employed during the period this thesis focuses upon, had military experience in the course of which racial discrimination and violence occurred, as demonstrated among allied troops stationed in Queensland during World War II. Segregation of African-American troops and disturbances between the allies occurred in Brisbane, Townsville, Rockhampton, Mt Isa and other cities in Australia.<sup>105</sup> The use of force was also evident amongst the police many of whom, according to Evans, were ready to ‘bash first and ask questions

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<sup>100</sup> *Derby Daily Telegraph*, Derby, Derbyshire, England, 12 December 1949.

<sup>101</sup> N H Hignett, *Portrait in Grey*, William Clowes and Sons, London, 1956, pp. 106 - 107.

<sup>102</sup> ‘Four Senior Jail Men Quit in Week’, *The Sunday Mail*, 28 March 1965.

<sup>103</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1964*, Brisbane, p. 2.

<sup>104</sup> H Jones, *Crime and the Penal System*, 2<sup>nd</sup> edn, University Tutorial Press, London, 1962, p. 204.

<sup>105</sup> R Evans & J Donegan, ‘Battle of Brisbane, 1942’, in R Evans & C Ferrier (eds), *Radical Brisbane, an Unruly History*, The Vulgar Press, Carlton North, 2004, pp. 209, 211 - 212.

later'.<sup>106</sup> By 1955, youths labelled 'bodgies and widgies' were considered a significant problem and the Police Minister, Arthur Jones, promised the problem would be eliminated. An ex-bodgie stated that the police would beat them 'down alley ways, on the street or in the watch-house'.<sup>107</sup> Complaints of assaults carried out by prison officers would most likely be investigated by police, who as a group supported the use of unsanctioned punishment. Consequently, the punitive behaviour of the prison staff sub-culture was reinforced as being acceptable and therefore transferred to the next generation of officers. Additionally, the methods used to train prison staff shaped their attitudes. Generally, prison warders initially went about their duties drawing on life experience. Subsequently they learnt 'on-the-job', both from more experienced staff and from their own or others' mistakes.

### ***Hard labour***

While prison design and the quality of prison staff influenced the pace and pattern of reform, the use of prison labour also emerged as a rehabilitative concept. Over the centuries, the purpose of prison labour changed from teaching useful employable skills, to the imposition of meaningless tasks as retribution and then it reverted back to the inculcation of useful skills.<sup>108</sup> Assigning work to prisoners originated in the workhouses where it had the dual aim of teaching employable skills to the poor and recouping expenses. Work continued to be performed in bridewells and subsequently in prisons, where its purpose altered to become punishment, as with the treadmill or shot drill. An option available to the judiciary was to include 'hard labour' in a sentence, which then required prisoners to be kept at work during their incarceration. In the early 19<sup>th</sup> Century, the SIPD recommended 'labour should be regarded principally with reference to moral benefits, and not

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<sup>106</sup> R Evans, 'Rock 'n' Roll Riot, 1956', in R Evans & C Ferrier (eds), *Radical Brisbane, an Unruly History*, The Vulgar Press, Carlton North, 2004, p. 249.

<sup>107</sup> *ibid.*, p. 250.

<sup>108</sup> N Morris & DJ Rothman, *The Oxford History of the Prison*, Oxford University Press, Oxford, 1998, pp.75, 131 – 133, 184.

merely the profits',<sup>109</sup> this meant hard labour should be imposed to reform prisoners and thereby reduce the number of recidivists. This resulted in labour for labour's sake and equipment like the treadmill was considered ideal because the design of the machinery required continuous effort by the prisoner. In 1867 the *Brisbane Courier* expressed concern about the low level of persuasion applied when hard labour gangs were seen 'toying with their tools' or 'congregating in groups to talk',<sup>110</sup> but conceded that discipline by hard toil should be applied only to those who were physically capable, without resorting to violence, which was 'out of the question in these days'.<sup>111</sup> In the mid-1950s the expressed intent of prison labour changed from enforcing meaningless tasks to providing prisoners with employable skills in preparation for discharge. The underlying consideration was that employment assisted a prisoner towards rehabilitation, yet it will be seen in the coming chapters that there was also a view by prison administrators that prison labour should be used to achieve financial savings. Another option considered rehabilitative but very limited in its application was parole.

Because parole relates to supervision of offenders in the community, it was interlinked with probation and came under the control of a probation officer. Probation was introduced in Queensland by the *Offender Probation Act 1886* and a Parole Board was established by the *Prisoners Parole Act 1937*. In spite of the existence of the legislation, the lack of support for both probation and parole was evident for many years with the single appointed probation officer dealing with only 40 cases in twelve years from 1944.<sup>112</sup> In 1958, Attorney General, William Power, said he believed parole under the supervision of parole officers should be given to as many prisoners as possible.<sup>113</sup> Yet,

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<sup>109</sup> The Society for the Improvement of Prison Discipline and for the Reformation of Juvenile Offenders, *Rules proposed for the Government of Gaols, Houses of Correction, and Penitentiaries*, appendix A, London, 1820.

<sup>110</sup> *The Brisbane Courier*, 20 Mar. 1867, p. 2.

<sup>111</sup> *ibid.*

<sup>112</sup> C McCartney, R Lincoln & P Wilson, *Justice in the deep north*, Bond University Press, Gold Coast, 2003, p. 144; Queensland Department of Corrective Services, 'Celebrating 40 Years of Community Corrections 1959-1999. A history of Community Corrections in Queensland', 1999, p. 3.

<sup>113</sup> Hansard 04/03/1958- 3/12/1958, *Prisons Bill*, QSL., Brisbane, p. 1491.

regardless of the Minister's comments, of the 54 applications for parole in the departmental reporting period of 1958–59, only six were approved.<sup>114</sup>

For reforms based on contemporary practice to be introduced, it is necessary to review their legislated platform on a regular basis. Probation and parole legislation was revised five times between 1886 and 1988. But how did review of prison legislation compare? Queensland's *Prisons Act 1890* provided for contemporary forms of socially acceptable punishment and while there had been some amendments, the Act was not subjected to significant review to reflect the societal or technological advances of the first half of the 20<sup>th</sup> Century. This was long overdue when the Queensland government changed in 1957.

### ***The start of change***

On 3 August 1957 the Country–Liberal Party coalition came to power on a platform of 'fixing' the problems created by the long-serving Labor Party, which, they believed, had become dictatorial and out of touch with the needs of the people. The conservatives main publicised focus was on the development of Queensland's mines, industry and transport system (particularly the railways),<sup>115</sup> while 'law and order' only entered the political agenda in the form of a possible Royal Commission into police administration and a review of the Criminal Code,<sup>116</sup> the prison system did not receive publicised attention. Of the various party policy speeches made during the 1953, 1957 and 1960 election campaigns, crime and punishment featured only in 1960 when the Coalition spoke of their achievements, including the implementation of the *Prisons Act 1958* and changes to the Probation and

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<sup>114</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1959*, Brisbane, 1959, p. 5.

<sup>115</sup> J Flemming, 'New Governments in Queensland: Industrial Relations, 1957–1961, 1989–1990', PhD thesis, Griffith University, 1998, Brisbane, p. 30.

<sup>116</sup> 'Police Reforms', *The Courier Mail*, 1 July 1957; 'Two views on Police', *The Courier Mail*, 2 July 1957; 'Police Probe', *The Courier Mail*, 5 July 1958, p. 5; 'Secret police claimed', *The Courier Mail*, 10 July 1957, p. 6; 'Barristers in Election for Law reform', *The Courier Mail*, 23 July 1957, p. 8; 'Nicklin would review all dictatorial laws', *The Courier Mail*, 31 July 1957.

Parole Act.<sup>117</sup> The Australian Labor Party's response to law and order in Queensland in 1960, related to juvenile delinquency; they intended to give solving the problem 'generous financial support' and develop a policy based on the recommendations of experts, which implied that an actual policy had yet to be developed even though there had been three years since the last election.<sup>118</sup> While prisons and their management were not a specific focus of the political campaigns, there appears to have been a wave of activity in this area in Queensland and other jurisdictions, with New Zealand, New South Wales and Victoria reviewing their penal legislation in the 1950s. A detailed comparison between the Queensland Prisons Act and legislation in other jurisdictions will be provided in Chapter 4.

The new Queensland Government intended to review outdated legislation, such as the *Prisons Act 1890* and Alan Whiteside Munro was appointed Attorney General with responsibility for the prison portfolio. Weller (as cited by Flemming, 1998) suggests that when political parties who have been in opposition for a long time come to power there is an opportunity for significant change because new ministers generally have strong views and are not 'house trained' by bureaucrats or fearful of the impact of reforms.<sup>119</sup> Flemming adds that the new Queensland Government had a golden opportunity to effect change because the Opposition was in disarray and desperately trying to realign their strategies.<sup>120</sup> Following a Public Service investigation into existing legislation, the Under Secretary to the Department of Justice, FP Byrne, requested the Solicitor General examine the New South

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<sup>117</sup> K J Morris, 'Policy speech of the Honorable K.J Morris, M.L.A. Deputy Premier and Minister for Labour and Industry', 11 May 1960, Parliamentary Library.

<sup>118</sup> TA Hiley, 'Policy speech, Queensland Country and Liberal Parties', 12 Feb. 1953, Queensland Parliamentary Library; GFR Nicklin, 'Policy speech, Queensland Country and Liberal Parties', 10 Feb. 1953, Queensland Parliamentary Library; VC Gair, 'Policy Speech of the Queensland Labor Party', 8 July 1957, Queensland Parliamentary Library; GFR Nicklin, 'Policy speech, Queensland Country and Liberal Parties', 5 May 1960, Queensland Parliamentary Library; VC Gair, 'Policy Speech of the Queensland Labor Party', 9 May 1960, Queensland Parliamentary Library; JE Duggan, 'Policy Speech of the Australian Labour Party', 8 July 1957, Queensland Parliamentary Library, p. 10; KJ Morris, 'Policy speech, Queensland Country and Liberal Parties', 11 May 1960, p. 9, Queensland Parliamentary Library.

<sup>119</sup> J Flemming, 'New Governments in Queensland: Industrial Relations, 1957–1961, 1989–1990', PhD thesis, Griffith University, Brisbane, 1998, p. 15.

<sup>120</sup> *ibid.*, p.16.

Wales prison legislation and prepare a set of regulations to bring Queensland 'as far as possible, into line with the NSW Act'.<sup>121</sup> As a result, in July 1958, the Comptroller-General of the Prisons Department, Stewart Kerr, began to prepare the regulations that would be incorporated into the Queensland Prisons Act. He stated that these had been derived from New South Wales and Victoria and his own ideas, and were 'desirable from an administrative point of view for the satisfactory internal management of the prisons'.<sup>122</sup> From this it seems that Kerr's focus was on administration, discipline and security, and much of what is presented in the following chapters considers the extent to which this was tempered by contemporary discourses in criminology and penology..

The emphasis on existing legislation in other jurisdictions may have been driven by the desirability of instituting consistent punishment practices. Alternatively, it may have been a result of political pressure to honour election promises to implement reforms as soon as possible. This last explanation is the most probable given the speed with which initiation, review, discussion and implementation were conducted. It may also be possible that a review of the Act had been instigated by the previous Government and the Country–Liberal coalition was simply finalising an existing review. Regardless of the motivation, the new Act allowed several changes, which are introduced below and considered in depth in the following chapters.

Reforms introduced by the Queensland *Prisons Act 1958* included: new measures to employ and train professional staff to promote the prisoners' physical and mental welfare; the introduction of examinations for employment or promotion of prison officers; minor prison offences to be heard by Superintendents and Visiting Justices; segregation of youthful or troublesome offenders and; payments to prisoners who had been injured while performing prison labour. In addition, hard labour was redefined and the list of offences

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<sup>121</sup> FP Byrne, 'Memorandum to the Solicitor General', 26 Sept. 1957. QSA., PRV 9251/1/33.

<sup>122</sup> S Kerr, 'Letter regarding Prison Regulations to the Under Secretary', 8 July 1958. QSA., PRV 9251/1/33.



by prisoners and other persons expanded.<sup>123</sup> Kerr also requested the penalty for trafficking by prison officers be increased to a level that deterred the offence and maintained a high level of integrity.<sup>124</sup> The Government could not fail to be aware of public concern about juvenile delinquency, nevertheless the only consideration of the punishment, treatment and reform of younger prisoners in the *Prisons Act 1958* was in Section 18 (1) 'As far as practicable...(e) Separate sections or cells for the confinement of prisoners of the various classes or age groups...; (h) A separate section to enable classification of prisoners according to age groups...; (j) A separate section for detention of prisoners under seventeen years who may be confined to prison for any cause' and classification under regulation 203 and 204 with youthful prisoners being defined as 'prisoners seventeen years of age and under the age of twenty five years'.<sup>125</sup> In all other aspects of the Act and Regulations, youthful offenders were treated the same as other prisoners, this included the punishments that were applied.

Reform is a slow process that encounters many hurdles, nevertheless in Queensland some concessions had been made to improve prison conditions. JF Whitney, Comptroller-General 1935–1948, reported in 1936 there was a 'reformatory move' involving the installation of a radio at HM Prison Brisbane to which prisoners were allowed to listen for one hour a day.<sup>126</sup> Until 1949 this listening time steadily increased; however, once prisoners were

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<sup>123</sup> Hansard, Prisons Bill, Initiation in Committee, 4/3/1958 – 3/12/1958, pp. 1486-8; Draft notes for the Minister to introduce the Prisons Bill, QSA., PRV 9251/1/33; S Kerr, Letter to the Under Secretary, Department of Justice, 'Re: Proposed New Prisons Act', 16 Sept. 1958, p. 2. QSA., JUS W63, item 20378; An examination on employment and again prior to appointment was proposed in the first draft of the Prison Bill, then omitted from the second draft by John Seymour the Parliamentary Counsel and Draftsman. J Seymour, Letter to Under Secretary, Department of Justice, 'Re: Prisons Bill', 11 Oct. 1958, p. 3. QSA., PRV 9251/1/33.

<sup>124</sup> S Kerr, Letter to Under Secretary, Department of Justice, 'Re: New Prisons Act- Proposed increase in penalty for offences by Officers', 21 Nov. 1958, p.2. QSA., PRV 9251/1/33; McGuire stated misconduct had been a frequent occurrence by some officers in the period he examined until the 1930s and it would be reasonable to assume in the absence of major investigations this misconduct continued into Kerr's era. J McGuire, 'Punishment and Colonial Society: A History of Penal Change in Queensland 1859 - 1930s', PhD thesis, University of Queensland, Brisbane, 2001, pp. 174-179.

<sup>125</sup> Queensland Government, *Prisons Act 1958*, s. 18, Brisbane, 1959; Queensland Government, *Prisons Regulations of 1959*, r. 203 - 204, Brisbane, 1981.

<sup>126</sup> JF Whitney, *Prisons Department-information contained in the report for year ending 31<sup>st</sup> December 1936*, Brisbane, 1936, p. 8.

suspected of making escape plans during radio transmissions at night, it was decided to allow only irregular use during night time.<sup>127</sup> Other concessions included the ‘talking film projector’ loaned to Brisbane Prison for three years, then offered to the Prisons Department for sale in 1946<sup>128</sup> and the installation of hot showers in 1949.<sup>129</sup> Another example of reform occurred in 1960 when Kerr decided the association of prisoners during meal times was a means of bringing prison life more in line with societal normality. Therefore, he permitted communal dining ‘as much as restrictions allowed’ to assist prisoners reintegrate back into society on discharge.<sup>130</sup> But these were ad hoc, minor improvements and there was clearly a need for significant systemic rehabilitative reform.

## **Conclusion**

It has been stated by Cose, Smith, Figueroa, Stefanakos & Contreras that prisons will always have a place in a civilised society because society needs to protect itself from those that would violate the innocent.<sup>131</sup> This chapter has shown that several factors influenced the development of Queensland prisons. Initially, Queensland prisons were strongly influenced by the SIPD in England. In particular, prison design and management emphasised discipline and deterrence, an encompassing institutional culture sanctioned and invigorated by the employment of staff with paramilitary experience. This, when combined with the political predisposition towards deterrence, resulted in a system which favoured strict discipline and was resistant to changes that might erode the existing level of control. Early decisions by gaol authorities in many instances went unchallenged due to the hierarchal nature of prison staffing, distance and response time delays. Consequently, a paramilitary authoritarian mentality became entrenched in the system and the employment

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<sup>127</sup> W Rutherford, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June, 1949*, Brisbane, 1949, p. 2.

<sup>128</sup> JF Whitney, *Prisons Department-information contained in the report for year ending 31<sup>st</sup> December 1946*, Brisbane, 1946, p. 5.

<sup>129</sup> W Rutherford, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June, 1949*, Brisbane, 1949, p. 2.

<sup>130</sup> ‘The Boggo Road System is out’, *The Sunday Mail*, 17 Jan. 1960.

<sup>131</sup> E Cose, VE Smith, A Figueroa, VS Stefanakos & J Contreras, ‘The Prison Paradox’, *Newsweek*, vol. 136, no. 20, 13 Nov. 2000.

of unskilled prison staff, with paramilitary backgrounds or inclination, confirmed the emphasis.

The prison facilities described in this chapter were initially located outside suburban areas but near transport lines, while those in isolated places (for example the prison farm at Stone River) were difficult to staff. As a result, administrators preferred prison locations with easy access, whereas the government and the public wanted prisons to be away from populated areas. Ultimately, locations were influenced by the public and determined by the government. However, prison authorities retained the capacity to influence the structural design of new facilities and make decisions about what rehabilitation practices they would endorse and implement under legislation.

The change in Government from the Labor Party to the Country–Liberal Coalition in 1957 provided an opportunity to implement reforms in a prison system that had lagged behind contemporary prison practice. Prison management in other jurisdictions was consulted and a new Prison Act drafted to provide legislative authority to reform the system. Continuity of leadership in the Queensland Parliament and the Prisons Department was provided by the Country–Liberal Coalition Government that held power for three decades and which also appointed the Comptroller-General, Stewart Kerr, who was to be administrator of the Department for seventeen years (1957 – 1974). Under this stable regime there were opportunities to initiate and implement rehabilitative reforms; however, several factors that will be discussed in the coming chapters hindered this. The next chapter will examine the penal theories and models of practice that were available for consideration when the new Prisons Act was drafted.

## Chapter 2 Theory and policy

The previous chapter reviewed the historical context of Queensland prisons prior to 1958. It pointed out that prisons were developed on a military foundation and operated in a conservative, paramilitary manner. This chapter discusses some of the criminological and penological theories that were in circulation prior to the *Prisons Act 1958* and considers their applicability to Queensland. This discussion will be assisted by the identification of some prison practices that will contextualise the theories and policies prior to a detailed examination occurring in the following chapters. The relationship between these theories and Queensland prison management policy to 1958 is explored to identify opportunities that might have been exploited in the framing of the *Prisons Act 1958*. The chapter does not assess the validity of different theories; rather, it identifies some that were current in the 1950s and subsequent chapters will discuss how, or if, they influenced or were applied through the legislation.

For the most part criminological theories are based on either the classical or positivist schools of sociological thought. Some of those which were available at the time and will be discussed in this chapter include Durkheim's anomie theory, Tarde's imitation theory, the delinquent subculture and the nothing-works position. The list is not intended to be exhaustive, but indicates some of those theories available at the time the Queensland prison legislation was being reviewed. Consideration is given to the principal penological theories and explains how they were applied to the management of prisons, influencing the choice of custodial options, prison design and policies regarding prison labour. An introduction is also provided as background to indeterminate sentences, the classification of prisoners and the use of punishment to maintain discipline which will lead to detailed discussion in later chapters. Prison rehabilitation programs which were facilitated for the most part by external volunteers are also considered. This is followed by an examination of the need to provide adequate staff training which would contribute to the reform of Queensland prisons under the *Prisons Act 1958*.

Historically there have been four main approaches to offender management; retaliatory, exploitative, humanitarian and treatment.<sup>1</sup> The humanitarian approach became more apparent in the last two hundred years, while the treatment approach emerged in the last century.<sup>2</sup> The treatment approach emphasised behavioural and therapeutic models which ‘superseded the security, prevention and deterrence’<sup>3</sup> focus of prison management. While the theoretical emphasis on retaliation and exploitation has been relegated to history, their influence occasionally resurfaces in support of punitive action following crimes that arouse community outrage. This will be discussed in Chapters 4 and 5 when various ‘modernised’ regulations and punishments stipulated in the *Prisons Act 1958* are examined, such as punitive prison labour, communication restrictions and dietary punishments.

Garland states that it is possible to change the way practitioners think about an issue by presenting them with current theories; when this occurs practices will change accordingly.<sup>4</sup> He claims the ideology behind penal management is not influenced by just a single school of thought; rather, to understand punishment it is necessary to consider ‘multiple causality, multiple effects and multiple meanings’.<sup>5</sup> The Gladstone Committee Report of 1895 set the tone for prison management for many decades. It was based on the belief that ‘prison treatment should have, as its primary and concurrent objectives, deterrence and reformation’.<sup>6</sup>

Criminological theories attempt to explain causes of crime and then identify effective methods for responding. Before considering some theories that were current in 1958 and were available for consideration in the modernising of the Act, the two main criminological schools of thought on which contemporary

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<sup>1</sup> EH Johnson, *Crime, Correction and Society*, 4th. edn, Dorsey Press, Illinois, 1978, p. 353.

<sup>2</sup> *ibid.*

<sup>3</sup> N Morris & DJ Rothman, *The Oxford History of the Prison*, Oxford University Press, Oxford, 1998, p. 196.

<sup>4</sup> D Garland, *Punishment and Modern Society, A Study in Social Theory*, Clarendon, Oxford, 1990, p. 277.

<sup>5</sup> *ibid.*, p. 280.

<sup>6</sup> Herbert Gladstone chaired the committee that made recommendations relating to the reform of prisons in the United Kingdom. LW Fox, AM López-Rey & C Germain, *Studies in penology, dedicated to the memory of Sir Lionel Fox*, M Nijhoff, The Hague, 1964, p. 187.

punishment and treatment models were based should be explained. Their influence is generally reflected in court sentences; however, all aspects of incarceration, the conditions, the discipline and the management to which the offender is exposed, are affected. If suitable theories are identified then treatment programs should be able to be developed for use while offenders are in custody.

### ***Theoretical schools***

Modern sentencing operates somewhere between the classical and positivist schools. Within the classical school, the work of Cesare Beccaria (1738–1794) is considered a major milestone in the development of criminological thought. Beccaria supported the social contract theory, arguing that people will only desire and should only surrender the smallest amount of liberty necessary for the government to exercise its responsibilities of maintaining social cohesiveness and preventing antisocial acts. He believed the focus should be on the criminal act, rather than the individual to achieve consistent sentencing, even when there were mitigating circumstances. The classical school held that breaking the law was a rational, conscious decision on the part of the offender. Jeremy Bentham (1748–1832) extended this concept by proposing the principle of calculated sentences. According to this approach, a person would be deterred from committing a crime if the punishment was sufficiently severe to negate the pleasure gained by committing the offence. Public opinion opposed this dogmatic application of the law and, according to Saleilles, juries would acquit defendants who they considered to be guilty to prevent the imposition of harsh sentences.<sup>7</sup> The neoclassical school acknowledges mitigating factors; however, it still subscribes to classical theory in the restriction of punishment between minimum and maximum sentences.<sup>8</sup> Government determined variations to minimum and maximum sentences can be viewed as a response to its perception of the community's abhorrence or tolerance of a particular offence. This is evident when a

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<sup>7</sup> EA Fattah, *Criminology: Past, Present and Future, A critical overview*, MacMillan Press, London, 1997, p. 205.

<sup>8</sup> EH Johnson, *Crime, Correction and Society*, 4<sup>th</sup> edn, Dorsey Press, Illinois, 1978, p. 37.

maximum sentence applied to a particular crime is perceived to be manifestly inadequate and requiring further punitive action.

In contrast, the positivist school of thought is interested in the scientific causes of crimes. Cesare Lombroso (1836–1909) initiated consideration of crime causation, although the scientific rigor of his work has since been found lacking. Others like Enrico Ferri (1856–1928) and Raffaele Garofalo (1852–1934) continued to explore this and delved deeper into the phenomenon called ‘crime’<sup>9</sup> to develop new criminological theories. Modern manifestations of research within the positivist school include consideration of the effects of chromosomal aberrations, glandular dysfunctions and chemical and hormonal imbalances on criminal behaviour.<sup>10</sup>

Criminology has developed from the foundation provided by this theoretical framework, becoming an integral component in the management of offenders. On some occasions, one theory is completely embraced, while on others several are concurrently applied or the alternate position of ‘nothing-works’ becomes the accepted norm. Humans are complex beings and consequently the causation and prevention of crime is complex. Many desire to uncover a single all-encompassing theory, but in reality different theories need to be assessed and implemented to discover what is appropriate and effective for offenders in their individual circumstances. The application of theories is limited by the social and political contexts, and also is constrained by budgetary and operational considerations. The hesitancy of legislators and prison administrators to consider new approaches is evident in past legislation and its implementation. Awareness of alternative theories is an important step towards reform since different theories prescribe varying methods for treating, managing and containing offenders. Therefore, it is necessary to examine some contemporary theories and practices prior to 1958 when Queensland legislators were gathering data to ‘modernise’ the Prisons Act.

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<sup>9</sup> EH Johnson, *Crime, Correction and Society*, 4<sup>th</sup> edn, Dorsey Press, Illinois, 1978, p. 57.

<sup>10</sup> E Fattah, *Criminology: Past, Present and Future, A critical overview*, MacMillan Press, London, 1997, p. 228.

At the beginning of the 20<sup>th</sup> Century, a theory based on the concept of anomie,<sup>11</sup> which Emil Durkheim described as ‘normlessness’, expressed the tension that existed between society’s expectations and an individual’s ability to meet them.<sup>12</sup> An example is the expectation that individuals should be employed; in reality, the ability to gain employment depends on an individual’s skill levels and the availability of employment. In 1938, Merton rejected the concept that deviance was produced by biological drives that ‘conditioned’ people to conform to societal norms; instead, he developed a concept of individual responses that he described in his ‘deviance typology’. Tension is generated by the disparity between acceptable societal goals (whatever they may be) and the individual’s ability to realise those goals. By 1949, Merton considered that individuals responded to those goals by conforming, or innovating, or participating in ritualism, retreatism or rebellion.<sup>13</sup> The resultant conflict between societal expectations and an individual’s ability to meet them was redefined by Robert Merton between 1949 and 1961. He said that some of this tension was manifested in deviant behaviours.<sup>14</sup> It may be argued that Durkheim and Merton’s definitions of anomie are distinct from each other, and while further discussion of the theories will not be entered into here, it is suffice to say these were part of the

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<sup>11</sup> Durkheim developed Anomie in his work *Suicide* which was published in 1897. GB Vold, TJ Bernard & JB Snipes, *Theoretical Criminology*, 4<sup>th</sup> edn, Oxford University Press, New York, 1998, p. 126.

<sup>12</sup> GB Vold & TJ Bernard, *Theoretical Criminology*, 3<sup>rd</sup> edn, Oxford University Press, Oxford, 1986, pp. 144 - 150.

<sup>13</sup> I Taylor, P Walton & J Young, *The New Criminology, For a social theory of deviance*, Routledge and Kegan Paul, London, 1973, pp.91, 96; PJ Van Der Walt, G Cronje & BF Smit, *Criminology an introduction*, Haum, Pretoria, 1982, p. 92; When elaborating on Merton, Taylor et al. paid little attention to the adaptations conformists employ because pure conformists who accept both cultural goals and institutional norms probably do not exist; instead, they would be part of one of the other groups. For Taylor et al., innovators are those who adopt illegitimate means to achieve their goals. Thus, the means are irrelevant for them; the only thing that matters is the outcome. Ritualism is typically evident in lower middle class employees and zealous bureaucrats who are incapable or unwilling because of their socialisation to deviate from rules or procedures. Those involved in retreatism give up trying to achieve success by legitimate or illegitimate means and instead turn to substance abuse, become homeless or vagrants. The rebellion group rejects societal goals and adopts alternatives they consider are more achievable and relevant. I Taylor, P Walton & J Young, *The New Criminology, For a social theory of deviance*, Routledge and Kegan Paul, London, 1973, pp. 97- 98; H Mannheim, *Comparative Criminology*, Routledge & Kegan Paul, London, 1965, pp. 456-457.

<sup>14</sup> PJ Van Der Walt, G Cronje & BF Smit, *Criminology an introduction*, Haum, Pretoria, 1982, pp. 93 - 94



theoretical foundation available to those reviewing the prison legislation. From this basis, Van Der Walt, Cronje and Smit considered that anomie (or normlessness) is not unique to any socioeconomic group;<sup>15</sup> rather, everyone experiences it to some degree since everyone, irrespective of their position in the community, has expectations placed on them. Because lower socioeconomic groups have less ability to achieve their aspirations, Merton asserts there is a higher tendency for them to become involved in deviant behaviour.<sup>16</sup>

By 1969, Merton believed social structures exerted pressure on individuals to participate in nonconforming behaviours and this participation was, therefore, a natural response to the social situations in which individuals found themselves.<sup>17</sup> There were other theories, such as imitation and delinquency theories, which explored these concepts further and if they had been considered by those drafting the *Prisons Act 1958*, may have provided a theoretical basis for allocating suitable penal classifications, programs and accommodation.

The imitation theory proposes that individuals generally either reflect what they see in others or adopt new attitudes, beliefs, behaviours, or the lifestyles of a role model. This theory could be utilised in prison classification and accommodation to enhance or negate peer pressure. At the end of the 19<sup>th</sup> Century, Gabriel Tarde proposed the following three principles that govern imitation: the degree of imitation is proportional to the closeness of the one being imitated, a social class tends to imitate the class immediately above it, and when there is a clash between two views, either, or a blend may be adopted.<sup>18</sup> These principles could have various applications, for example, the closeness of association can affect delinquent subcultures, therefore, the

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<sup>15</sup> PJ Van Der Walt, G Cronje & BF Smit, *Criminology an introduction*, Haum, Pretoria, 1982, p. 94; H Mannheim, *Comparative Criminology*, Routledge & Kegan Paul, London, 1965, pp. 501 - 502.

<sup>16</sup> S Box, *Deviance, Reality & Society*, 2<sup>nd</sup> edn, The Chaucer Press, Suffolk, 1971, p. 98.

<sup>17</sup> *ibid.*, p. 97.

<sup>18</sup> H Mannheim, *Comparative Criminology*, Routledge & Kegan Paul, London, 1965, pp. 453 - 455.

promotion or suppression of imitation through prisoner classification can be utilised to encourage or repress behaviours or attitudes. Furthermore, positively motivated prisoners<sup>19</sup> may be accommodated together to support each other in rehabilitation. Alternatively, prisoners may decide to make negative choices if prison authorities do not appropriately manage imitation during classification and accommodation decisions.

After World War II there was concern in England by the governments and prison administrators when they recognised that there was an over-representation of youthful offenders aged between sixteen and twenty one.<sup>20</sup> Several international studies examined pre-incarceration young offenders and attempted to divert their negative behaviours to legitimate outlets.<sup>21</sup> The 1955 Delinquent Subculture theory, by Albert Cohen, proposed that individuals who joined groups acquired thoughts and behaviours consistent with those of other members within that group. An example could be the low literacy levels observed amongst prisoners who have academic ability but chose not to improve. Box states a 'delinquent's conduct is right by the standards of his

<sup>19</sup> J Madge, 'Trends in Prison Design', *British Journal of Criminology*, vol. 1, 1960 – 1961, p. 369.

<sup>20</sup> Secretary of State for the Home Department, *Penal Practice in a Changing Society, aspects of Future Development (England and Wales)*, Her Majesty's Stationary Office, London, 1959, p. 1.

<sup>21</sup> For a discussion of some of these studies refer to 'Experimental Studies' in *Crime and Justice, Vol. III, The Criminal in Confinement*, by Radzinowicz and Wolfgang. The studies cited in the text targeted youthful offenders in conflict with the law, but not incarcerated at the time. These included the Provo Experiment 1956, the Highfields Study 1950, the Midcity Project 1954 and 1957 and the Community Treatment Project. L Radzinowicz & ME Wolfgang, *Crime and Justice Vol. III The Criminal in Confinement*, Basic Books, London, 1971, pp. 266-333; LT Empey, & J Rabow, 'The Provo experiment in delinquency rehabilitation', *American Sociological Review*, Oct, 1961, Vol. 26, Number 5, p. 684, viewed 23 April 2012  
<http://www.jstor.org/discover/10.2307/2090198?uid=3737536&uid=2134&uid=322912283&uid=2&uid=70&uid=3&uid=322912273&uid=60&sid=56091410243> ; HA Weeks, 'Preliminary evaluation of the Highfields Project', *American Sociological Review* vol. 18, no. 3 (Jun., 1953), pp. 280-287, viewed 25 April 2012,  
<http://www.jstor.org/discover/10.2307/2087882?uid=3737536&uid=2134&uid=322912283&uid=2&uid=70&uid=3&uid=322912273&uid=60&sid=56102700563&showMyJstorPss=false&seq=2&showAccess=false>; WB Miller, 'The Impact of a 'Total-Community' Delinquency Control Project', *Social Problems* Vol. 10, no. 2, Autumn, 1962, pp. 168-191, viewed 25 April 2012,  
<http://www.jstor.org/discover/10.2307/799049?searchUrl=%2Faction%2FdoAdvancedSearch%3Fq0%3Dmidcity%2Bproject%26f0%3Dall%26c1%3DAND%26q1%3D%26f1%3Dall%26wc%3Don%26Search%3DSearch%26sd%3D%26ed%3D%26la%3D%26jo%3D&Search=yes&uid=3737536&uid=2134&uid=322912283&uid=2&uid=70&uid=3&uid=322912273&uid=60&sid=56102700563>.

subculture precisely because it is wrong by the norms of the larger culture'.<sup>22</sup> This theory does not consider biological causation of deviant behaviour; rather, it upholds the concept of rational choice.<sup>23</sup> Cohen applied this theory to boys in the 'lowest socioeconomic stratum' of large American cities,<sup>24</sup> although it can just as easily be applied to any group that has a strong 'code' (i.e., a set of rules and beliefs). Braithwaite believed Cohen assumed lower and middle class students both commence schooling with similar goals, but middle class students are better equipped to succeed academically while lower class students are likely to feel resentful due to their lack of success.<sup>25</sup> Queensland's prison authorities had the ability to address this issue by seeking to improve prisoners' literacy levels through the provision of well-resourced prison educational facilities. It will be seen in Chapter 6 that educational opportunities in Queensland's prisons were limited, ad-hoc and localised.

The high proportion of migrants in Australia after World War II and the social standards and beliefs they brought with them was discussed in Chapter 1. In a 1930 American study, AW Lind investigated the transfer of acceptable behaviours in a migrant's home country to their adopted nation and the tension this generated with the law. He found that delinquent behaviours tended to follow a common set of cultural norms in American cities, whereas the legally enforced laws were those of white America. The study found that due to the large indigenous population and substantial immigrant communities in Honolulu, where Lind conducted his research, both communities held different standards of acceptable behaviour, which were passed to the second generation through their socialisation and observation of these behaviours at

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<sup>22</sup> S Box, *Deviance, Reality & Society*, 2<sup>nd</sup> edn, The Chaucer Press, Suffolk, 1971, p. 100.

<sup>23</sup> For a discussion on 'rational choice' refer to: EA Fattah, *Criminology: Past Present and Future. A Critical overview*, MacMillan Press, London, 1997, pp. 263 – 264; D Howitt, *Introduction to Forensic and Criminal Psychology*, 4<sup>th</sup> edn, Pearson, Sydney, 2011, pp. 56 – 57.

<sup>24</sup> PJ Van Der Walt, G Cronje & BF Smit, *Criminology an introduction*, Haum, Pretoria, 1982, p. 91; H Mannheim, *Comparative Criminology*, Routledge & Kegan Paul, London, 1965, pp. 506 - 512.

<sup>25</sup> After extensive research, Braithwaite concluded that academic failure was highly likely to lead to delinquent behaviour; J Braithwaite, *Inequality, crime and public policy*, Routledge and Kegan Paul, London, 1979, p. 75.

home.<sup>26</sup> Consequently, the community either overtly or covertly encouraged illegal behaviour or failed to condemn it, thereby ensuring its continuation. Examples of such behaviour include domestic violence, substance abuse, vigilante justice and the use of violence to resolve conflict. Cultural norms may be influenced by imitation theory in which individuals chose or were encouraged to adopt accepted normalities. In 1959, the Comptroller-General of Queensland's prisons, Stewart Kerr, believed youth required a change of mindset to prevent them from committing crimes and that the older generation had a responsibility to guide the young to a crime-free life.<sup>27</sup> Lind's study suggests that Kerr's reliance on the older generation to model appropriate behaviours was ill-founded. There were many contemporary empirical studies available if Queensland prison administrators desired to develop a foundation of programs designed to assist in the correction of criminal behaviours.

Unfortunately, the conservative attitude of prison administrators is reflected in their scepticism regarding the value of the available criminological theories and treatment programs. This scepticism was evident in Queensland prisons where for many years psychological and psychiatric services were limited to parole reports and psychiatric treatment. In the middle of the 20<sup>th</sup> Century it was recognised that some offenders had mental health issues that required expert assessment and intervention, yet treatment appeared to have been restricted to medication. An inquiry into sexual offences held in 1944 recommended legislation that permitted indeterminate sentences. It also recommended a psychiatric assessment following conviction for certain offences to determine whether the offender was 'mentally deficient'. If they were, then indeterminate sentences should be applied until the person was

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<sup>26</sup> AW Lind, 'Some Ecological Patterns of Community Disorganization in Honolulu', *American Journal of Sociology*, vol. 36, no. 2, Sep., 1930, pp. 206-220, viewed 26 April 2012, <<http://www.jstor.org/discover/10.2307/2766376?uid=3737536&uid=2129&uid=2134&uid=322912283&uid=2&uid=70&uid=3&uid=322912273&uid=60&sid=56107010313&showMyJstorPss=false&seq=3&showAccess=false>> ; T Morris, *The Criminal Area*, Routledge & Kegan Paul, London, 1958, pp. 92 - 93.

<sup>27</sup> S Kerr, 'Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1959', Brisbane, p. 5.

psychologically re-assessed and found to be no longer at risk of reoffending. The inquiry also recommended making the legislation retrospective to include those currently in custody.<sup>28</sup> The use of psychiatric services at sentencing and subsequently at pre-release indicated a need for ongoing assessment and some form of intervention during incarceration. In the years to come, Comptroller-General Kerr, was to acknowledge the value of professional staff, which included positions such as psychologists and education officers, and the programs they could deliver, however, implementation was limited and its application will be discussed further in Chapters 5 and 6. This hesitancy may be attributed to the issues discovered by WC Bailey.

Bailey examined studies published from 1940 to 1960 and believed that many treatments offered to offenders did not produce measurable benefits. He proposed four reasons for this: the treatment was inherently ineffective, the location where the treatment was applied was not conducive to the treatment; much of the treatment was not 'corrective'; while the treatment may have been appropriate, there were too many independent variables to be effectively controlled, making it difficult to determine the appropriate technique to be applied to the relevant criminal behaviour; and reformatory treatments were based on inappropriate theories.<sup>29</sup> In 1964 the Attorney-General for Norway, Andreas Aulie, said some theorists had overstated what could be delivered in rehabilitative programs and, as a result, under-delivered on public expectations. This resulted in the perception that 'nothing works' and that programs were a waste of funds and resources.<sup>30</sup> Aulie was also critical of using psychiatrists as legal experts to predict the risk of recidivism and believed 'criminology ought to be a pure science' and criminal policy should not pretend to be a science.<sup>31</sup> Crawford said the 'nothing-works' position represented a shift in focus from the offender to the crime and crime

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<sup>28</sup> N Macrossan, 'Report: Committee of Inquiry regarding Sexual Offences', 9 Oct. 1944, pp. 19 - 23, QSA., item 293159.

<sup>29</sup> L Radzinowicz & ME Wolfgang, *Crime and Justice Vol. II The Criminal in Confinement*, Basic Books, London, 1971, pp. 187 - 191.

<sup>30</sup> LW Fox, AM López-Rey & C Germain, *Studies in penology, dedicated to the memory of Sir Lionel Fox*, M Nijhoff, The Hague, 1964, pp. 22 - 25.

<sup>31</sup> *ibid.*, pp. 28 - 29.

prevention in the community, as well as public safety.<sup>32</sup> This shift could explain the support in Queensland for post-incarceration programs, which are discussed below.

Criminological theories could provide a foundation for prison administrators to develop therapeutic programs. Then by understanding the various theories, informed decisions might be made as to the most appropriate penological methods to manage offenders and reduce recidivism. Some of these theories have been mentioned here as an indication of the material that was available for Queensland's prison authorities to consider and incorporate into prison practices in the coming decade. Other penological principles that were available at the time of the *Prisons Act 1958*, or subsequently identified, can be found in Ashworth's *Sentencing and Criminal Justice*, where incapacitation rehabilitation, deterrence, reparation and others are discussed.<sup>33</sup>

Ideally, appropriate theory should inform policy, which is then reflected in practice. Since the relationships between theory, policy and practice are not always clear, it is sometimes necessary to examine each component separately and subsequently identify connections between them. Manuel Lopez-Rey, the United Nations Advisor on the Prevention of Crime and the Treatment of Offenders, aptly categorised contemporary (1964) penology in four forms, which he termed administrative, scientific, academic and analytical.<sup>34</sup> The following chapters will reveal that Queensland prison management, post 1958, predominantly operated within the administrative form. These following pages provide some historical context and consider the dominant penological practices in Western society, particularly in Queensland, prior to the *Prisons Act 1958*.

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<sup>32</sup> G Hughes, *The politics of crime and community*, Palgrave Macmillan, New York, 2007, p. 41.

<sup>33</sup> A Ashworth, *Sentencing and Criminal Justice*, Cambridge University Press, Cambridge, 2005, chapter 3.

<sup>34</sup> LW Fox, AM López-Rey & C Germain, *Studies in penology, dedicated to the memory of Sir Lionel Fox*, M Nijhoff, The Hague, 1964, pp. 138 - 142.

## ***Penology***

Scientific penology involves examining the personality of the offender to the exclusion of the offence and this is achieved by applying medico-psychological theories to prisoners. Lopez-Rey believed this general application dehumanised the prisoners by regarding them as a formula devoid of human nature and the subject of treatment and rehabilitation, irrespective of their actual needs.<sup>35</sup> Academic penology imparts knowledge and ideas. From this analytical penology involves evaluating scientific and academic penology to generate contemporary recommendations based on consideration of the current socio-economic and political climate.<sup>36</sup> Although administrative penology is ostensibly a system for applying contemporary practices, it tends to reinforce the traditional methods of custody, security and discipline.<sup>37</sup> Lopez-Rey considered administrative penology to have developed from the ‘sediment’ of successive administrative policies until it became a ‘deep rooted, powerful, demanding and occasionally untouchable’ system.<sup>38</sup> This insight is discussed in Chapter 5 where the application of reforms and policies is evaluated in terms of the need to maintain security and discipline in a closed environment.

When, in 1960, Kerr responded to Parliament about prison reform and rehabilitation, he acknowledged there was a ‘real need for better treatment by way of training of prisoners- not better personal and physical treatment’, and he believed this need was the result of long-term neglect.<sup>39</sup> Subsequent chapters will show that during Kerr’s era as Comptroller-General of Prisons (1957–1974), the main management policy was of a traditional central control with many operational issues referred to the executive for decision. Kerr’s management method also reflected administrative penology, which has its foundation in the policies identified in Chapter 1, which date back to first settlement when decisions needed to be referred to Britain. This policy was

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<sup>35</sup> *ibid.*, pp. 140 - 141.

<sup>36</sup> *ibid.*, p. 142.

<sup>37</sup> *ibid.*, p. 138.

<sup>38</sup> *ibid.*, p. 139.

<sup>39</sup> S Kerr, ‘Hansard Report 25<sup>th</sup> October, 1960. Rehabilitation of Prisoners’, 5 Jan. 1960, p. 1. QSA., item 293136.

not to change until 1975 when Kerr's successor, ASJ Whitney, advocated decentralisation, delegation of authority and autonomy.<sup>40</sup> While this related to management by the prison administrators, the fundamental penology underpinning their portfolios in Queensland appears to have been influenced by the separate system.

The separate system and its alternative, the silent system, had dominated international prison practice. The separate system influenced the Queensland's *Prisons Act 1958* as demonstrated by prisoners still being accommodated in single cells and noise in cells being discouraged. However, not all Western administrators supported these systems. Lopez-Rey believed the single cell concept was a vestige from the Pennsylvania (separate) and Auburn (silent) systems of the early 1800s. In 1964, he favoured small buildings with dormitories because they were more cost effective and permitted normal interactions between offenders and staff.<sup>41</sup> It will be seen through the designs of the new prisons that Queensland continued to support single-cell occupancy into the 21<sup>st</sup> Century, even though this restricted prisoner numbers more than dormitories. Separation was the stated policy in the legislation; yet operational practicalities dictated otherwise. Chapter 5 will examine aspects of the enforcement of silence in cells and the consequences of overcrowding. One method used in Queensland, to alleviate overcrowding without building new secure prisons, was to assume a certain level of trust by accommodating prisoners in open institutions.

### ***Open institutions***

This trend towards open institutions in 20<sup>th</sup> Century penology had been adopted in several countries and is based on the premise that some prisoners can be trusted in a non-secure environment. Queensland prison administrators experimented with this concept in the 1930s and the success of these trials,

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<sup>40</sup> AJ Whitney, 'Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1975', Brisbane, p. 1.

<sup>41</sup> LW Fox, AM López-Rey & C Germain, *Studies in penology, dedicated to the memory of Sir Lionel Fox*, M Nijhoff, The Hague, 1964, p. 160.



which were introduced in Chapter 1, caused open institutions to become a permanent incarceration option. Since this concept was initially developed overseas, it is necessary to first examine its international context before looking at how it was applied in Queensland.

Open institutions, which include prison farms, operated with a conceptual foundation based on trust and have been used in a handful of jurisdictions in the United States of America since the 19<sup>th</sup> Century. A former Director of the Federal Prison Bureau in the USA, Sanford Bates, claimed he introduced the concept of honor farms to Alex Paterson, Chairman of the British Prison Commission, in 1931. From this beginning, honor farms were introduced to the United Kingdom in 1936 and subsequently became an important part of the UK prison system.<sup>42</sup> To minimise the risk of escape and public concerns about security, the first honor farm at New Hall Camp near Wakefield was used to accommodate trusted prisoners at the end of their sentences. Paterson said ‘you cannot train men for freedom in a condition of captivity’ and by reducing the emphasis on security, staff could concentrate on training and exercising personal influence.<sup>43</sup> In Europe, Finland supported the open institution concept and commenced using it in July 1946 for short-term first-time offenders. By March 1955, there were different variations available for positively behaved long-term offenders.<sup>44</sup> Ernest Lamers, Director General of Prison Administration in the Netherlands, strongly advocated the open institution concept. He believed these institutions should have a sufficiently small population so that staff could monitor the development of each offender and they should be located near medium-sized towns. He made this statement in 1964 when the Netherlands was enjoying an economic boom and labour was in short supply.<sup>45</sup> Consequently, prisoners from open institutions could be easily integrated with the workforce, which contributed to the community’s

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<sup>42</sup> *ibid.*, pp. 38 - 40.

<sup>43</sup> HM Prison Service England, New Hall Camp, viewed 28 May 2009, <<http://www.hmprisonservice.gov.uk/prisoninformation/locateapison/prison.asp?id=1009,15,2,15,1009,0>>; H Jones, *Crime and the Penal System*, 2<sup>nd</sup> edn, University Tutorial Press, London, 1962, p. 195.

<sup>44</sup> LW Fox, AM López-Rey & C Germain, *Studies in penology, dedicated to the memory of Sir Lionel Fox*, M Nijhoff, The Hague, 1964, p. 213.

<sup>45</sup> *ibid.*, p. 127.

acceptance of the open institution concept. The terms ‘hostels’, ‘halfway houses’, ‘open institutions’ and ‘minimum-security prisons’ have varying meanings in different countries, however, the critical component in each context is the policy of trust placed in the offenders who are sent to these places.

Under Arthur Hume, the Inspector of Prisons<sup>46</sup> in New Zealand, there were tree-planting camps which have been operating since 1901.<sup>47</sup> In these camps trusted prisoners participated in community projects under the supervision of a small number of staff. In Queensland, the concept of prison farms was first introduced in 1928 when W Gall (Comptroller-General 1927–1934) reported the need to purchase more land to train prisoners under 23 years old in agriculture.<sup>48</sup> Subsequent Comptroller-Generals continued to support this concept. Then the Palen Creek Prison Farm commenced in 1934 (Fig. 2.1) as an experiment using first-time offenders<sup>49</sup> and the model continued to be viewed favourably. In 1955, Comptroller-General, W Rutherford, removed the word ‘prison’ from the title and the facility became known as Palen Creek Farm in an ‘endeavour to remove the name of prison from the minds of prisoners there’.<sup>50</sup>

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<sup>46</sup> Te Ara, The Encyclopaedia of New Zealand. Arthur Hume, biography p.1, viewed 12 Sept. 2013, <<http://www.teara.govt.nz/en/biographies/2h55/hume-arthur>>.

<sup>47</sup> PK Mayhew, *The Penal System of New Zealand 1840- 1924*, Department of Justice, Wellington, 1959, p. 70; G Newbolt, *The Problem of Prisons, Corrections reform in New Zealand since 1840*, Dunmore, Wellington, 2007, p. 26.

<sup>48</sup> W Gall, *Report upon the Operations of the Sub-Departments*, Brisbane, 1928, p. 39.

<sup>49</sup> Queensland Government, *Rules and Regulations – HM Prison Farm, Palen Creek*, regulation 25. Brisbane, 1934, p. 2.

<sup>50</sup> W Rutherford, ‘reply with information for the Prime Minister regarding the International Penal and Penitentiary Commission Congress in Geneva’, 10 May 1955, p. 2, QSA., RS13257/1/31, item 293136.

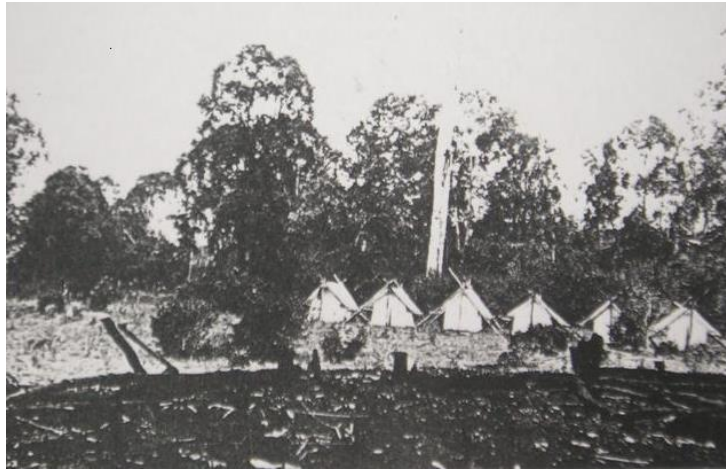


Figure 2.1 Palen Creek Prison Farm 1934<sup>51</sup>

Kerr was also an advocate of prison farms and described Palen Creek, Numinbah and Stone River farms (see Chapter 1) as ‘unique in absolute minimum security’. He considered them a ‘positive form of training’ and that they provided ‘a healthy, bodily and mental atmosphere’.<sup>52</sup> This form of accommodation permitted the policy of limited trust to be exercised in a cost-effective environment with low-risk prisoners. Their accommodation capacity also had the potential to be expanded as the advantages became apparent. To reduce negative community reactions to several escapes reported in the press (refer to Chapter 3 p. 82) prisoners sent to farms in 1959 were those classified as remediable or vagrants.<sup>53</sup> Even though an ulterior motive for the introduction of prison farms may have been financial savings, they represented a significant shift in Queensland’s penal philosophy from containment and deterrence to trust and rehabilitation. This trust and rehabilitation appears to have been limited to farms and selectively applied to prisoners who were most likely to be successfully rehabilitated and posed minimal risk to the community, or the prison establishment. The majority of prisoners, who were considered a security risk, remained in Queensland’s secure prisons.

<sup>51</sup> Photo of Palen Creek Prison farm in 1934. A Lobban , *Queensland Prison Service Annual Report 1987*, Brisbane, 1987, p. 2.

<sup>52</sup> S Kerr, ‘Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1959’, Brisbane, p. 4.

<sup>53</sup> *ibid.*

## ***Prison designs***

The structural design of conventional prisons manifested the penological theories that appealed to the policy makers and prison administrators at the time of construction. Unfortunately, the upgrading of facilities tends to lag behind contemporary theories because of the large replacement costs and long approval processes. Consequently, unless there is a policy of ongoing construction (usually driven by existing or anticipated overcrowding), contemporary theory will outpace prison facilities, resulting in out-dated infrastructure cluttering the penological landscape and frustrating reformers. Prison design has the ability to ‘affect the activities within them’ and designs used in Australia are generally ‘imported’ from overseas.<sup>54</sup> As an example, in Queensland, facilities based on the Standard Auburn design, which emphasised the policies of control, discouraged communication or interaction and encouraged reflection,<sup>55</sup> continued to be used in Brisbane and Townsville until the 1980s. Of the several prison designs used internationally (Fig. 2.3), four found shape in Queensland, the last three designs were used within the last fifty years and supported classification, unit management, interaction and communal living. Understanding some of the concepts behind prison design is important because infrastructure promotes or hinders the ‘modernised’ policies and practices that were meant to be incorporated in the *Prisons Act 1958*.

The London politician Sir William Crawford, of the Prison Discipline Society, had a significant influence on the design of prisons in 19<sup>th</sup> and 20<sup>th</sup> Century Queensland.<sup>56</sup> He visited America in 1834 and was impressed by the Pennsylvania (separate) System, believing it could be applied in UK prisons

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<sup>54</sup> JS Kerr, *Out of Sight, Out of Mind*, S.H. Ervin Gallery, Sydney, 1988, pp. 7 - 9.

<sup>55</sup> G Powers, *A brief account of the construction, management and discipline at the New-York State Prison at Auburn*, Doubleday, Auburn, New York, 1826, p. 75.

<sup>56</sup> Crawford helped Elizabeth Fry’s brother in law, TF Buxton and Samuel Hoare, found the Society for the Reformation of Prison Discipline later known as the Society for the Improvement of Prison Discipline and for the Reformation of Juvenile Offenders (SIPD) in 1815. Crawford was to also become friendly with the Whigs prison spokesman Hon. HG Bennet; E Stockdale, ‘The rise of Joshua Jebb, 1837 – 1850’, *The British Journal of Criminology*, vol. 16, no. 2 April 1976, p. 164, viewed 1 May 2012, <<http://bjc.oxfordjournals.org/content/16/2/164.extract>>.

more cheaply than the Auburn System.<sup>57</sup> Crawford and Rev. W Russell adapted designs they received from J Haviland, architect of the Pennsylvania Eastern State Penitentiary<sup>58</sup> and submitted several plans for the Model Prison. While not a strong advocate of the separate system, Joshua Jebb started his career under Crawford and Russell in 1837 when he was seconded from the army to advise on prison design and ‘contributed to the spread of the separate system’.<sup>59</sup> Jebb eventually became Surveyor General of Prisons in the United Kingdom and Chairman of the Directors of Convict Prisons in 1850.<sup>60</sup> Internationally, many former military officers were appointed as prison administrators<sup>61</sup> and, together with the separate system, this set the tone of prison administration in Queensland during the 19<sup>th</sup> and 20<sup>th</sup> Centuries.<sup>62</sup>

For many years those involved in the design of prisons followed a policy of prisoners being isolated from the community and as much as possible from each other. They considered that the ‘form of a prison must go along with its purpose... and include “high and thick walls...uninviting and cavern-like entrances”...everything must convey “darkness, threatening, ruins, terror” to control crime among the citizens’.<sup>63</sup> The ideal of one person in each cell was to promote contemplation to encourage the prisoners’ to rehabilitate themselves and to prevent ‘contamination’ and the ‘evils of association’ of prisoners who may be redeemed.<sup>64</sup> The SIPD considered that ‘forced

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<sup>57</sup> N Johnston, *Forms of Constraint: A history of Prison Architecture*, University of Illinois Press, Chicago, 2000, p. 90.

<sup>58</sup> AT Gardner, *A Philadelphia masterpiece, Haviland's prison*, viewed 1 May 2012, <<http://www.metmuseum.org/pubs/bulletins/1/pdf/3257648.pdf.bannered.pdf>>.

<sup>59</sup> N Morris & DJ Rothman, *The Oxford History of the Prison*, Oxford University Press, Oxford, 1998, p. 92; Also refer to figure 2.2 in Chapter 2.

<sup>60</sup> Personal facts and details of Major General Sir Joshua Jebb KCB, viewed 1 May 2012, <<http://www.stanford.edu/group/auden/cgi-bin/auden/individual.php?pid=I24885&ged=auden-bicknell.ged>>.

<sup>61</sup> N Morris & DJ Rothman, *The Oxford History of the Prison*, Oxford University Press, Oxford, 1998, p. 92.

<sup>62</sup> N Johnston, *Forms of Constraint: A history of Prison Architecture*, University of Illinois Press, Chicago, 2000, pp. 89 - 92; N Morris & DJ Rothman, *The Oxford History of the Prison*, 1998, Oxford University Press, Oxford, p. 92.

<sup>63</sup> Comments by Francesco Milizia in *Principi di architettura civile* published in 1785, N Johnston, *Forms of Constraint: A history of Prison Architecture*, University of Illinois Press, Chicago, 2000, p. 31.

<sup>64</sup> *The third Report of the Committee of the Society for the Improvement of Prison Discipline and for the reformation of Juvenile Offenders*, London, 1821, pp. 26 – 35; The Society for the Improvement of Prison Discipline and for the reformation of Juvenile Offenders,

submission leads by degree to habitual obedience'.<sup>65</sup> Thick cell walls and doors were part of the concept to reduce contamination by association and prevent communication. The walls were to be nine feet high with a window approximately two feet square placed near the ceiling and blinds placed outside to prevent communication between cells.<sup>66</sup> The reduction of contamination was further reinforced by classification<sup>67</sup> where similarly graded offenders were accommodated near each other under strict supervision. The prisons of the 18<sup>th</sup> and 19<sup>th</sup> Century were generally built to a 'uniform standard of security',<sup>68</sup> then as classification became more diversified<sup>69</sup> different designs and security levels were able to be utilised. Jeremy Bentham was a well know law reformer in the late 1780s when he visited his brother who had designed a 'rotunda-form workshop' where the inspector, located in the centre, could observe any of the work areas through peep holes. The theory behind this was that the workers did not know when they may be observed so were aware of the possibility of 'direct, unseen and continuous' supervision.<sup>70</sup> This supervision extended to observation of the staff, because their conduct was considered to influence the 'moral character of those over whom they are placed'.<sup>71</sup> Bentham carried this omnipresence theory to his prison designs,<sup>72</sup> and other prison designers were to use this same concept of central observation<sup>73</sup> for many years to come through the radial designs. These radial designs, seen in figure 2.3 (b) and (c), show the buildings' radiating

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*Remarks on the form and construction of prisons with appropriate designs*, London, 1826, p. 40.

<sup>65</sup> The Society for the Improvement of Prison Discipline and for the reformation of Juvenile Offenders, *Remarks on the form and construction of prisons with appropriate designs*, London, 1826, p. 35.

<sup>66</sup> *ibid.*, p. 40.

<sup>67</sup> *Report of the Committee of the Society for the Improvement of Prison Discipline and for the reformation of Juvenile Offenders*, London, 1818, pp. 25 - 26.

<sup>68</sup> J Madge, 'Trends in Prison Design', *British Journal of Criminology*, vol. 1, 1960 – 1961, p. 365.

<sup>69</sup> C Litchfield, 'Prison construction and planning', *The Prison Journal*, vol. 25, 1945, pp. 39 – 40.

<sup>70</sup> N Johnston, *Forms of Constraint: A history of Prison Architecture*, University of Illinois Press, Chicago, 2000, pp. 49 – 50, 52.

<sup>71</sup> The Society for the Improvement of Prison Discipline and for the Reformation of Juvenile Offenders, *Rules proposed for the Government of Gaols, Houses of Correction, and Penitentiaries*, London, 1820, p.44.

<sup>72</sup> L Lefaivre & A Tzonis, *Emergence of Modern Architecture: A documentary history from 1000 – 1810*, Routledge, Florence, Kentucky, USA, 2004, pp. 444 - 454.

<sup>73</sup> N Johnston, *Forms of Constraint: A history of Prison Architecture*, University of Illinois Press, Chicago, 2000, pp. 55 - 56.

from a central point which was designed to contain the keeper's quarters and the chapel. While this central point allowed supervision of the buildings and the airing-courts or exercise yards between the buildings, the inside of the cells could not be observed.<sup>74</sup> The buildings were then surrounded by a 'strong boundary wall of considerable height', as a further deterrent to escape, most of which can be observed from the central point.<sup>75</sup>

Some of the prison reformers of the 19<sup>th</sup> Century who have been mentioned thus far are shown in Figure 2.2. This diagram depicts their associations and shows the path of influence that lead to the policies used in prison designs that were eventually incorporated in Queensland's prisons. It also indicates the influence from the Prisons Act 1839 (UK) through to the Queensland's Prisons Act 1958 (refer to Figure 4.1).

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<sup>74</sup> The Society for the Improvement of Prison Discipline and for the reformation of Juvenile Offenders, *Remarks on the form and construction of prisons with appropriate designs*, London, 1826, pp. 19 - 20.

<sup>75</sup> *ibid.*, pp. 28, 35.

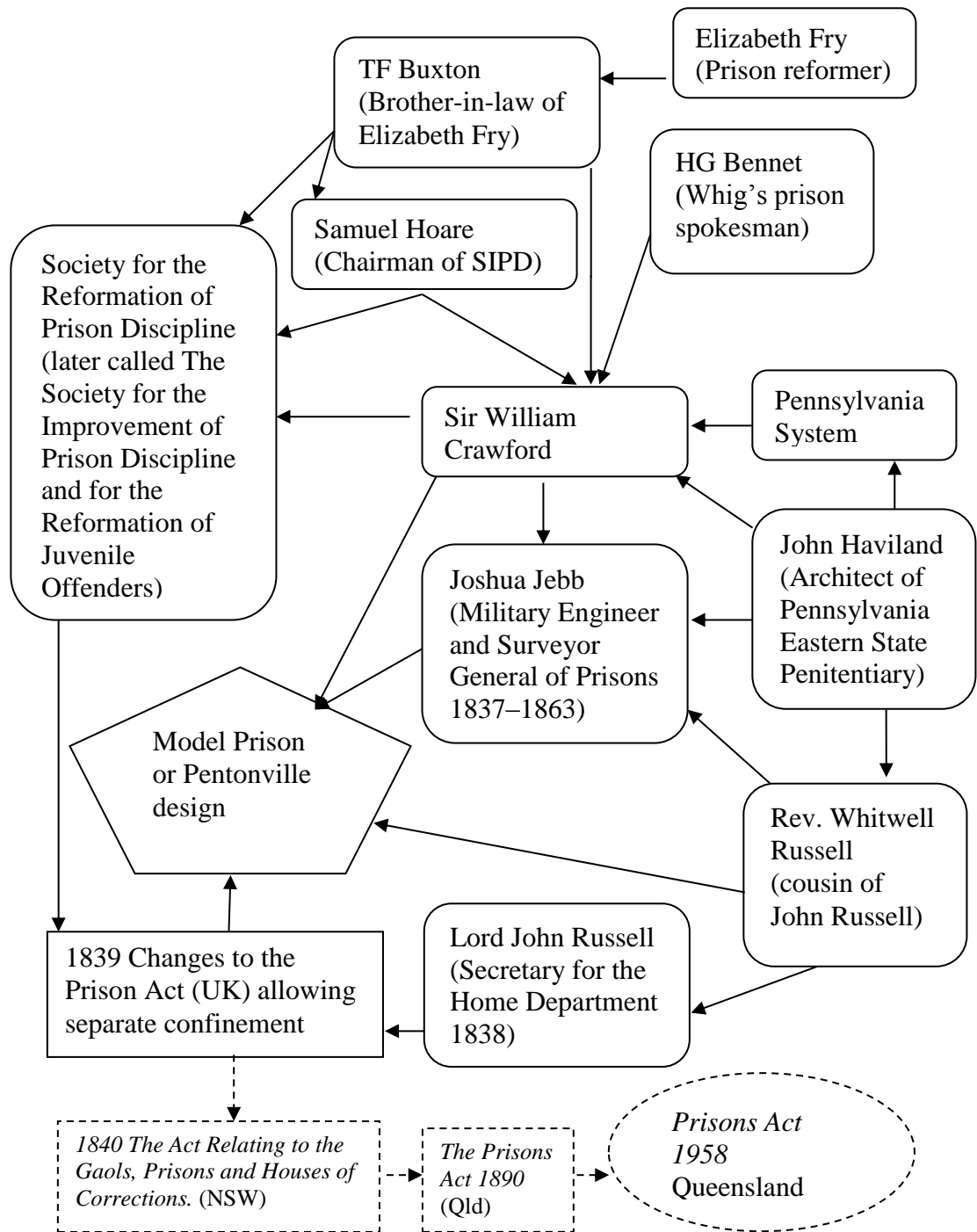


Figure 2.2 Influential persons in prison design.

There were several main designs that dominated Western jurisdictions including Queensland; these included those shown in Fig. 2.3.



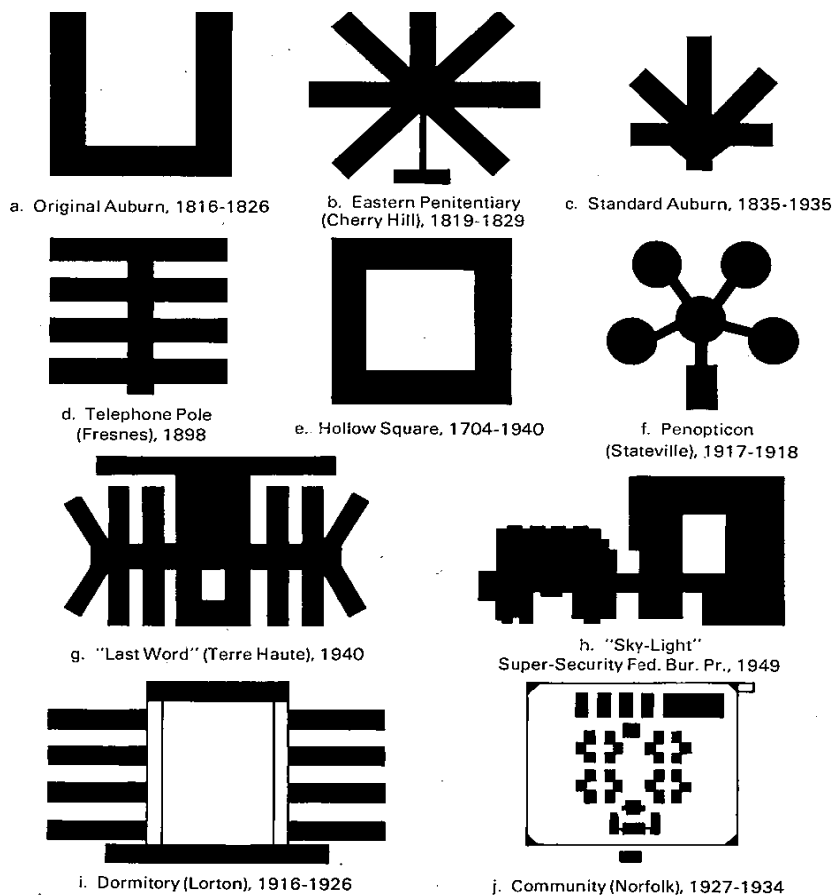


Figure 2.3 Prison designs<sup>76</sup>

Of the designs in Fig. 2.3, only (a), (c), (d) and (e) have been used in Queensland. The Standard Auburn design (c) was used in mid and late 19<sup>th</sup> Century prisons at Rockhampton, South Brisbane (Boggo Road, Fig. 2.4) and Townsville (Stewart's Creek, Fig. 2.5). The radial designs employed hub-and-spoke or cruciform shapes depending on anticipated expansion.<sup>77</sup> The theory behind buildings being separate from the outer wall was developed by builders and prison practitioners who intended to prevent escape and 'contain in an orderly fashion the occupants of their institution'.<sup>78</sup> Each prison that used the Standard Auburn design consisted of a gate house with staff

<sup>76</sup> ST Reid, *Crime and Criminology*, 2<sup>nd</sup> edn, Holt, Rinehart and Winston, Sydney, 1979, p. 617; JS Kerr, *Out of Sight out of mind*, S.H. Ervin Gallery, Sydney, 1988, p. 116; N Johnston, *Forms of Constraint: A history of Prison Architecture*, University of Illinois Press, Chicago, 2000, p. 91.

<sup>77</sup> JS Kerr, *Out of Sight out of mind*, S.H. Ervin Gallery, Sydney, 1988, p. 116; N Johnston, *Forms of Constraint: A history of Prison Architecture*, University of Illinois Press, Chicago, 2000, p. 91.

<sup>78</sup> N Johnston, *Forms of Constraint: A history of Prison Architecture*, University of Illinois Press, Chicago, 2000, p. 78.

accommodation on either side, a compound area immediately inside, miscellaneous functional buildings including offices, kitchen and hospital either side of the compound, and then the prisoner accommodation buildings were at the end of the compound.

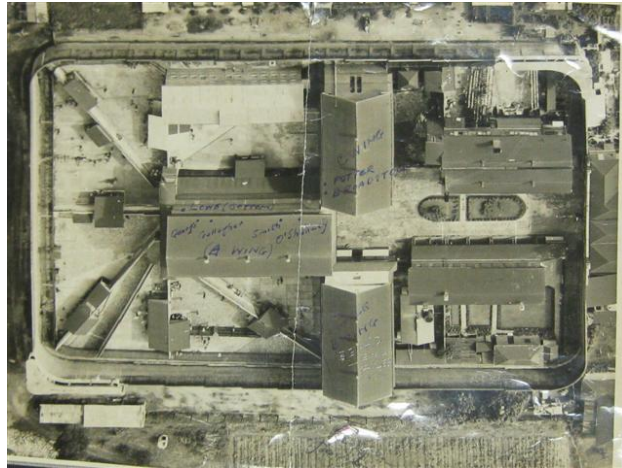


Figure 2.4 Brisbane Prison (Boggo Road)<sup>79</sup>



Figure 2.5 Townsville Prison Stuart Creek<sup>80</sup>

The staff accommodation rooms on either side of the gatehouse were usually for the prison Superintendent and his second in charge (either a Deputy Superintendent or a Chief Prison Officer). From their accommodation there was a window into the gate area that enabled them to converse with the gate officer, check that duties were being performed and monitor movements in and out of the prison. There was also a window into the prison. This allowed

<sup>79</sup> HM Prison Brisbane aerial photo, QCSA historical collection.

<sup>80</sup> HM Prison Townsville Etna Creek aerial photo, QCSA historical collection.

observation of the staff performing their duties in the compound area where the officers controlled prisoner movement into the accommodation and exercise yards. While the amount of accommodation and perimeter shape varied between prisons, the building and cell designs were similar. In these earlier prisons, the internal cell design in Queensland did not include plumbing and the cell windows were small and located high on the wall which discouraged communication<sup>81</sup> and offered limited views outside. This cell design was used until the prison building program in the 1960s adopted the hollow square design (Fig. 2.3 (e)). The hollow square design and its adaptations was used extensively during the prison reformer John Howard's era but was criticised because it was difficult to observe prisoners and separate them into different categories.<sup>82</sup> Queensland's application of this design a century later was to incorporate additional staff, armed towers and early versions of electronic surveillance,<sup>83</sup> however, there were still many 'blind spots'. It generally takes several years for major infrastructure to traverse the government approval process and for construction to be completed. Therefore, projects completed in the mid-1960s were likely to have been instigated in the late 1950s.

There was a continuing and anticipated overcrowding problem in Queensland prisons (Table 2.1), which drove the prison building program of the 1960s and 1970s, along with a change in policy where isolation was no longer the focus. The designs of Queensland prisons shifted from the Standard Auburn design, which was used from the 1880s to the 1960s, to a mix of the Original Auburn and Hollow Square designs. The change in building design also resulted in a change to cell layout and perimeter security. The Standard Auburn design was traditionally surrounded by high solid perimeter walls, whereas the new prisons had wire fences. The cell design also changed significantly. The new

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<sup>81</sup> Having the small windows set high in the cell was mentioned by Antonio Averlino in the 1460s. Johnston, N, *Forms of Constraint: A history of Prison Architecture*, University of Illinois Press, Chicago, 2000, pp. 29 - 30.

<sup>82</sup> N Johnston, *Forms of Constraint: A history of Prison Architecture*, University of Illinois Press, Chicago, 2000, p. 48.

<sup>83</sup> This included fixed cameras and electronic duress alarms.

cells included plumbing, sewerage and large windows, which permitted better outlook and communication.

Year	Average prisoner population	Single cell capacity in Queensland	Percentage of capacity
1959	935	600	155.8
1960	910	600	151.7
1961	895	600	149.2
1962	922	620	148.7
1963	928	736	126.1
1964	895	766	116.8
1965	909	881	103.2
1966	1021	881	115.9
1967	1091	881	123.8
1968	1073	961	111.7
1969	1073	1058	101.4
1970	1154	986	117
1971	1244	987	126
1972	1314	987	133.1
1973	1518	1112	136.5
1974	1498	1094	136.9
1975	1527	1197	127.6

Table 2.1 Prison populations<sup>84</sup>

Despite the need for additional accommodation, the extensions made to Townsville Prison in 1964 were recommended to be the last to prevent it becoming overly large.<sup>85</sup> It can be seen that the medium-security Wacol prison (Fig. 2.7) and the Security Patients Hospital used the hollow square design. In

<sup>84</sup> S Kerr, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1959 – 1973, Brisbane; AJ Whitney, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1974 – 1975, Brisbane.

<sup>85</sup> S Kerr, 'Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1964', Brisbane, p. 1.

1965, Kerr claimed that the Security Patients Hospital facilities were ‘amongst the foremost in design in the world’.<sup>86</sup>

Modern prison designs should reflect modern penal management. Queensland’s prison expansion and construction in the 1960s and 1970s utilised the Original Auburn (Fig. 2.3(a)) and Hollow-Square designs (Fig. 2.3(e)) which facilitated an unwritten policy of interaction, but the management practices did not change. By 1963, the UK had implemented an early form of case management, known as the ‘Norwich System’.<sup>87</sup> Yet case management and regular interaction between prisoners and officers was not fully encouraged in Queensland until the Telegraph Pole design (Fig. 2.3(d)) was used during the next expansion program in the 1980s.<sup>88</sup>

John Madge points out that the change in design was not the result of any notable criminological theories. Instead it was because larger prisons and the telegraph pole design expedited prisoner movement.<sup>89</sup> This design was considered superior to others because prisoners could move along a single corridor to support areas (education, work or other areas) which were accessed from a main spine. It gave better control because prisoners did not have to traverse other areas to reach their destination and the cells had sunlight during part of the day which reduced any ‘dank, dark courts and corners’.<sup>90</sup> The Original Auburn design (Fig. 2.3(a)) was used for Woodford Prison accommodation and later for expansions at Rockhampton Prison. This allowed for communal living in modern cells with plenty of natural light and

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<sup>86</sup> S Kerr, ‘Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1965’, Brisbane, p. 1.

<sup>87</sup> Council of Europe, ‘The Status, Selection and Training of Prison Staff’, The first report of Sub-committee VI of the European Committee on Crime Problems, Strasbourg, 1963, p. 10.

<sup>88</sup> In conjunction with a major review (the Kennedy review), new legislation (*Corrective Services Act 1988*), a change of government and an influx of new staff and prison administrators the Telegraph Pole design was used in the 1980s and 1990s to alter the staff and prisoner subcultures. The Telegraph pole design was part of a new era in Queensland prisons.

<sup>89</sup> J Madge, ‘Trends in Prison Design’, *British Journal of Criminology*, vol. 1, 1960 – 1961, p. 369.

<sup>90</sup> N Johnston, *Forms of Constraint: A history of Prison Architecture*, University of Illinois Press, Chicago, 2000, pp. 96 - 97.

the ability to see beyond the confines of the cell and the prison. While the *Prisons Act 1958* did not directly address the nature of prison design, the analysis in Chapter 4 will show that some regulations in the *Prisons Act 1958* were transposed from the *Prisons Act 1890*. This made the enforcement of some regulations problematic, because they were hard to apply in modern structures.



Figure 2.6 HM Prison Brisbane (Boggo Road) c. 1988<sup>91</sup>

The Hollow Square design (Fig. 2.3(e)) in conjunction with the Original Auburn design was used at Brisbane Prison (Boggo Road, Fig. 2.6); while a variation of the Hollow-Square design was used at Wacol Prison (Fig. 2.7) and the Security Patients Hospital, which was under the control of the Prisons Department. The new prison designs included inward spurs that protruded at 90 degrees to the outer wall. This allowed more cells to be built and separate exercise yards for prisoners accommodated in the immediate area (Fig. 2.6).



Figure 2.7 HM Prison Farm Wacol<sup>92</sup>

<sup>91</sup> HM Prison Brisbane (Boggo Road). QCSA historical collection.



Figure 2.8 Prison cell in HM Prison Wacol<sup>93</sup>

The cells in the Security Patients Hospital were built in the 1960s with large internal windows consisting of several small, thick glass panes (Fig. 2.9).



Figure 2.9 Cell window in the Security Patients Hospital<sup>94</sup>

The Queensland Comptroller-General had recorded this design in 1935, after his tour of the Parramatta New South Wales Mental Hospital.<sup>95</sup> This indicates that NSW was moving to a modern approach towards prison design, for the management of those with severe mental illness, as these windows allowed prisoners to communicate with each other and officers, while also preventing escape if the window was broken.

<sup>92</sup> HM Prison Farm Wacol. QCSA historical collection.

<sup>93</sup> Interior of prison cell. Wacol Prison, QCSA historical collection.

<sup>94</sup> Exterior of prison cell, Security Patients Hospital, QCSA historical collection.

<sup>95</sup> JF Whitney, 'Report on tour of New South Wales Prisons', 27 October 1935, p. 3, QSA., RS13257/1/31, item 293136.

The use of different designs in Queensland reveals a slow but definite shift in prison policy. When the infrastructure no longer supported certain regulations these were generally phased out and new policies and procedures were introduced as prison administrators changed. As additional new infrastructure was built or old infrastructure altered these changes spread, especially when given impetus by other change strategies. However, where out-dated buildings remained they tended to become a bastion of old regulations, procedures and behaviours that continued to influence and hinder the introduction of modern penology.

### ***Work as rehabilitation***

Policies relating to prison labour are one obvious indicator of change in the management of prisons. The idea of using prisoner labour for reformation, then as a punishment, then later for moral improvement, was introduced in the previous chapter. By the mid-20<sup>th</sup> Century prison administrators had to consider the economic and industrial environment when utilising prison labour. Hard but beneficial labour was difficult to apply because complicating and sometimes competing factors had to be considered. These included the possible rehabilitative benefit, the effect of prison overcrowding, the state of the local and national economies, the labour market, public opinion, party politics, free trade in manufacturing, the intervention of unions representing either external interests or prison staff, building infrastructure and equipment, set up and running expenses, cost recovery for prison industry, cost of detention, prisoner and supervisory staff technical skill levels and prisoner work ethics.

Across time and jurisdictions it was common policy that the financial burden of maintaining a prison should be partially offset by utilising the work performed by prisoners to generate revenue, without jeopardising community employment.<sup>96</sup> Then by 1959 prison labour was being viewed, in theory, as a

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<sup>96</sup> *The Brisbane Courier*, 20 Mar. 1867, p. 2.



means of rehabilitation with the consensus being that work should 'be of service to the prisoner on their discharge'.<sup>97</sup> While this was official policy in Queensland, as will be seen in Chapter 4, prison labour was also used for cost savings in prison construction.

One innovative and far-sighted idea for the use of prisoner labour was provided by Samuel Raymond Ramsden, Liberal member for Merthyr, who in 1958, suggested that hard-labour prisoners could be employed in rural areas of western Queensland, clearing land and erecting fences. They could be accommodated in prefabricated huts that could be moved to another site when the work was completed in locations like Injune, Emerald or Springsure,<sup>98</sup> however, this concept did not come to fruition until 1990.<sup>99</sup>

In 1958 Kerr observed that the policy of maintaining prison employment had practicality issues as it was 'impossible to hold large numbers [of prisoners] in a state of idleness' and it was 'unavoidable' that work inside prison would be similar to that done in the community.<sup>100</sup> A few days later, a meeting was held between the Justice Minister, AW Munro, and members of the Queensland Trades and Labour Council. The requirement to provide prisoners with employment under the 1959 regulation 418<sup>101</sup> had the potential to be regarded as competition by organised labour and departmental policy had to take into account these external influences. While it was agreed that it was not 'desirable to build the new prison at Wacol with prison labour', a decision

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<sup>97</sup> Queensland Government, *Prison Regulations of 1959*, r. 419, Brisbane, 1981.

<sup>98</sup> Hansard 04/03/1958- 3/12/1958, *Prisons Bill*, QSL., Brisbane, p. 1493.

<sup>99</sup> The possibility of prisoners working on various rural projects was raised at the Prison Administrators conference in 1966 and it was noted that it occurred in other jurisdictions such as New Zealand, 'Jail work outside', *The Courier Mail*, 2 Nov. 1966. Although it was discussed in 1958 and 1966, the idea was not implemented in Queensland until 1990 when prisoners were used to assist with the clean up after a major flood in Charleville. Subsequently, prisoners were utilised in temporary camps following natural disasters across the State and established permanent camps in regional areas including Springsure.

<sup>100</sup> S Kerr, Letter to the Minister about 'Employment of prisoners at labour in Queensland Prisons', 19 June 1958, QSA., RS13257/1/31, item 293136.

<sup>101</sup> Regulation 418, 'All prisoners may be required to perform suitable labour unless unable to do so...' Queensland Government, *Prisons Regulations of 1959*, Brisbane, 1981.

was taken to provide skilled labour and vocational training on prison farms.<sup>102</sup> Under the agreement reached that day items produced in the carpenter workshop in Brisbane Prison would be used mainly to furnish HM Prison Wacol.<sup>103</sup> Additionally, Wacol prison was to include ‘extensive trade training with dairying and agricultural pursuits of a high standard as an aid to training and a means of providing milk and provisions for Government Institutions’.<sup>104</sup>

Within a few years, this arrangement had been eroded. Training, which was a genuine priority in some other jurisdictions, was used as a pretext for industrial output and cost savings.<sup>105</sup> Kerr considered young men in prison a ‘wastage of man-power’,<sup>106</sup> which indicates that he regarded prison labour as a resource to be utilised. When the prison construction program commenced in the mid-1960s, the Prisons Department employed qualified tradesmen to supervise the building program and indentured prisoners as apprentices.<sup>107</sup> While available documentation is generally silent as to the source of labour, some reports mention that prisoners were used in the expansion and construction of prison buildings in Townsville, Wacol and Brisbane.<sup>108</sup> The following chapters show that Kerr regarded prison labour as a means of providing employable skills through training and rehabilitation, while its output was a by-product that incidentally benefited the Department. Work of this nature was consistent with the revised definition of ‘hard labour’ in section 30(1) of the *Prisons Act 1958*, namely that hard labour was ‘any manual, industrial or trade labour of the type performed in the community and as may from time to time be determined by the Comptroller-General’. As we

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<sup>102</sup> AW Munro, ‘Letter regarding a meeting about Prison Labour’, 27 July 1958, from Munro for information of the Under Secretary and for the Comptroller-General to note and return, QSA., RS13257/1/31, item 293136.

<sup>103</sup> S Kerr, ‘Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1959’, Brisbane, p. 2.

<sup>104</sup> *ibid.*, p. 1.

<sup>105</sup> S Kerr, ‘Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1960’, Brisbane, p. 6.

<sup>106</sup> S Kerr, ‘Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1961’, Brisbane, p. 3.

<sup>107</sup> S Kerr, ‘Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1964’, Brisbane, p. 1.

<sup>108</sup> *ibid.*, p. 3; S Kerr, ‘Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1965’, Brisbane, p. 1.

will see in the coming chapters, other rehabilitative opportunities were neglected if they conflicted with prison employment. This suggests that Queensland administrators believed rehabilitation would occur with the acquisition of a suitable work ethic and employable skills. If this was not possible, the Department should at least benefit from the labour.

### ***Indeterminate sentences***

In addition to modern prison design and prison employment, another aspect incorporated in the *Prisons Act 1958* and its amendments related to the imposition of indeterminate sentences. These sentences show the imprint of both the classical and positivist criminological schools; where deterrent is a classical determinant and incapacitation until no longer a threat to the community being positivist in nature.<sup>109</sup> After World War II there was a general movement for treatment programs<sup>110</sup> prior to the acceptance of the ‘nothing works’ position discussed earlier. While it was believed that the period of threat may be reduced by successful rehabilitative programs, in Queensland psychological programs did not receive a high priority while offenders were in custody. Instead, reduction in the risk to the community remained in faith through incapacitation of the individual until such time as they no longer posed a threat.

The desire to rehabilitate prisoners was tempered by the realisation that not everyone could be redeemed. While life imprisonment could be applied to some offences, some offenders posed an ongoing risk even after they had served the maximum sentence courts could impose. In recognition of this, since 1914, the courts could declare an offender ‘habitual’ under

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<sup>109</sup> SM Talarico, ‘What do We Expect of Criminal Justice? Critical Questions of Sanction Policy, Sentencing Purpose and the Politics of Reform’, *Criminal Justice Review*, vol. 4, no. 55, 1979, pp. 56 - 57.

<sup>110</sup> S Jonathan, ‘Positively Punitive: How the Inventor of Scientific Criminology Who Died at the Beginning of the Twentieth Century Continues to Haunt American Crime Control at the Beginning of the Twenty-first’, [Texas Law Review](#), issue 84, no. 7, Jun 2006, pp. 2135 - 2172.

Queensland's *Criminal Code* s. 659.<sup>111</sup> This meant they remained in custody, even after completing their sentence, until they were considered to be rehabilitated.<sup>112</sup> On entering the prison system, they were then classified as 'intractable' prisoners under regulation 204 (H) and not entitled to the same privileges and opportunities as prisoners with other classifications.<sup>113</sup> While this option was in the statutes at the time of the *Prisons Act 1958*, support appears to have waned within a few years since fewer prisoners were given indeterminate sentences for crimes outside those that attracted a life sentence (see Table 2.2). An exception was prisoners found to suffer from 'insanity', because of the real or perceived risk they could be detained under 'the Queen's pleasure'<sup>114</sup> until they were considered no longer a threat to society.<sup>115</sup>

These sentences or categories provided the authority to detain prisoners until they were no longer considered a threat; however, obligations were not legislated for prison administrators to provide rehabilitative opportunities. The use of indeterminate sentences was intended to protect society, therefore, even after release offenders continued to be monitored through the parole system. Those sentenced to the Queen's pleasure were considered potentially redeemable and were reviewed intermittently until they were fully released. Categorising prisoners by one of the indeterminate options provided legislators of the *Prisons Act 1958* and its subsequent amendments with the ability, through classification, to permit or deny privileges based on the perceived likelihood of the prisoner's redemption. This can be viewed as either an efficient use of resources or a denial of opportunities and incentives.

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<sup>111</sup> C Pennefather, *Report of the Comptroller-General of Prisons for the year 1914*, Brisbane, 1915; RF Carter, *Criminal Law of Queensland*, 6<sup>th</sup> edn, Brisbane, 1982.

<sup>112</sup> C Pennefather, *Report of the Comptroller-General of Prisons for the year 1913*, Brisbane, 1914; RF Carter, *Criminal Law of Queensland*, 6<sup>th</sup> edn, Brisbane, 1982.

<sup>113</sup> Queensland Government, *Queensland Prison Regulations 1959*, regulation 204 (H), Brisbane, 1981, p. 18.

<sup>114</sup> This could also be referred to as 'the King's pleasure' dependent on who was the monarch at the time.

<sup>115</sup> RF Carter, *Criminal Law of Queensland*, 6<sup>th</sup> edn, s. 647, Brisbane, 1982; The data in table 2.2 commenced in the prison annual reports in 1964 which coincided with the *Prisons Act Amendment Act 1964* when legislation included prisoners in the Security Patients Hospital under the Prisons Department portfolio.

Year <sup>116</sup>	Life sentences <sup>117</sup>	Habitual prisoners	Queen's pleasure
1957	57	24	
1958	57	28	
1959	57	24	
1960	59	17	
1961	55	18	
1962	65	17	
1963	68	13	
1964	59	9	6
1965	61	6	6 <sup>118</sup>
1966	64	6	3
1967	59	5	4
1968	64	5	3
1969	69	5	5
1970	71	5	14
1971	72	4	5
1972	72	4	7
1973	71	1	17
1974 <sup>119</sup>	Categories no longer available		

Table 2.2 Indeterminate sentences.

### ***Classification***

The policy of placing prisoners in similar classifications is long established in prison management. In 1818 the SIPD said a prison should possess, amongst other things, 'classification according to age, sex and crime', because a gaol with limited to no classification is a 'nursery of crime' where the 'infection

<sup>116</sup> Information in the table collated from the Annual Reports of the Comptroller-General of Prisons for the year 1957- 1965.

<sup>117</sup> Prisoners detained in security patients hospitals sentenced to life imprisonment are not included in these figures.

<sup>118</sup> Detained at Her Majesty's Pleasure due to unsoundness of mind. S Kerr, 'Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1965', Brisbane, p. 2; Unsoundness of mind appears to have been a consistent cause for applying 'Detention at Her Majesty's Pleasure'.

<sup>119</sup> A change of reporting format commenced in 1974.

will spread'.<sup>120</sup> In its simplest form, this categorisation is based on gender and/or age, whereas more complex groupings are based on factors such as sentence, number of convictions, type of offence, security risk and treatment<sup>121</sup> or containment needs. Where isolation cells were not in use, architectural design assisted classification whose purpose was the prevention of contamination. Classification was also concerned with separating prisoners into identifiable, homogeneous groups based on government and administrative priorities, which varied between jurisdictions and with time. England's *Gaol Act 1823* legislated classification in preference to separate confinement to 'reduce the effects of indiscriminate association of prisoners'.<sup>122</sup> The complexity of such classification ultimately was limited by the ability to manage or segregate the different classifications. When Kerr was asked in 1960 whether classification was based on 'education and occupational background, their aptitude or occupational desires', he replied that important risk factors for classification determinants were the 'age group and record of crime'.<sup>123</sup> Unlike the question, which was couched in terms of rehabilitative needs, Kerr based his response on legislation first introduced in 1890.

Under Queensland's *Prisons Act 1890* prisoner classification was based on categories such as first-time offender awaiting sentence, number of convictions with or without hard labour, debtor, lunacy, contempt of court or failure to provide security.<sup>124</sup> The *Prisons Act 1958* used these categories, while adding homosexuals and youthful prisoners. It also categorised prisoners into those considered remediable, recidivist or intractable or with short-sentence convictions.<sup>125</sup> In 1959, Brisbane and Townsville prisons

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<sup>120</sup> *Report of the Society for the Improvement of Prison Discipline and for the reformation of Juvenile Offenders*, London, 1818, pp. 23 - 24.

<sup>121</sup> LT Wilkins, & P MacNaughton-Smith, 'New Prediction and Classification Methods in Criminology', *Journal of Research in Crime and Delinquency*, vol. 1, issue 1, 1964.

<sup>122</sup> N Johnston, *Forms of Constraint: A history of Prison Architecture*, University of Illinois Press, Chicago, 2000, p. 45.

<sup>123</sup> S Kerr, 'Questionnaire concerning prisoners- Department of Labour and National Service', 31 March 1960, p. 1, QSA., item 293136.

<sup>124</sup> Queensland Government, *Prisons Act, 1890, and Rules and Regulations relating to Prisons*, regulation 118, Brisbane, 1928.

<sup>125</sup> Queensland Government, *Prisons Regulations 1959*, regulation 204, Brisbane, 1981.

established classification committees that consisted of three senior prison administrators and the Government Medical Officer. The committee could seek assistance from psychologists and psychiatrists when required and provide advice to the newly formed Parole Board.<sup>126</sup>

In theory, to achieve rehabilitation the management of each classified group required different considerations such as trained staff, appropriate work options, special programs, education, amount and/or type of food,<sup>127</sup> exercise and association with other prisoners. As the population within each classification increased, it became more difficult to manage prisoners with different classifications who were accommodated in the same area. This problem initially was resolved by using separate exercise yards during the day. Then, as prisoner numbers grew, separate accommodation buildings were required and eventually specialised prisons were constructed.<sup>128</sup> Although, separate specialist prisons were not always a viable option due to financial or geographical constraints. Therefore, the alternative was to withhold classification privileges or entitlements to facilitate the management of the larger prison mass and to minimise tension between different prisoner classifications (see Chapter 3 for further discussion). Here, it suffices to say classification is a useful tool for identifying key similarities and providing group management, however, it could become unwieldy if the subdivisions were too specific, resulting in too many classification groups. Group management is particularly susceptible to problems if even though classification separation is appropriate or required, it is not possible to achieve due to the physical structure of the facilities. As an example of the problems caused by overcrowding in 1962, Kerr stated there were idle prisoners in gaols because ‘it was impracticable to provide everyone with adequate segregation,

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<sup>126</sup> S Kerr, ‘Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1959’, Brisbane, p. 1.

<sup>127</sup> This could include additional rations and/or alternative food options. JS Kerr, *Out of Sight, Out of Mind*, S.H. Ervin Gallery, Sydney, 1988, p. 156.

<sup>128</sup> EH Sutherland, DR Cressey, *Principles of Criminology*, 6<sup>th</sup> edn, Lippincott, Chicago, 1960, p. 454.

classification and useful training'.<sup>129</sup> Classification was perceived as a key policy for managing and rehabilitating prisoners, therefore in many instances privileges and less restrictive placements were intrinsically linked to the classification system and the disciplinary process which were part of contemporary penological management. This management continues through the theoretical and administrative aspects discussed thus far to its manifestation in practices that incorporate the stated and unstated policies of the prison administrators.

### ***Punishment***

Modern punishment is based on the classical school of criminology which considers crime the result of rational choice and the offender has determined the personal advantages and disadvantages prior to committing the criminal action. Where the disadvantages, including the punishment, outweigh the advantages the classical school contends that the person will be deterred from committing the offence. In addition to the nature of the punishment, the severity applied in prisons must be tempered by what is acceptable to the community and this can be monitored by having transparent procedures in place. Historically, punishments for many infractions have been determined and applied in-house with limited oversight, for example prison staff preferred the internal punishment system for dealing with assault (either one prisoner assaulting another or a prisoner assaulting staff) and the evidence gathering techniques were haphazard. This system was found to be insufficient if instead of an internal punishment the matter was brought before a court of law. Therefore, in 1956, staff were instructed to question assailants and to connect suspects with any weapon used to ensure sufficient evidence could be produced for a 'tribunal'. The Comptroller-General believed it was insufficient to 'lock up' a prisoner; evidentiary justification was also required.<sup>130</sup> Nevertheless, punitive internal arrangements, sheltered from

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<sup>129</sup> S Kerr, 'Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1962', Brisbane, p. 2.

<sup>130</sup> Prisons Department, 'General Order, Re: Investigation of Cases of assault and other serious Breaches of Prisons Regulations', 17 April 1956, QSA., item 293136.



transparent examination, appeared to have continued in Queensland prisons and several examples and discussions will occur in the coming chapters to demonstrate the use and abuse of official and unofficial sanctions.

While the use of corporal punishment in Queensland had been discontinued by 1958, dietary restrictions continued to be used as a form of punishment (see Chapter 4 for a jurisdictional comparison of legislation). Chapter 4 shows that while the policy regarding dietary punishments consisting of bread and water rations continued, they were reduced from a maximum of twenty-eight days under Queensland's *Prisons Act 1890*<sup>131</sup> to a maximum of fourteen days under the *Prisons Act 1958*.<sup>132</sup> In contrast, the use of bread and water rations as a punishment decreased in New Zealand and was abolished by the *Penal Institutions Act 1961*.<sup>133</sup> The policy to use different punishments to enforce discipline continued in Queensland and Chapters 3 and 5 will discuss the various ways this was applied and manipulated. Contemporary penology supported rehabilitation, but where this was provided whilst in custody it caused conflict with the conservative beliefs of some prison administrators.

Kerr recognised the global trend in 1960 was towards treatment rather than punitive imprisonment and while he appeared to be sympathetic to youthful and new offenders he remained committed to the application of strict discipline. He believed resources should be focused on preventing crime through the provision of appropriate education in schools during childhood, rather than on treatment after offences have been committed.<sup>134</sup> Kerr's disdain for leniency became evident later in his career when comments in his annual reports were critical because he 'sensed a hardening of public opinion'.<sup>135</sup> The following chapters will show that rehabilitation whilst in custody was focused on limited work and education opportunities, while most contemporary

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<sup>131</sup> Queensland Government, *The Prisons Act 1890*, s. 29, Brisbane.

<sup>132</sup> Queensland Government, *Prisons Act 1958*, ss. 32 (7), 33 (5), Brisbane.

<sup>133</sup> G Newbolt, *The Problem of Prisons, Corrections reform in New Zealand since 1840*, Dunmore, Wellington, 2007, p. 61.

<sup>134</sup> S Kerr, 'Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1960', Brisbane, p. 6.

<sup>135</sup> S Kerr, 'Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1971', Brisbane, pp. 2, 5.

rehabilitative programs in Queensland were conducted after a prisoner was released.

### ***Rehabilitation options***

In 1954 Professor George B Vold considered that rehabilitation was provided by psychological and psychiatric services to assist the offender understand what and why they needed to change and/or 'education and vocational training to correct the ignorance, poor habits and lack of skills'.<sup>136</sup> That Queensland had chosen the second path as the fundamental rehabilitative policy was confirmed the following year when the Comptroller-General, William Rutherford, a predecessor of Kerr, stated 'the emphasis is on rehabilitation at all times, and prisoners are encouraged in every way to improve their education and skill at labour'.<sup>137</sup> By 1959, prisoners participated in distance education programs through the 'University of Queensland, Technical Correspondence School, Primary Correspondence School and the Commercial Correspondence School'<sup>138</sup> and their supervision was provided by part-time and volunteer teachers. In 1960, Kerr accepted this was inadequate and expressed a desire to employ a full-time teacher in Brisbane and Townsville prisons.<sup>139</sup> This gap between educational requirements and available resources was to continue for several years and will be discussed in detail in Chapter 6.

It had long been accepted practice to permit chaplains, charitable groups and individuals to assist in education, leisure and religious activities, show films and conduct concerts in Queensland prisons.<sup>140</sup> These volunteer run programs

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<sup>136</sup> G Vold, 'Does the Prison Reform?' *Annals of the American Academy of Political and Social Science*, vol. 293, May, 1954, pp. 48 - 49.

<sup>137</sup> W Rutherford, 'Reply regarding information for the Prime Minister regarding the International Penal and Penitentiary Commission Congress in Geneva', 10 May 1955, p. 1, QSA., RS13257/1/31, item 293136.

<sup>138</sup> S Kerr, 'Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1959', Brisbane, p. 5.

<sup>139</sup> S Kerr, 'Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1960', Brisbane, p. 2.

<sup>140</sup> In 1964, Bennett paraphrased Sir Lionel Fox, saying while 'after care societies were doing a commendable job in minimising the problem, it would not be completely resolved until society had progressed through several more civilising generations'. LW Fox, AM

expanded and in 1959, their post-release assistance was acknowledged in departmental reports.<sup>141</sup> To further assist prisoners the Prisoners' Aid Society was formed in 1961 and commenced activities by visiting Townsville prison.<sup>142</sup> Kerr supported the Society, describing it as a 'commendable' enterprise<sup>143</sup> and he allowed it to undertake welfare duties in the prisons.<sup>144</sup> There was also a further shift in Queensland prison policy when prisoners were allowed access to leisure and sport activities.

Prison leisure and sporting activities were relatively new concepts, but when permitted, they were always considered to be a privilege that may be withdrawn for an infraction or conflicting priority. In 1960, Kerr considered these part of a 'modern prison administration' and permitted them in Townsville Prison.<sup>145</sup> However, the existing infrastructure in Queensland's prisons was not conducive to sporting activities due to a lack of sufficient or suitable space. Over the next decade these programs expanded and there was to be tension between the prison administrators and some of the service providers which will be discussed in Chapter 6. A penological policy that gained some support because it reduced overcrowding and could be used as an incentive was the early discharging of prisoners.

Increases in prison population, without proportional increase in accommodation, resulted in serious overcrowding in Queensland's prisons. To help reduce overcrowding in the existing infrastructure, early discharge options were available in the form of part payment of fines, periodic detention and parole. Under the *Justice Act Amendment Act of 1909* prisoners were permitted to pay part of their court-ordered fines and serve the remainder on a

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López-Rey & C Germain, *Studies in penology, dedicated to the memory of Sir Lionel Fox*, M Nijhoff, The Hague, 1964, p. 49.

<sup>141</sup> S Kerr, 'Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1959', Brisbane, p. 5.

<sup>142</sup> S Kerr, 'Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1961', Brisbane, p. 1.

<sup>143</sup> S Kerr, 'Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1963', Brisbane, p. 2; S Kerr, 'Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1964', Brisbane, p. 2.

<sup>144</sup> At that time, welfare officers were not employed in the prisons.

<sup>145</sup> S Kerr, 'Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1960', Brisbane, p. 3.

pro-rata basis. This reduced overcrowding by allowing prisoners to pay what they could afford off their fines. Their sentence was converted to a daily rate and the outstanding amount was completed in custody.<sup>146</sup> Periodic detention (discussed further in Chapter 5), which assisted to reduce overcrowding at different times of the week, was introduced in the forms of weekend detention<sup>147</sup> and release to work.<sup>148</sup> A community supervision release option was that of parole.

Chapter 1 introduced parole as a method of reducing prisoner numbers while maintaining a level of indirect supervision over a discharged offender as they reintegrate into the community. Parole had developed from the 1840s system of ticket of leave where prisoners granted remission were bound to be of good behaviour until their sentence was completed.<sup>149</sup> In 1955, Comptroller-General W Rutherford said parole was granted ‘sparingly’.<sup>150</sup> Even under the new *Offenders Probation and Parole Act 1959*, the number of approvals continued to remain low until the mid-1970s (see Table 6.1) and the coming chapters will show that it was difficult for a prisoner to obtain parole approval. These early release options provided population management opportunities, and in some cases incentives to comply with prison regulations. The prisons department appears to have favoured options that released it from ongoing responsibility, while those options that required continued reporting, such as parole did not enjoy the same support. To facilitate the penological policies discussed thus far it was necessary to employ suitable staff.

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<sup>146</sup> C Pennefather, ‘Report of the Comptroller-General of Prisons for 1910’, Brisbane, p. 5.

<sup>147</sup> Weekend detention meant the offender reported to the prison on Friday evening and was released on Sunday afternoon for the number of weekend or hours specified by the sentencing court.

<sup>148</sup> Release to work occurred for the period of employment, plus reasonable travel time, on a daily basis.

<sup>149</sup> N Morris & DJ Rothman, *The Oxford History of the Prison*, Oxford University Press, Oxford, 1998, p. 123.

<sup>150</sup> W Rutherford, ‘Information for the Prime Minister regarding the International Penal and Penitentiary Commission Congress in Geneva’, 10 May 1955, p. 3, QSA., RS13257/1/31, item 293136.

### ***Getting the right staff***

One means of encouraging rehabilitation and reducing recidivism was to provide appropriate role models in the form of staff willing to assist the rehabilitative process. To ensure prison practices appropriately reflect government policies, it was necessary to employ staff who understood and supported the policies and to ensure subsequent practices are aligned with these. In 1960, JS Lobenthal considered that it was rare for recruits to have a 'fundamental educational background for them to understand and to contribute to the ultimate penological aims of their administration'.<sup>151</sup> The previous chapter described the background of the Queensland prisons workforce and considered the problems that administrators encountered in implementing policy due to the nature of the staff and the working conditions. A recruitment and training policy was required to develop staff capable of performing this task as role models, under limited supervision, in difficult conditions and with dysfunctional individuals.

In 1955, the Netherlands reported that the question of properly trained prison staff had been raised as early as 1886. To address this, it had been conducting voluntary professional development since 1929 and appropriate senior staff had been selected and prepared to conduct this training. It was also recognised that there had been a severe labour shortage during and immediately after World War II. This resulted in staff being employed who did not meet the normal education standards; it was therefore necessary to improve the skill and knowledge levels of those now experienced staff.<sup>152</sup> England and Wales also recognised the need to train prison staff as recruits, to equip them with appropriate security and legislative knowledge.

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<sup>151</sup> JS Lobenthal, 'Proposals for Correctional Education and Training', *The Prison Journal*, vol. 40, no. 1, 1960, p. 3.

<sup>152</sup> AM Lamers, 'Personnel: The training of the personnel of penal institutions in the Netherlands', First United Nations Congress on the prevention of crime and the treatment of offenders Geneva 1955, viewed 5 August 2009, <<http://www.asc41.com/1st%20UN%20Congress%20on%20the%20Prevention%20of%20Crime/056%20ACONF.6.C.1.L.12%20Personnel%20in%20the%20Netherlands.pdf>>.

It was noticed that while a tension traditionally existed between prison staff and prisoners in high-security prisons, this was not as evident in open or training prisons. The Secretary of State, for the Home Department in England, acknowledged that pay and conditions would need to be improved to attract and retain quality staff to support the reform process.<sup>153</sup> Thus, The Netherlands, England, Wales and Queensland all appear to have experienced similar problems and recognised the need to train new and existing staff so that they were likely to be supportive of reform. Chapters 5 and 6 will discuss how Queensland's prison administrators recognised this problem and attempted to address it with recruit and in-service training. It will be seen that this was to be inadequate and Chapter 7 will discuss the Bredhauer 1974 investigation that identified ongoing staff issues.

### ***Who provides the oversight***

Another policy prison administrators needed to manage was accountability; this included the decisions that were made and the conditions prisoners were detained under. Transparent practices ensure accountability is maintained but it can be overlooked or ignored when there is a low level of community engagement and a high level of community apathy, such as when the subject matter is not newsworthy or is kept from the press. 'Out of sight, out of mind' was never truer than for those sent to prison who have had their possessions and many rights removed. In the USA, the courts adopted a 'hands-off' attitude to incidents that occurred inside prisons until 1970. In that year, a federal judge in Arkansas effectively ruled that the constitution did not stop at the prison gate but applied inside prisons and jails. This ruling effectively forced the management, operation and design of prisons in the USA to become more transparent.<sup>154</sup> Queensland's Minister for Justice, Alan Whiteside Munro, said:

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<sup>153</sup> Secretary of State for the Home Department, *Penal Practice in a changing Society, Aspects of Future Development (England and Wales)*, Her Majesty's Stationary Office, London, 1959, pp. 22 - 24.

<sup>154</sup> W Collins, *Jail Design and Operation and the Constitution, an Overview*, U.S. Department of Corrections, Washington, 1998, pp. 10-11.

Of all the responsibilities of Government, there probably are none so shrouded in secrecy as that of the guardianship of those who offend against the law... there is sound reason for this. The first is the paramount requirement of security, the second is that we should not in any way glamourize the lives of wrongdoers, and the third... be fair in maintaining the respect of the prisoners themselves... however, there is no need for a complete veil of secrecy<sup>155</sup>

and he advocated public discussion to resolve some of these problems. Thus, prison decision makers acknowledged that a level of inclusion and transparency was desirable; however, the following chapters will show that despite the stated policy of transparency, the reality was closer to selective exposure.

Administrators establish the parameters, set out in legislation and policies that provide the direction for prison management. By examining and applying criminological and penological theories, a prison administrator can ensure the prison system is in step with societal expectations and contemporary best practice. When this knowledge is available but ignored or selectively applied, the prison system risks becoming archaic in policy and practice, generating disharmony within prisons and risking the support of the community and the government. It will be seen in Chapter 6 that each of these consequences was to occur.

## ***Conclusion***

This chapter has considered some of the contemporary criminological theories and policies, including those relating to the influence of society and peers, available for consideration when the Queensland *Prisons Act 1958* was being drafted. The chapter has not attempted to be the definitive authority of all contemporary theories, but instead to establish that there were theories available which may have then informed rehabilitative programs if they were to be developed by appropriately qualified personnel. Subsequent chapters will examine if these personnel were to be employed to provide rehabilitative

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<sup>155</sup> AW Munro, A paper titled 'The problem of prisons', undated, however, Munro was Minister for Justice between 1957 and 1963, QSA., RS13257/1/31, item 293136.

programs or alternatively have their efforts redirected towards other priorities. It has also been seen that prior to the *Prisons Act 1958*, international penology was moving towards more lenient practices which encompassed rehabilitative options. The incumbent Comptroller-General just prior to the *Prisons Act 1958*, William Rutherford, believed ‘the less repressive the custodial methods employed, the greater the success in rehabilitation which is now considered the primary objective of imprisonment’.<sup>156</sup> While his successor, Stewart Kerr, spoke of the need for rehabilitation, he adopted a more conservative approach consistent with administrative penology. Kerr said the ‘proper treatment’ of different classifications included ‘strict discipline and security’ and ‘where necessary, adequate training with specialised assistance in relaxed conditions, so that full benefit may be given to those prisoners likely to be or capable of being restored to useful citizenship’.<sup>157</sup> Some of the various contemporary theories have been mentioned or discussed in this chapter to assist the reader in the contextualisation of the development of the *Prisons Act 1958*. In the following chapters it will be seen that if theories were considered by the legislation reviewers a framework for rehabilitative reform may have been possible.

The changes in infrastructure design has also been considered and it has been seen that while the hollow-square and Original Auburn prison designs had been superseded internationally, they were still considered suitable for Queensland prisons built in the 1960s and 1970s. The change in prison design indicated a start to modern penological thinking and provided opportunity for new policies to be implemented. The prison management policies relating to education, prison labour, classification, parole, indeterminate sentences and periodic detention were discussed as they provided opportunities for the Queensland prison system to modernise operations under the *Prisons Act 1958*. While prison reform noticeably advanced in areas relating to infrastructure, by 1958 there were few rehabilitative reforms for prisoners.

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<sup>156</sup> W Rutherford, ‘Letter to the Under Secretary in response to a pamphlet from India’, 28 Dec. 1955, QSA., RS13257/1/31, item 293136.

<sup>157</sup> S Kerr, ‘Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1959’, Brisbane, p. 2.



This chapter has explored a selection of the many theories that were available for consideration during the drafting of the *Prisons Act 1958* and the development of policies for managing Queensland's prisons. Next, the community's attitude to incarceration will be considered as this could influence aspects of Queensland's Prisons Act 1958 while it was being drafted. Furthermore, if the community's attitude and prison practice were in conflict, did the community's attitude encourage change or was the Prisons Department so insulated that it was not responsive to community expectations?

## Chapter 3 Behind closed doors

This chapter considers community exposure and some of the responses to prison management to 1958 and the effect they may have had on policy development and prison practice. It also examines whether community responses to publicised incidents drove any subsequent policy changes, each of which will be considered in Chapter 4. An evaluation will occur of the tone of media reports and the political or organisational responses manifested in official enquiries and reviews. It is through these reports that a glimpse will be seen of what occurs ‘behind closed doors’ or more specifically, behind the prison gates. While the media emphasised the dangerousness of prisoners, the Government expressed a desire for rehabilitation. All of these factors potentially influenced subsequent legislation.

When the press reports on prison incidents that affect public safety it tends to reinforce an underlying belief in the innate dangerousness and untrustworthiness of prisoners. Then through its descriptions, either supports law enforcement agencies (police and prisons) or questions their ability to maintain community safety. This influences community perception of the management of prisons, which in turn has the potential to influence government policy and prison administrators. Professor Yvonne Jewkes claims media reports are predicated on the belief that readers consider prisons to be full of dangerous people who have an easy life behind bars.<sup>1</sup> When escapes from custody are reported, the press tends to use negative descriptive language for the prisoners, emphasising the futility of the escape, in some cases highlighting the dangerousness of the escapees, while using positive language for the authorities. For instance, in 1948 two escapees were described as ‘hungry and worn out’ and their bid as ‘futile’, while the police provided a ‘relentless’ and ‘concentrated’ search effort with an ‘all-night vigil’ to recapture the escapees.<sup>2</sup> The intent is to elicit community support in reporting sightings, dishearten the escapees if they read or hear the reports and

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<sup>1</sup> Y Jewkes, *Handbook on Prisons*, Willan, Devon, 2007, pp. 449-450.

<sup>2</sup> ‘Prison farm escapees taken’, *Townsville Daily Bulletin*, 17 May 1948, p. 2.

bolster support for the police in their efforts. Jewkes states ‘when people read news reports about prisons and prisoners, they are looking for both confirmation of their existing views, which – without context and background – tend to be punitive, and for further opportunity to be shocked and outraged’.<sup>3</sup> Generally, criticisms of prison practices which allowed escapes to occur were not included in the initial media reports and may never be disclosed, unless the matter was heard in an open court or open Public Service appeal. An experienced reporter, NE Isaacs, stated that ‘newspapers tend to take the reports of policemen at face value. In many situations, if a man is arrested and the police report him guilty of a crime, the report is published in such a manner as to cast little doubt on its accuracy’.<sup>4</sup> It is argued by P Mason that the over-reporting of violent crimes creates an atmosphere of support for draconian law and order measures to the ‘extent that prison was the only viable option’.<sup>5</sup>

### ***Prison disruptions***

In the period after World War II the press provided a steady diet of prison reports involving incidents, escapes and atrocities in local, interstate and overseas prisons and POW camps. These included international reports of large scale riots which contributed to the desensitisation of the reader by the reporting of the authorities’ use of severe or even lethal force that reinforced a belief in the need for strong prison discipline. Some examples were a 1950 2000 prisoner riot in Manila, in which prisoners seized the armoury and twelve were killed in the resulting crossfire.<sup>6</sup> A 1952 headline read, ‘Guns blaze in Michigan prison riot’, after state troopers used sub-machine guns on 2600 rioting prisoners who had taken eleven officers hostage. The cause of the

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<sup>3</sup> Y Jewkes, *Handbook on Prisons*, Willan, Devon, 2007, pp. 449 - 450.

<sup>4</sup> NE Isaacs, ‘The crime of present day crime reporting’, *The journal of criminal law, criminology and police science*, vol. 52, no. 1, May-June 1961, p. 407.

<sup>5</sup> P Mason, ‘Misinformation, myth and distortion’, *Journalism Studies*, 2007, p. 481; Also refer to Mathiesen, T, ‘Television, Public Space and Prison Population: a commentary on Mauer and Simon’, *Punishment and Society*, 2001, pp. 35 - 42.

<sup>6</sup> ‘12 prisoners killed in prison riot’, *Townsville Daily Bulletin*, 29 May 1950, p. 5.

disturbance was only briefly mentioned.<sup>7</sup> The headline of ‘Diet too tame, Jail riot on saveloys’ occurred when Chicago prisoners caused property damage because they were ‘served saveloys for the third time in a week’ and also complained they weren’t given enough to read.<sup>8</sup> The press’s inclination to publish reports that emphasise prisoners’ dangerousness and minimise their causes for complaint include the 1954 headline of ‘Convicts Flogged’. This report showed punishment in England still included whipping with the ‘cat o’ nine tails’ when two prisoners received six and twelve lashes respectively because they attempted to start a prison mutiny against new working hours.<sup>9</sup> When viewing these reports the community would be less inclined to sympathise with prisoners who damage publically funded property and take staff hostage because they had saveloys too often or have to change their work hours.

Compounding the impression given by reports from overseas, prisons in other Australian jurisdictions also experienced problems that suggested a system in trouble. In 1953, the press reported that twelve prisoners attempted to escape from Grafton Gaol (NSW). There was a ‘savage melee’ led by a ‘notorious attempted murderer serving a life sentence’, resulting in six prisoners and four officers being injured.<sup>10</sup> Then in September 1954, the headline ‘Buckets, fists,

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<sup>7</sup> The prisoners were complaining about the ‘brutal conditions’ they were detained under. ‘Guns blaze in Michigan prison riot’, *Townsville Daily Bulletin*, 23 April 1952, p. 1; At a similar time headlines in the *Cairns Post* read ‘Another U.S. prison riot’ where ‘nearly half the 500 prisoners’ in a San Francisco prison rioted over food and ‘one trustee was beaten up’. ‘Another U.S. prison riot’, *Cairns Post*, 8 May 1952, p. 1; Another disturbance in New York was reported as ‘Convicts wild rampage, £4½ million damage, then gave up’, four prisoners were killed and three officers wounded. ‘Convicts wild rampage, £4½m Damage, then gave up’, *The Courier Mail*, 25 Sept. 1954, p. 1.

<sup>8</sup> ‘Diet too tame, Jail riot on saveloys’, *The Courier Mail*, 27 Sept. 1954, p. 1; Jefferson, Missouri, in 1954 had 300 prisoners rioting, three killed and 23 wounded. ‘Three die in prison riot’, *Townsville Daily Bulletin*, 24 Sept. 1954, p. 1; and a month later another riot resulted in 37 injured and one prisoner killed. ‘Prisoner shot dead 37 injured in riots’, *Townsville Daily Bulletin*, 25 Oct. 1954, p. 1.

<sup>9</sup> ‘Convicts flogged’, *Townsville Daily Bulletin*, 5 May 1954, p. 1; Then in 1955, ‘Prisoners hold five hostages’ was the headline when 22 ‘hardened’ death row prisoners held staff hostage during a riot and escape bid in New York. It was reported that a Roman Catholic priest was allowed to hear the confessions of some of the hostages because ‘among the rebels were some of the most notorious criminals in the State, including three police killers and...a bank robber’. ‘Prisoners hold five hostages’, *Townsville Daily Bulletin*, 20 Jan. 1955, p. 1. This report indicated the hostages were preparing for the worst possible outcome and based on the crimes of the prisoners this fear may have been well founded.

<sup>10</sup> ‘Foil mass prison break at Grafton’, *Townsville Daily Bulletin*, 16 June 1953, p. 1.

boots used. 312 prisoners join fight in jail riot' in Melbourne's Pentridge Gaol following two prisoners drunk on a prison cocktail fighting and being separated by warders.<sup>11</sup> The next day the headline read 'Prisoner wounded in second disturbance in 24 hours, pitched battle in Pentridge, 'Killer' pistol smuggled in'. It was reported that a prisoner serving 'nine-years for armed hold-ups' was shot in the leg and a 'pitched battle' followed between prisoners and warders.<sup>12</sup> Each of the preceding articles highlighted the dangerousness of 'prisoners' and the extreme measures prison staff used to maintain security.

### ***Dangerous prisoners***

An indication of the emphasis the community in the 1950s put on a secure prison system can be gauged by reflecting on the responses to the press coverage of Queensland prisoner AE Halliday, a man who was categorised as a dangerous prisoner. Halliday was involved in various prison disturbances and several escape attempts, two of which were successful. During his criminal career he was convicted of a well publicised murder and sentenced to life in prison. Following an escape attempt from Brisbane Prison the headline read 'Halliday starts fire at Boggo Road, Taxi killer's bid to escape fails' and the press reminded the community of his original crime and two successful escapes.<sup>13</sup> A few days later the press reported Halliday's punishment was fourteen days solitary confinement in a cell deprived of light.<sup>14</sup> One person wrote to the editor that 'solitary confinement was foul and sadistic' and 'by shutting out the light to this unfortunate we are only plunging ourselves into moral darkness'.<sup>15</sup> This elicited several letters from those who considered the punishment was the right 'way to deter callous crime';<sup>16</sup> another reader dwelt

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<sup>11</sup> '312 prisoners join fight in jail riot', *The Courier Mail*, 10 Sept. 1954, p. 1.

<sup>12</sup> 'Prisoner wounded in second disturbance in 24 hours, pitched battle in Pentridge, 'Killer' pistol smuggled in', *The Courier Mail*, 11 Sept. 1954, p. 1.

<sup>13</sup> 'Halliday starts fire at Boggo Road, taxi killer's bid to escape fails', *The Courier Mail*, 3 Dec. 1953, p. 1.

<sup>14</sup> 'Won't see light while in cell, Halliday use to solitary', *The Courier Mail*, 10 Dec. 1953, p. 1.

<sup>15</sup> 'Solitary confinement is foul and sadistic', *The Courier Mail*, 11 Dec. 1953, p. 2.

<sup>16</sup> 'Way to deter callous crime', *The Courier Mail*, 12 Dec. 1953, p. 7.

on the viciousness of the crimes<sup>17</sup> and another thought that the punishment was ‘Halliday’s own choice’ because he attempted to escape.<sup>18</sup> The press reinforced the unsympathetic responses by printing a statement by a Prison Chaplain who considered fourteen days solitary confinement too light<sup>19</sup> and the Attorney General’s comment that he would ‘not question [the] solitary term’.<sup>20</sup> While one lone voice was raised against the punishment, numerous others from the community, church and Government supported taking a hard stance.

The *Courier Mail* crime reporter at the time, Pat Lloyd, wrote several articles about Queensland prisons which depicted a sombre life for prisoners<sup>21</sup> in overcrowded<sup>22</sup> and outdated facilities. Yet he was also critical of lenient approaches to detention, the ‘liberal approach to parole’ and parole failures (refer to Chapter 6 p. 208 for a discussion about parole approvals) using negative quotes from the police to reinforce the story.<sup>23</sup> To continually remind the public of prisoners’ dangerousness he provided several reports that referred to prisoner Halliday. Lloyd used this offender as an example of a dangerous prisoner, who after an initial period of disruption and establishing his position in the prisoner hierarchy, attracted little attention to himself until opportunities presented to escape twice and make several other attempts.<sup>24</sup> While Lloyd was critical of violent offenders he provided a sympathetic report recognising many short sentence prisoners were able to be rehabilitated, if provided opportunities while in custody.<sup>25</sup> He also recognised the public’s interest in (and possibly fear of) crime and reported on the assistance provided by the community following offences and escapes.<sup>26</sup>

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<sup>17</sup> ‘Remembers the crime’, *The Courier Mail*, 12 Dec. 1953, p. 7.

<sup>18</sup> ‘Halliday’s own choice’, *The Courier Mail*, 15 Dec. 1953, p. 2.

<sup>19</sup> ‘Punished Halliday ‘lightly’, Chaplin’, *The Courier Mail*, 12 Dec, 1953, p. 6.

<sup>20</sup> ‘Justice can discipline. Power will not question solitary term’, *The Courier Mail*, 14 Dec. 1953, p. 3.

<sup>21</sup> ‘Silver fox furs go...from the court to the hardship of jail’, *The Sunday Mail*, 15 Nov. 1953, p. 1.

<sup>22</sup> ‘Boggo Road Jail Bulges at The Seams’, *The Courier Mail*, 12 April 1954, p. 2.

<sup>23</sup> *ibid.*

<sup>24</sup> ‘Boggo Road Jail Bulges at The Seams’, *The Courier Mail*, 12 April 1954, p.2; ‘Boggo Road houses... a murderer whose one hope is escape’, *The Courier Mail*, 30 Aug. 1954, p. 2; ‘The man who has reached the end of the road’, *The Courier Mail*, 31 Aug. 1954, p. 2.

<sup>25</sup> ‘How do safeblowers and burglars end their days’, *The Courier Mail*, 20 Feb. 1953, p. 2.

<sup>26</sup> ‘Citizen “detectives” here smash crime’, *The Sunday Mail*, 7 Feb. 1954, p. 6.

While incidents in Queensland's gaols were generally not as severe as interstate or overseas, they demonstrated that Queensland was not immune to the problems that threatened the community's safety. In 1953, when sentencing two offenders a Judge stated, 'I believe that it would be better if people like you [habitual criminals] were put away on some island prison...', and the headline 'Judge suggests Island prison'<sup>27</sup> reinforced the desirability of removing dangerous prisoners from society for the community's safety. The following year this 'dangerousness' was again evoked when prison overcrowding made the headlines as 'Brisbane prison problem' and the accommodation of prisoners 'outside the prison walls'. The press called for a new 'prison colony' near Brisbane because of the increase in the numbers of habitual offenders over the preceding five years when 'several substantial sentences have been imposed for grave sexual offences also for robbery when armed or with violence'.<sup>28</sup>

Other evocations of dangerous prisoners, especially from interstate, included a story about two prisoners in Brisbane who had attempted to kill an 'underworld' figure. The headline read 'Gashed in Boggo Road attack. Attempt to kill Mr Big'. The report described how the prisoners had tried to cut the throat of an underworld figure they believed had informed authorities of an escape attempt.<sup>29</sup> In another report a 'Victorian' criminal had escaped from Rockhampton Gaol and was sentenced to six months cumulative,<sup>30</sup> while in November 1954 a prisoner, described as a 'hoodlum', escaped from a prison van while on his way to a Brisbane court.<sup>31</sup> Regardless of the negative

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<sup>27</sup> 'Judge suggests Island prison', *Townsville Dailey Bulletin*, 24 July 1953, p. 1.

<sup>28</sup> The outside accommodation was the former women's prison which was similar in design and structure to the men's prison. The newspaper report intimated the additional accommodation was inferior in security but prisoners were being transferred based on their classification with high risk prisoners moved to Townsville prison and low risk to the farms. 'Brisbane Prison Problem', *Townsville Daily Bulletin*, 3 Sept. 1954, p. 2.

<sup>29</sup> 'Gashed in Boggo Road attack. Attempt to kill Mr Big', *The Courier Mail*, 22 July 1954, p. 1.

<sup>30</sup> 'Extra six months for gaol break', *Townsville Daily Bulletin*, 18 Sept. 1954, p. 1.

<sup>31</sup> 'Hoodlum escapee has vanished', *The Courier Mail*, 17 Nov. 1954, p. 7; 'Split second dash police claim in court van escape', *The Courier Mail*, 9 Dec. 1954, p. 8.

prison publicity, in December, there was a rare show of public sympathy for a prisoner who escaped from Numinbah prison farm.

Comptroller-General, W Rutherford, had appealed through the press to the escapee to surrender, explaining that he was not classed as a criminal because he was only in prison due to a failure to pay two fines.<sup>32</sup> Following the escapee's recapture and eight month sentence for the escape, letters of support appeared in the newspapers, expressing horror at the sentence<sup>33</sup> which was considered unjust.<sup>34</sup> Then, dangerous prisoners returned to the fore in 1955 with the headline, 'Convict attacks Boggo Rd Warden' after an officer had been 'savagely attacked' before other officers could come to his assistance. The report stated 'that only the warder's courageous and desperate action in breaking a window to call for assistance prevented a possible mutiny or mass escape attempt'.<sup>35</sup> Yet there is no indication in the report of the involvement of any other prisoners, making the claim of mutiny or escape an exaggeration that affirms the earlier comment from Jewkes that people were 'looking for both confirmation of their existing views... without context and background ... to be shocked and outraged'.<sup>36</sup>

These reports and others like them emphasised that prisoners were dangerous and that strict discipline needed to be maintained to ensure the security of prisons and public safety. This notion remained dominant throughout the conservative reform of the *Prisons Act 1958*, as will be discussed in Chapter 4. The insistence on an emphasis on 'security' by the public at large, the government and prison administration allowed abuse of power and malpractice to remain hidden behind prison walls. Therefore, when the

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<sup>32</sup> "'Come back Mervyn Roy Litzow.'" (Prison chief's dramatic appeal)', *The Sunday Mail*, 14 Nov. 1954, p. 1; 'Escapee gives himself up to police', *The Courier Mail*, 15 Nov. 1954, p. 1; 'Litzow jailed for escaping', *The Courier Mail*, 17 Nov. 1954, p. 8.

<sup>33</sup> 'Sentence for escapee', *The Courier Mail*, 18 Nov. 1954, p. 2; 'Sentence for escapee', *The Courier Mail*, 23 Nov. 1954, p. 2; 'Sentence for escapee', *The Courier Mail*, 1 Dec. 1954, p. 2.

<sup>34</sup> 'Power not questioning gaol sentence on escapee', *The Courier Mail*, 2 Dec. 1954, p. 11; 'Sentence on escapee', *The Courier Mail*, 23 Nov. 1954, p. 2; 'Sentence for escapee', *The Courier Mail*, 1 Dec. 1954, p. 2.

<sup>35</sup> 'Convict attacks Boggo Rd Warden', *Townsville Daily Bulletin*, 26 Jan. 1955, p. 1.

<sup>36</sup> Y Jewkes, *Handbook on Prisons*, Willan, Devon, 2007, pp. 449 - 450.



outcomes of official inquiries did enter the public realm they provided rare insights into prison operations. Some examples of these investigations will be examined to demonstrate how instances of brutality, incompetence and corruption had the potential to mobilise the community and provide the political impetus for prison reform.

### ***Problematic prison management***

The inept administration of H.M. Prison Townsville was revealed during several inquiries between the 1940s and 1960s. In 1946 a discharged male prisoner, EC Long, was discovered in the women's section of Townsville Prison after having climbed the outer wall to deliver some 'delicacies'.<sup>37</sup> Because of this unauthorised entry, an inquiry was launched that discovered several irregularities in the operation of the prison; however, the details were not published in the press. The newspapers instead reported on the punishments and appeal process, which will be discussed later in this chapter. The evidence uncovered in the inquiry showed a lack of security and accountability<sup>38</sup> and revealed several serious incidents were inappropriately managed, punishments were selectively applied and recorded, and security measures were applied haphazardly. The inquiry found that when prison keys were discovered hidden in a tree, 'sometime prior to May 1946', the usual security responses of performing searches and replacing locks had not been performed. Neither had this occurred when a male prisoner was found in the female division on 17 November 1946.<sup>39</sup> Primary punishments were inconsistently recorded and the loss of remission (see Chapter 5 on secondary punishments) was selectively applied. For instance, a female prisoner named Paull was sentenced to three days on half rations by Superintendent Dwyer, but this was not recorded in the 'Punishments Book', whereas there were entries for other prisoners who had been merely cautioned. Furthermore,

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<sup>37</sup> Long was charged and sentenced to nine months imprisonment; 'Over Gaol wall to get in', *The Courier Mail*, 19 Nov. 1946, p. 3; 'Back to Gaol. Man found in prison compound', *Townsville Daily Bulletin*, 19 Nov. 1946, p. 2.

<sup>38</sup> W Rillie & E Southerst 'Inquiry into certain charges against D.C. Dwyer (Supt), E.C. Watermon (Chief Warder), J.M. Gormon (Warder), C.C. Thwaite (Warder)', inquiry batch no. 113 I, QSA., item 136863.

<sup>39</sup> *ibid.*, report 24 March 1947, p. 11, inquiry batch no. 113 I, QSA., item 136863.

Dwyer did not apply the mandatory loss of five days' remission, because he 'wanted to get rid of her [Paull]'.<sup>40</sup> The inquiry made other findings against Dwyer and Chief Prison Officer Waterman. These included: the unreported loss and recovery of a firearm and ammunition; the Superintendent's numerous absences from the Prison without cause; failure to prevent male prisoners from entering the female prisoners' division; failure to report the loss of a set of warder's keys and; failure to lock away a prisoner at the appropriate time each night.<sup>41</sup> Each of these demonstrated serious breaches in the administration of security, but these were not reported in the press or brought to the public's attention, thereby keeping these prison issues in-house and avoiding accountability until a major incident, in this case an escape, resulted in a wider examination of prison management.

The inconsistent application of regulations was identified again in another closed inquiry, in October 1947, which investigated whether the Senior Warder Trade Instructor at Brisbane Prison, G McDonald, had used improper language.<sup>42</sup> The report referred to a complaint by the 'D' Tower officer, Perrin, who was responsible for the discipline of prisoners in the workshop, even though he was only a probationary officer at the time. The incident arose because prisoner Lewis had entered an area with McDonald's permission but without Perrin's. When Perrin challenged this, McDonald responded, 'I am in charge of this fucking shop. You mind your own fucking business'. In responding to the charge, McDonald claimed 'several similar incidents during the day were causing unrest among some prisoners'.<sup>43</sup> During cross examination, McDonald acknowledged that these incidents had been appropriately managed by Perrin and another junior officer, Hair. It appeared that Perrin and Hair had considered the incidents sufficiently minor to warrant only cautions. It also appeared through the repetition of these behaviours that

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<sup>40</sup> *ibid.*, p. 11, inquiry batch no. 113 I, QSA., item 136863.

<sup>41</sup> *ibid.*, p. 13, inquiry batch no. 113 I, QSA., item 136863.

<sup>42</sup> McDonald was charged under the Public Service Acts 1922-1945; JA Murray, Stipendiary Magistrate 'Inquiry into charges of Improper Conduct against George McDonald', 1947, QSA., PRV14646/1/106, item 136864.

<sup>43</sup> JA Murray S.M. 'Inquiry into charges of Improper Conduct against George McDonald: Letter dated 27 Oct. 1947', 1947, QSA., PRV14646/1/106, item 136864.

more senior staff, such as McDonald, would generally consider the incidents inconsequential and disregard them. The focus of the investigation was the language used by McDonald who was found guilty and fined £3.<sup>44</sup> This tirade by McDonald is a good example of the 'bawling out' of junior staff who use their initiative which will be discussed in later chapters. In this instance it shows the inconstant application of procedures or regulations which, while ignored by some, should be complied with to maintain the security or safety of the area. While the offences may be trivialised by their lack of sanction it is also possible that Perrin and Hair realised that formally reporting the matters would not be taken seriously by senior staff. It also shows that prisoners were able to move between areas without the knowledge of those responsible for accounting for their whereabouts at all times, potentially for nefarious reasons.

When in 1948 Comptroller-General Whitney resigned<sup>45</sup> and was replaced by his deputy, W Rutherford, the Prison's Department was plagued with problems, including staff offences that were being reported in the newspapers. In March 1949, Thomas Aikens, Member for Mundingburra, stated in Parliament that he believed Chief Warder Simpson had been coerced into resigning following an accusation of 'improper practices and theft'. The Attorney-General assured Aikens that when Mr Kerr, the Deputy Comptroller-General, investigated the matter and spoke to Simpson, Kerr told him 'there was no imputation against him in connection with the matter', yet Simpson still resigned.<sup>46</sup> Then in an unrelated incident the press reported warder, Charles Walker, was dismissed for falsifying records to disguise illegal betting. He had been using the government phone and transferring

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<sup>44</sup> Public Services Commissioner. 'Inquiry into charges of Improper Conduct against George McDonald: Letter dated 30 Oct. 1947', 1947, QSA., PRV14646/1/106, item 136864; An example of the wage for a warder Trade Instructor was £672 - £732 per annum making the fine approximately equivalent to one day's pay. 'List of applicants for promotional positions', 9 June 1953, p. 2. QSA., item 293136.

<sup>45</sup> Whitney resigned after being charged with de-pasturing private stock on prison land. 'Prison Chief suspended', *Townsville Daily Bulletin*, 26 July 1948, p. 1; 'Prison Chief denies charges', *Townsville Daily Bulletin*, 3 Aug. 1948, p. 1; 'Prison post to be filled', *Townsville Daily Bulletin*, 10 Sept. 1948, p. 1; 'Whitney has no plans', *The Courier Mail*, 23 August 1948, p. 3; 'Service benefits', *The Courier Mail*, 11 Sept. 1948, p. 3.

<sup>46</sup> 'Stuart Prison resignation', *Townsville Daily Bulletin*, 31 March 1949, p. 2.

payment for losing bets through the prison dispatch bag.<sup>47</sup> He claimed the calls involved official business with the betting being ‘incidental’ and Whitney (when he was Comptroller-General) had told him telephone use was a ‘concession of his position’.<sup>48</sup> On appeal his dismissal was considered too harsh and overturned;<sup>49</sup> instead he was demoted and transferred.<sup>50</sup>

The blasé attitude of some of Queensland’s warders continued. A 1952 press report revealed that they failed to search for a weapon used in a stabbing. This incident was reported in detail, with statements by witnesses indicating the assailant had possessed the knife for some time, used it on the 5 October 1952, then disposed of it when he threw it over the prison wall where it remained for five days until other prisoners found it and handed it to staff.<sup>51</sup> The report went into detail in many areas, but did not indicate that even a failed search for the weapon had occurred. Thus, although the community was reading about the incident itself, underlying security issues continued to be exposed.

Newspapers again reported on the lack of adequate supervision of prisoners when, due to Brisbane overcrowding in 1954, they were placed in temporary dormitories which included the concert hall and sleeping on the interior landings outside the cells.<sup>52</sup> When an officer was punished because of an escape attempt and had his pay reduced, warders blamed the temporary accommodation and failure by senior staff to instruct junior officers on their duties.<sup>53</sup> The press depicted a system in crisis with headlines including: ‘Secret Inquiry at gaol’;<sup>54</sup> ‘Jail warder’s appeal in closed court’;<sup>55</sup> ‘Highly dangerous state at city jail’;<sup>56</sup> ‘Denial warder left post to get telegram’;<sup>57</sup> ‘Hacksaws in

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<sup>47</sup> ‘Prison warder wins appeal’, *Townsville Daily Bulletin*, 14 May 1949, p. 2.

<sup>48</sup> ‘Prison officer demoted’, *The Courier Mail*, 13 May 1949, p. 4.

<sup>49</sup> *ibid.*

<sup>50</sup> ‘Prison warder wins appeal’, *Townsville Daily Bulletin*, 14 May 1949, p. 2.

<sup>51</sup> ‘Court hearing in Stuart Prison’, *Townsville Daily Bulletin*, 24 Oct. 1952, p. 2.

<sup>52</sup> ‘Jail warder’s appeal in closed court’, *The Courier Mail*, 7 April 1954, p. 8.

<sup>53</sup> ‘Dangerous state of gaol security’, *Daily Bulletin*, Rockhampton, 2 June 1954, p. 4.

<sup>54</sup> ‘Secret Inquiry at gaol’, *Daily Bulletin*, Rockhampton, 7 April 1954, p. 4.

<sup>55</sup> ‘Jail warder’s appeal in closed court’, *The Courier Mail*, 7 April 1954, p. 8.

<sup>56</sup> ‘Highly dangerous state at city jail’, *The Courier Mail*, 2 June 1954, p. 3.

<sup>57</sup> ‘Denial warder left post to get telegram’, *The Courier Mail*, 3 June 1954, p. 3.

Gaol'<sup>58</sup> and 'Warders to stay until relieved'.<sup>59</sup> Newspaper reports indicate that the initial hearing by the Appeal Board was to be open to the public, but then it was relocated inside the prison, ostensibly to allow evidence to be heard from prisoners and warders. When this occurred, Comptroller-General W Rutherford, 'refused to allow Press representatives to attend the hearing at the gaol' and the evidence given on that day was not released.<sup>60</sup> When the hearings were reconvened outside the prison, the Board Chairman stated he had not intended or ordered the appeal to be 'heard in camera' (closed to the public).<sup>61</sup> At the remaining hearings the press reported on evidence regarding security lapses at Boggo Road gaol including officers leaving their posts prior to their replacement arriving,<sup>62</sup> escape attempts,<sup>63</sup> hacksaws in the prison<sup>64</sup> and prisoners 'wandering around the prison at night'.<sup>65</sup> The reports made it evident there was a culture of attempting to hide problems that reflected poorly on the prisons' administration and it was only during the open hearings that some of these issues came to the public's attention.

In the same period these investigations and incidents were occurring, warders were seeking wage increases and to support their claim they were promoting the dangerousness of prisoners. The headline of 'No penalty fear by 'Lifers' for violence' opened with 'because the death penalty had been abolished in Queensland' prisoners did not fear using violence against officers, therefore the staff needed to be forever vigilant. Officers also claimed there was 'insufficient secure lock-up provisions' which was used to facilitate punishment for prison offences.<sup>66</sup> This reinforced the community's perception

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<sup>58</sup> 'Hacksaws in Gaol', *The Courier Mail*, 4 June 1954, p. 1.

<sup>59</sup> 'Warders to stay until relieved', *The Courier Mail*, 5 June 1954, p. 5.

<sup>60</sup> 'Secret Inquiry at gaol', *Daily Bulletin*, Rockhampton, 7 April 1954, p. 4.

<sup>61</sup> 'Jail Inquiry no longer to be secret', *The Courier Mail*, 28 April 1954, p. 8.

<sup>62</sup> 'Warders to stay until relieved', *The Courier Mail*, 5 June 1954, p. 5.

<sup>63</sup> 'Denial warder left post to get telegram', *The Courier Mail*, 3 June 1954, p. 3.

<sup>64</sup> 'Hacksaws in Gaol', *The Courier Mail*, 4 June 1954, p. 1.

<sup>65</sup> 'Highly dangerous state at city jail', *The Courier Mail*, 2 June 1954, p. 3. ; 'Hacksaws being taken into Boggo Road Gaol', *The Courier Mail*, 4 June 1954, p. 3.

<sup>66</sup> 'No penalty fears by "lifers" for violence', *The Courier Mail*, 28 Sept. 1954, p. 7; The implications of this reference to the punishment cells was it caused extra duties where punishment conditions were applied in normal accommodation areas. It was also considered to reduce the deterrent effect if a prisoner served his punishment in the normal accommodation area. Furthermore, the punishment did not occur in a timely manner when hearings were delayed pending a vacancy.

that prisoners were a dangerous group who required constant control to maintain security and keep the community safe. The press reports also demonstrate that warders were starting to use the media to gain support for their industrial campaigns by leaking information that might otherwise not have been officially disclosed.

The next inquiry into the administration of Townsville gaol was conducted in 1955 by J Hickey S.M. to investigate the circumstances surrounding the escape of two prisoners. This was one of the few reported in the newspapers that included evidence of staff brutality. It was claimed that management difficulties at the prison were compounded by ‘fifty five resignations in five years’<sup>67</sup> which left the prison understaffed<sup>68</sup> and lacking experienced officers. Prisoners who gave evidence claimed they had been beaten by senior staff<sup>69</sup> and there were only four showers for 160 prisoners.<sup>70</sup> The press reported that prisoners J McDonald and MP Condon claimed they would ‘kill anyone who mistreated them’ and McDonald also had stated there was a key ‘floating around’ the prison.<sup>71</sup> Even though there were several allegations by different prisoners, the offences of Condon and McDonald were included in the report. McDonald was serving a sentence for break and entry and Condon for shoplifting. When an inspection of the prison was conducted during the investigation, instead of describing the conditions, the reporter focused on the breaches of prison regulations he observed, including a prisoner having ‘a pencil and paper’. The reporter wrote that ‘several prisoners read from notes while testifying today and yesterday’ which indicated multiple breaches and, another prisoner was observed ‘climbing a separating wall’. The reporter noted that Superintendent Whitney stated prisoners were always ‘flaunting the

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<sup>67</sup> ‘Stuart Gaol Inquiry: Counsel claims security precautions not taken’, *The Central Queensland Herald*, 18 Aug. 1955, p. 17.

<sup>68</sup> ‘No defending warders Taylor tells Inquiry’, *The Central Queensland Herald*, 11 August 1955, p. 23.

<sup>69</sup> ‘Inquiry commences into escape of prisoners’, *The Central Queensland Herald*, 28 July 1955, p. 4; ‘Prisoners induced to make allegations’, *The Central Queensland Herald*, 4 August 1955, p. 24.

<sup>70</sup> ‘Inquiry commences into escape of prisoners’, *The Central Queensland Herald*, 28 July 1955, p. 4.

<sup>71</sup> ‘Prisoner tells of key floating around gaol’, *The Central Queensland Herald*, 28 July 1955, p. 6.

rules',<sup>72</sup> and gave the impression that prison staff were diligently enforcing the regulations, which in the light of the reporter's earlier comments was unlikely. Thus, the newspaper's readers were distracted by the perception that prisoners were continuously challenging the rules while the underlying conditions in the prison were not in the press. There was evidence presented that warders were assaulting prisoners and while complaints could be made to the Visiting Justice, requests to be listed to see the VJ could be ignored or might even invite retaliation.<sup>73</sup> The newspaper closed with a statement from a prisoner that Superintendent Whitney was 'the only officer in the prison he could respect...and he realised Mr Whitney had a difficult task'.<sup>74</sup> This flattery of Whitney was meant to beg the question that if a prisoner had such high regard for the Superintendent and his work, could the other allegations be true? This reporting of what in essence was the petty aspects of prison management, had the potential to downplay all statements made by prisoners and distracting the reader from considering the underlying issues of prison security, inconsistent application of prison regulations, use of unnecessary force by officers and the inability of prisoners to report any misuse of power.

When the investigation continued, ex-officer Jones gave evidence supporting prisoner allegations of assault. He claimed he resigned after speaking with the Superintendent because of the 'base methods adopted by warders in the execution of their duties' which included assaulting prisoners, some of which occurred in Superintendent ASJ Whitney's presence.<sup>75</sup> To discredit these statements Whitney gave evidence, and the press reported, that Jones's resignation was 'no loss to the prison service' because he was 'a trouble-maker among the officers'.<sup>76</sup> But, Jones may have been labeled a trouble-maker because he questioned or refused to participate in prison sub-cultures' practices with which he disagreed. The inquiry found warders were negligent

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<sup>72</sup> 'Prisoner tells of key floating around gaol', *The Central Queensland Herald*, 28 July 1955, p. 6.

<sup>73</sup> *ibid.*

<sup>74</sup> *ibid.*

<sup>75</sup> 'Prisoners mother makes charges at gaol Inquiry', *The Central Queensland Herald*, 11 August 1955, p. 13.

<sup>76</sup> 'Taylor shows how he escaped from cell', *The Central Queensland Herald*, 11 August 1955, p. 9.

in their duties, cell searches 'were a farce...patrolling of the track around the wall was perfunctory' and the Superintendent, ASJ Whitney, had also failed in his duty to supervise his staff. However, Hickey was unwilling to make a finding regarding the 'undue use of force'.<sup>77</sup> The press stated that Cabinet had received the Inquiry's report and was considering a new security code to be implemented in all Queensland prisons.<sup>78</sup> This included prisoners to be segregated into three unspecified groups.<sup>79</sup>

It appears that the systemic flaws in Townsville's security in 1947, which were again highlighted in Hickey's 1955 inquiry, were not remedied. The press reported that on 2 September, 1955, a discharged prisoner, WH La Vare, passed through the Chief Warder's residence,<sup>80</sup> entered the gatehouse at Townsville Prison, broke the lock on the armory and removed twenty-three fully loaded revolvers before being interrupted. No one was hurt in the ensuing shootout before La Vare was overwhelmed by officers. In his statement to police, La Vare said he intended to assist two prisoners to escape by taking an officer hostage and then arming these prisoners and any others who wanted to join them.<sup>81</sup> While the community was again given the details of the incident and the 'heroic' actions by staff, the many security shortfalls that permitted this occurrence were not discussed in the press.

The findings of the investigations reinforced the need to strengthen security but failed to address other significant issues, in particular the use of unauthorised secondary punishment. This seemed to condone its continuation

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<sup>77</sup> 'Stuart Gaol Inquiry: Counsel claims security precautions not taken', *The Central Queensland Herald*, 18 Aug. 1955, p. 17; An unrelated 1970's investigation in Victoria by barrister Kenneth Jenkinson, Q.C. found prisoners there had been unlawfully struck on different occasions by officers in the presence of senior officers which showed this was not an unheard of occurrence, P Lynn & G Armstrong, *From Pentonville to Pentridge, A history of prisons in Victoria*, Jenkin Buxton, Melbourne, 1996, pp. 159 – 160.

<sup>78</sup> 'Review prison security rules', *The Central Queensland Herald*, 1 Sept. 1955, p. 27.

<sup>79</sup> '£1M. gaol may replace Boggo Road', *The Central Queensland Herald*, 15 Sept. 1955, p. 17.

<sup>80</sup> The residence was part of the gate building and the armoury was located inside the gate area.

<sup>81</sup> 'Shots being fired in Townsville Prison', *Townsville Daily Bulletin*, 2 Sept. 1955; Townsville Court Cells collection, 'Copies of Depositions of witnesses,' 26 - 27 September 1955.



and the press was not inclined to draw attention to aspects of prison practice that infringed the rights of prisoners. Inquiries demonstrated that the investigators were intolerant of unprofessional conduct, inconsistent application of punishment and poor supervision, but were reluctant to make findings regarding the unjustified or excessive use of force.<sup>82</sup> Possibly this was due to an aversion to being viewed as lenient, soft or weak towards prisoners.

### ***Going soft on crime***

Prior to 1958, the areas of infrastructure and rehabilitation generally received less attention from the press than incidents involving staff. The exception was overcrowding and prison labour that provided employable skills. The Government and prison administrators needed to ensure any changes they instigated in the 'crime and punishment' environment was carefully managed with respect to the perceptions (regardless of realities) conveyed by the media to the public. This was important because any indications of 'going soft' on crime, indulging prisoners with luxuries or, at the other extreme brutalising prisoners and failing to provide some level of rehabilitation, could cause community dissatisfaction and draw unwanted attention to prison management.

Two examples of newspapers reporting perceived 'soft' prison conditions emerged in 1956. They were stories about prisoner seating and the prison Christmas menu. The first headline of 'Prisoners travel in comfort' conveyed the perception of luxury, even though this 'comfort' consisted of the provision of 'two long seats' in the back of the police escort van, rather than having prisoners sit on the vehicle's tray.<sup>83</sup> Then the next day's report clearly implied a level of indulgence, despite being published during a traditionally generous time of year. The headline 'Peace on Earth — even in gaol,' was followed by a description of the prison Christmas menu, which included 'a double issue of

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<sup>82</sup> In contrast, subsequent appeals appeared to be more tolerant of any lapses. It is difficult to determine the cause for this disparity because appeals consider additional factors such as precedence, points of law, procedural fairness and processes which may permit different evidence to be admitted or omitted.

<sup>83</sup> 'Prisoners travel in comfort', *Townsville Daily Bulletin*, 21 Dec. 1956.

meat and a full loaf of bread...sausage and steak will be on the breakfast menu and for lunch, there will be roast beef and the traditional plum pudding...prisoners will be allowed to purchase delicacies...and the Government will give...an extra issue of tobacco'.<sup>84</sup> While these reports did not provoke any published 'letters to the Editor', they implied a degree of indulgence provided at the tax payers' expense. At odds with this perception, over the subsequent months there were several disturbances in which prisoners protested against poor conditions that were the result of many years of financial cut-back.

### ***The prison farm experiment***

The frugal operation of Queensland's prisons can be detected in newspaper reports, when following World War I and as the Great Depression unfolded, the government in 1930 instigated a review of prison expenses. The Home Secretary considered various options, including utilising prison labour to construct roads, as 'the prisons should be made more self-supporting'.<sup>85</sup> This need for stringency provided the justification to use prison labour, prison produce and prison manufactured goods to reduce the overall operating cost of prisons and other government institutions. But it also led to the opening of prison farms to alleviate overcrowding and reduce security costs. The addition of a second prison farm in 1940 near Nerang was welcomed in the newspapers for 'producing sufficient crops for the needs of Brisbane Prison' thus relieving the taxpayers of that burden.<sup>86</sup> The farms provided prison administrators with the opportunity to extol the farms' virtues by making positive comments in the press regarding rehabilitation through trust, the reduction of overcrowding and cost savings through the produce generated.

A 1946 newspaper interview with Attorney-General, David Gledson, about the Stone River Prison Farm, highlighted agricultural productivity and the

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<sup>84</sup> 'Peace on Earth- even in gaol', *Townsville Daily Bulletin*, 22 Dec. 1956.

<sup>85</sup> 'Prison labour use for road work', *Townsville Daily Bulletin*, 25 March 1930, p. 6.

<sup>86</sup> 'Second prison farm planned at Nerang', *Townsville Daily Bulletin*, 3 Jan. 1940, p. 6.

existing and intended quality of the livestock.<sup>87</sup> Then some months later the Opposition in parliament attempted to bring the prison farm issue back to one of community safety, questioning Gledson in Parliament about ‘lifera’<sup>88</sup> being on the farms. He replied that ‘if we abandoned hope [in the prisoners] that would be the end of it all’ and two had since been released on parole. Some members voiced their concern that even releasing them on parole was a ‘dangerous experiment’.<sup>89</sup> When Comptroller-General, JF Whitney, commented in the press about rehabilitation he stated ‘on the farms every effort was being made to induce prisoners to assist themselves and almost invariably they were anxious to carry out the work to the best of their ability’, yet despite the 1448 prisoners who passed through the farms the previous year it was the headline of ‘11 Murderers on prison farms’ which stands out in the press reports.<sup>90</sup> Nevertheless, most of the reports demonstrate at least tolerance, by the media and the community, of the prison farm concept provided serious offenders were not included in the farm population.

In 1949 a headline read ‘Prison Reform’, followed by a lead sentence of ‘Queensland with its prison farms led the world in prison reform’. The Attorney-General, George Henry Devries, was reported as saying that the Palen Creek farm had been so successful in reforming prisoners that other farms had been established.<sup>91</sup> This minor story garnered support for the farm experiment, in spite of its ongoing failures through escapes, by emphasising the lead role farms were taking in the system and the positive (but unspecified) prisoner rehabilitation that was occurring. Yet, while the low risk nature of farms and the prisoners housed there was reiterated in the press on several occasions following the war, during the same period secure prisons continued to receive negative media attention.

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<sup>87</sup> ‘Stone prison farm progress’, *Townsville Daily Bulletin*, 19 July 1946, p. 5.

<sup>88</sup> A ‘lifer’ refers to any prisoner serving a life sentence.

<sup>89</sup> ‘Five murderers on prison farms’, *Townsville Daily Bulletin*, 24 Oct. 1946, p. 3; It will be seen in Chapter 6 that parole release was to be granted sparingly for many years to come.

<sup>90</sup> ‘11 murderers on prison farms’, *Townsville Daily Bulletin*, 28 Aug. 1947, p. 4.

<sup>91</sup> ‘Prison reform’, *Worker*, 24 October 1949, p. 2.

### ***Problems inside***

Brisbane's *Courier Mail* gave extensive coverage to demands made by Arthur Bruce Pie, leader of the short lived Queensland People's Party, who wanted answers about incidents that occurred at Boggo Road prison. This included when Arthur Halliday and two other prisoners escaped in 1946. The escape resulted in a 'Report of Commission appointed to inquire into the escape from H. M. Prison Brisbane on the 11<sup>th</sup> December 1946 of 3 prisoners and related matters',<sup>92</sup> but even so, Pie demanded a 'full inquiry into Queensland's gaol administration', and the suicide of a prisoner at Boggo Road, because, 'like all Government inquiries which are likely to disclose maladministration, findings were never made public'.<sup>93</sup> He claimed that prisoners being locked in their cells from 4.00pm until 8.15am in number two block had the 'effect of making bad men worse' and their confinement was the 'basic cause of most of the unrest and trouble at the gaol'. Pie stated that requests had been made to the Premier and Attorney General for prison reform, which included having a five member prison commission to deal with prison problems instead of the Visiting Justice.<sup>94</sup> This appears to have fallen on deaf ears and there was no follow up in the press. The press, however, did report the findings of the inquiry, which identified several shortcomings, including blind spots in the gaol perimeter, officers not performing their security checks as required and officers pleading ignorance of the duty requirements of their posts. As a result additional checks were to be performed by senior staff and officers were required to sign off on each new general order as it was released.<sup>95</sup>

While direct criticism of the prison administration was not reported in the press, there had been a steady stream of negative publicity which reflected adversely on prison administrators and therefore the Government. In response,

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<sup>92</sup> 'Murderer, gunman, and burglar still at large, 3 Brisbane goal-breakers hunted by armed police. Public warned all escapees dangerous', *The Courier-Mail*, 12 Dec. 1946, p. 1; W Rillie & E Sutherst, 'Report of Commission appointed to inquire into the escape from H. M. Prison Brisbane on the 11<sup>th</sup> December 1946 of 3 prisoners and related matters', memorandum for the Public Services Commissioner, 1 April 1948, p. 1. QSA., item 136864.

<sup>93</sup> 'Probe on gaols demanded', *The Courier Mail*, 21 March 1947, p. 1.

<sup>94</sup> 'Men driven mad in Gaol, says Pie', *The Courier Mail*, 22 March 1947, p. 3.

<sup>95</sup> 'Prison Discipline', *Cairns Post*, 10 Oct. 1947, p. 4.

on the 11 July 1947, Cabinet reviewed the findings of the inquiry and decided the breaches of discipline should result in censure of Comptroller-General JF Whitney and Superintendent O'Connor. Whitney and O'Connor were given until December to ensure 'all short comings were corrected; otherwise the government will have no option but to effect a complete change in the Administration and control of the Prisons Service'.<sup>96</sup> Unfortunately, it appears that prison administrators were not in harmony with the Government or the community on these issues and they were slow to implement the appropriate responses.

### ***No sympathy given***

Previous chapters identified that prison administrators had stated they believed society was interested in less punitive or retributive punishment and desired more rehabilitative treatment. Yet in contrast, press reports in 1957 were unsympathetic to prisoners who challenged the authorities for any reason and this gave further substance to the argument for more stringent prison discipline. Some of these reports described an incident involving three prisoners who had barricaded themselves in their cells. The Attorney General, William Power, who was present with the Comptroller-General, asked two of them to remove their barricades. Because of the third prisoner's (WJ Taylor) history of involvement in disturbances, Power did not speak to him; instead, he ordered Taylor's cell door be removed. The newspaper reported that this took over an hour, during which time Taylor threw the contents of his cell night bucket over the workmen removing the door.<sup>97</sup> By the next day, seven more prisoners had barricaded themselves in their cells. Some surrendered while others were removed after a warder forced their cell doors with a 'house jack'.<sup>98</sup> The media ran these stories over a few days and the tone was against the 'trouble making' prisoners and favoured the no nonsense approach taken

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<sup>96</sup> W Rillie & E Sutherst, 'Report of Commission appointed to inquire into the escape from H. M. Prison Brisbane on the 11<sup>th</sup> December 1946 of 3 prisoners and related matters', memorandum for the Public Services Commissioner, 1 April 1948, p. 1. QSA., item 136864.

<sup>97</sup> 'Prison cell bed used as barricade by "Stay Put"', *Townsville Daily Bulletin*, 19 Jan. 1957.

<sup>98</sup> 'Mutiny at Gaol quelled by five ton house jack', *Townsville Daily Bulletin*, 21 Jan. 1957; JR Stephenson, *Nor iron bars a cage*, Boolarong, Brisbane, 1982.

to deal with the disturbance. To reinforce community confidence in the prison authorities and to deter other prisoners from barricading their cells, within a few weeks trials were held and sentences and punishments applied. M George was charged with causing a disturbance and trying to incite other prisoners: he received fourteen days solitary confinement.<sup>99</sup> Taylor was sentenced to twenty eight days solitary confinement, served in seven day periods, while the sentences of the other prisoners were extended between three and eighteen months.<sup>100</sup>

An example of a newspaper report unsympathetic to prisoners' complaints appeared on 31 January regarding claims by ex-prisoner, T Paul, of a lack of rehabilitation opportunities, moral corruption (read homosexuality), brutality and beatings.<sup>101</sup> Attorney General Power responded that he would 'not tolerate any brutality in Boggo Road' and authorised an investigation by the Visiting Justice, RT Kennedy. However, he also was reported as saying that he considered the accusations hearsay and that 'there is no homosexuality in the gaol'. As an example of the unjustifiable generality of this comment an undated account by prison officer T King described how a prisoner had his penis mutilated during the receipt of oral sex when the provider suffered a seizure.<sup>102</sup> JR Stephenson also commented that it was 'impossible to control this behaviour among the prisoners much less eradicate it' when there were 'practicing homosexuals' whom he described as the 'Gay Set' and 'enemy within'.<sup>103</sup> To further discredit Paul's claims, the report contained a statement by the Salvation Army's Brigadier, B Patereson, who said 'from what I have seen and knew, the prisoner setup gave the best possible chance to any prisoner.'<sup>104</sup> While this investigation was under way, further incidents kept prison management in the media.

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<sup>99</sup> '14 Days Solitary for Prison Breaches', *Townsville Daily Bulletin*, 2 Feb. 1957.

<sup>100</sup> 'Boggo Rd. "Stayputs" severely punished', *Townsville Daily Bulletin*, 23 Jan. 1957.

<sup>101</sup> 'Former Inmate has blast at Boggo Rd, Gaol', *Townsville Daily Bulletin*, 31 Jan. 1957, p. 1.

<sup>102</sup> T King, *Boggo Road and beyond*, Watson Ferguson, Brisbane, 2007, p. 44.

<sup>103</sup> JR Stephenson, *Nor iron bars a cage*, Boolarong, Brisbane, 1982, p. 98.

<sup>104</sup> 'Former Inmate has blast at Boggo Rd, Gaol' and 'Prison probe Suggested', *Townsville Daily Bulletin*, 31 Jan. 1957, p. 1.

Within a few days of Paul's claims, two prisoners<sup>105</sup> climbed onto a publically visible roof in Brisbane Prison to protest against prison conditions. Subsequent enquiries by the Attorney General and the Comptroller-General found that there were no 'tangible complaints' and blamed the incident on ringleaders who were attempting to 'wrest control of the gaol'. Power maintained that 'the warders had shown remarkable forbearance...and at no time ...used the least physical violence despite calculated and insulting abuse from certain prisoners'.<sup>106</sup> The two prisoners were subsequently sentenced to eighteen months' additional imprisonment.<sup>107</sup> The roof incident attracted considerable publicity and was linked to a subsequent incident at Sydney's Long Bay Gaol. The New South Wales Justice Minister, RR Dowling, stated that 'he could not say to what extent the rebellion [a mass hunger strike] was due to Brisbane's latest "Boggo Road rebellion"', when his prisoners protested about the lack of meat in their meals.<sup>108</sup>

### ***Unreliable evidence***

It was mentioned earlier that little credibility was given to allegations made by prisoners and when investigations were conducted, findings tended to deal with security and administration issues and did not usually make recommendations in the prisoners' favour. Following the claims of ex-prisoner Paul on 31 January, 1957, a report by the Visiting Justice, RT Kennedy, was submitted to Cabinet on 12 February and reported in the press the following day. It found 'the allegations fell under four headings: vermin infestations by the supply of unclean blankets to prisoners; food unsuitable and insufficient; brutality by officers towards prisoners and; homosexuality and perversion among prisoners'.<sup>109</sup> The report included descriptions of the standard reception process for prisoners; the medical treatment of receptions with lice; normal laundering process for used blankets, including storage until

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<sup>105</sup> Prisoners GL Potter and BJ Gallagher.

<sup>106</sup> 'Staged strike on Boggo Road Roof', *Townsville Daily Bulletin*, 4 Feb. 1957.

<sup>107</sup> 'Additional Sentences for Gaol Roof Top Squatters', *Townsville Daily Bulletin*, 5 Feb. 1957.

<sup>108</sup> 'Prisoner Hunger Strike at Long Bay', *Townsville Daily Bulletin*, 8 Feb. 1957.

<sup>109</sup> 'No Evidence of "Corruption" at Boggo Rd. Gaol', *Townsville Daily Bulletin*, 13 Feb. 1957.

reissued. The investigation determined that complaints about the food and allegations of brutality were groundless. Furthermore, Kennedy stated it was ‘an old prisoner’s trick for them to punch and mark themselves on the face and body and accuse a warder of having done it’.<sup>110</sup> Regarding homosexuality, Kennedy reported that officers separated those who were known to be ‘perversion-minded’ and this had ‘been successful and reflected in the fact there has never been any evidence of an actual occurrence of it’. Kennedy’s investigation ‘found no evidence of anything to cast any reflection on the gaol administration’.<sup>111</sup> It appears that credible and willing witnesses to corroborate the prisoners’ testimony or tangible or independent evidence was not available, making it difficult for Kennedy to base his findings on anything other than prisoners’ testimonies against officers, and the prisoners’ testimonies were assumed to be totally unreliable.

Against the background of ongoing prison incidents, the Queensland Labor Premier, Vincent Gair, announced a ‘get tough policy’ to demonstrate to the community that the Government was in control of the prisons. In a newspaper report, he stated ‘I was never happy with this ‘kids gloves’ treatment that has been going on,’ but rejected a demand by the Opposition for an investigation into the State’s prisons. Gair believed ‘a bit of efficiency from the top down’ was required. The positions of Comptroller-General of Prisons<sup>112</sup> and Superintendent of Brisbane prison both needed to be filled and the persons to be appointed were ‘likely to be judged on a record of strong discipline — humane but firm.’ Gair did not believe that prisoners should receive ‘Lennons

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<sup>110</sup> *ibid.*

<sup>111</sup> *ibid.*

<sup>112</sup> Rutherford resigned 15 Feb. 1957 to become the State Migration Officer. TJ Quinn was seconded from the police force then appointed as Comptroller-General; Quinn had been a police Inspector who was due for retirement; however Quinn only held the position until 3 Oct. 1957 when he resigned and Deputy Comptroller-General, SG Kerr, was appointed. JR Stephenson, *Nor iron bars a cage*, Boolarong, Brisbane, 1982, p. 64; Quinn did not apply for the position and the appointment was not considered a promotion from his police appointment, however, the applicants (including Kerr) were considered ‘disappointing’ and Quinn was approached to undertake the position as a permanent appointment. ‘List of applicants for the position of Comptroller-General’, 29 March 1957, QCSA historical display; Kerr, simultaneously held the roles of Comptroller-General, Deputy and during the period 8/2/1957- 5/1/1958, also the position of Brisbane Prison’s Superintendent while it was vacant. JR Stephenson, *Nor iron bars a cage*, Boolarong, Brisbane, 1982, p. 64.



Hotel treatment'<sup>113</sup> and 'sympathy is only wasted on some of the people in prison'.<sup>114</sup> At the same time the public received conflicting messages because within a few days the Attorney General, William Power, claimed there was 'no inhumanity to prisoners' and the emphasis was on 'rehabilitation'. Furthermore, he said solitary confinement was imposed only by a magistrate and that it was carried out in cells that had 'natural light and...fresh air and...rarely used'.<sup>115</sup> Based on the number of punishments in figure 5.6 and a description of the 'Black Peter'<sup>116</sup> by a warder who used these cells, the validity of this statement is questionable, but the wider community at the time was not aware of the detail and even if it had been, may not have considered the punishments unreasonable. Power might genuinely have regarded rehabilitation as the emphasis, however, in July 1957 a defense barrister stated he believed 'the possibility of prison reform for a youth was most remote', saying that during five months in gaol his client had not been approached regarding education or work.<sup>117</sup> Despite Gair's 'get tough' stance, his term as Queensland's Premier soon was to come to an end. After nine terms in Government, which gave ample opportunities to implement their crime and punishment policies, Labor was defeated on 3 August 1957.

### ***The unions have a say***

The new Country-Liberal Government then had the opportunity to identify a clear mandate in the operation of the State's prisons and establish their position on crime and punishment. The trade unions were a powerful force that represented 70% of the State's workers<sup>118</sup> and in 1958, representatives from the Trades and Labour Council of Queensland met with the new Attorney General, Alan Whiteside Munro, to discuss the threat prison labour

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<sup>113</sup> Lennons was an up market hotel located in George St. Brisbane.

<sup>114</sup> 'Get tough on Prisons', *Townsville Daily Bulletin* 18 Feb. 1957.

<sup>115</sup> 'No inhumanity to Prisoners - Power', *Townsville Daily Bulletin*, 25 Feb. 1957; The punishment cells (called the Black Peter) used in A Wing, Brisbane prison, were described as 'all cement, barely head height, no windows, no tap water, no toilet, dim light when on, and damp as hell...when the doors were closed it was "black as a ducks guts'. S Gage, *Boggo Road Prison – Riot to Ruin*, Sid Harta, Victoria, 2009, p. 116.

<sup>116</sup> These punishment cells were located 'underground'. SM, Gage, *Boggo Road Prison, riots to ruin*, Sid Harta, Victoria, 2009. pp. 23, 116.

<sup>117</sup> 'Chance remote of reforming youths in Jail', *The Courier Mail*, 19 July 1957.

<sup>118</sup> B Galligan, *Australian State Politics*, Longman Cheshire, Melbourne, 1986, p. 268.

posed to the livelihoods of skilled tradesmen. Munro sympathised with their concern and instructed the prisons Comptroller-General, Stewart Kerr, not to use prison labour to construct prisons.<sup>119</sup> As Flemming has explained the Country–Liberal Coalition had been in opposition for so long it was ill prepared for power, or the concessions it would have to make to the trade unions in order to enact their desired reforms.<sup>120</sup> Munro might have had a genuine concern for tradesmen, but it is more likely that he was attempting to avoid alienating the unions and causing industrial unrest so early in the new Government's term, especially over an issue (prisoner rehabilitation) that did not receive obvious public support. In spite of this directive, it will be seen in Chapter 6 that over the coming years prison labour continued to be utilised in prison construction under the guise of 'prison training'.

### ***Rehabilitate but get tough***

During the period examined in this chapter the community had been subjected to conflicting reports of retribution and rehabilitation. This tension continued under the new Government and was evident in the statement by the Minister for Justice and Attorney-General, AW Munro: 'Our policy was to try to rehabilitate them. But the primary purpose of jail was to punish wrongdoers. Jail life cannot be made too attractive - in fact it must be made unattractive.'<sup>121</sup> Prison management already included the banning of talking amongst prisoners, except during exercise periods and 'necessary conversations in the workplace,' meals were in cells, prisoners were locked in cells from 4:00pm until 6:20am and primary punishments included reduced rations and/or solitary confinement.<sup>122</sup> A few months later, Munro explained, 'we are giving more thought to the prisoners' ultimate redemption. Making a useful citizen of

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<sup>119</sup> A Munro, 'Prison Administration, Question of prison Labour', 27 June 1958, QSA., item 293136; S Kerr, 'Employment of prisoners at labour in Queensland Prisons', 19 June 1958, QSA., item 293136.

<sup>120</sup> J Flemming, 'New Governments in Queensland: Industrial Relations, 1957-1961, 1989-1990', PhD thesis, Griffith University, Brisbane, pp. ix, 1.

<sup>121</sup> 'Desperate criminals lead grim life in crowded jail', *The Courier Mail*, 30 Jan. 1958.

<sup>122</sup> *ibid.*

him is a very important part of our program'.<sup>123</sup> To further fuel the tension between 'making jail life unattractive' and 'the prisoners' ultimate redemption', it was clear from the press that there was still considerable public support for corporal punishment. For example, a youth worker from Toowoomba stated in a newspaper interview 'Magistrates ought to use the power they possess to have administered a good sound whacking' to problem teenagers.<sup>124</sup> This concept was supported in principle by Mr. Justice Philp who stated in another report, 'a few hidings now and again would do some boys a lot of good'.<sup>125</sup> While these reports focused on juveniles, the retributive approach and the belief in the deterrent value of corporal punishment was not restricted in its application to a particular age group. Even Dr. McGeorge, consulting psychiatrist to the New South Wales Prisons Department, said in a Queensland newspaper he had 'no sympathy for offenders against children and no punishment was too severe for them'.<sup>126</sup> This statement was made without qualification. Thus, it appears that even some medical professionals harboured a retributive attitude towards certain crimes.

In contrast, another report titled 'A penal dilemma', focused on juvenile incarceration and raised the question of rehabilitation. Following thirteen escapes from Westbrook Farm Home<sup>127</sup> during the year<sup>128</sup> and the sentencing of a fifteen year old boy for murder,<sup>129</sup> the suitability of a reformatory environment was questioned and the possible need for 'sterner discipline and closer custody...for some persistent delinquents' was expressed. Then the report concluded with the statement that 'punishment must do more than satisfy a demand for retribution whenever the public is shocked by horrible crime. Society must be protected, but it must also do everything possible to

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<sup>123</sup> 'Prisoners to work on the new jail', *The Sunday Mail*, 12 Jan. 1958; 'New Wacol jail under way 'within a year'', *The Courier Mail*, 19 Sept. 1958.

<sup>124</sup> 'Police youth club sought on Downs', *The Courier Mail*, 23 May 1958.

<sup>125</sup> 'Give boys a hiding or two, judge says', *The Courier Mail*, 8 Aug. 1958.

<sup>126</sup> 'Never release this man', *The Courier Mail*, 13 Aug 1958.

<sup>127</sup> Westbrook Farm Home was located near Toowoomba.

<sup>128</sup> 'Police View: Stop these boy escapes at Westbrook', *The Courier Mail*, 20 Aug. 1958.

<sup>129</sup> 'To prison or home? Now to Cabinet', *The Courier Mail*, 28 Aug. 1958; 'Bowen boy murderer unmoved by 10 year term', *The Courier Mail*, 28 Aug. 1958.

make young criminals fit for liberty when they are released'.<sup>130</sup> The author expressed a need for proactive rehabilitation, rather than reactive retribution which was generally expressed in reports relating to custody. While this sentiment related to juvenile offenders, because they were considered redeemable, it could also be applied to incarcerated adults in preparation for their eventual release into the community. These reports appeared in the press during the drafting of the *Prisons Act 1958* but it will be seen in Chapter 4 that while there was some discussion of corporal punishment, the focus was towards prison discipline rather than rehabilitation.

### ***Don't question the decision***

To understand how discipline worked in prisons one has to appreciate that prison administrators usually adopted an autocratic management style which meant that questioning their decisions was not tolerated and that they resented any dissent being aired in public. For example, when Power was Attorney-General in 1954 he stated that he would have the author of a letter to the editor investigated. The press viewed this as a threat to free speech,<sup>131</sup> but it can also be seen as a threat to accountability in decision making. Power had responsibility for the prison's portfolio and as we shall see keeping controversial issues 'in-house' and discrediting dissenters was a recurring theme under different prison administrators.

An example of the suppression of public information mentioned earlier was the investigation into EC Long's breach of prison security at Townsville Prison.<sup>132</sup> Newspapers reported that Dwyer and Waterman were both dismissed, that Dwyer was later reinstated following an appeal,<sup>133</sup> but that he

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<sup>130</sup> 'A Penal Dilemma', *The Courier Mail*, 29 Aug. 1958.

<sup>131</sup> 'Every man's liberty', *The Courier Mail*, 12 Nov. 1954, p. 2.

<sup>132</sup> 'Over Gaol wall to get in', *The Courier Mail*, 19 Nov. 1946, p. 3; 'Back to Gaol. Man found in prison compound', *Townsville Daily Bulletin*, 19 Nov. 1946, p. 2.

<sup>133</sup> 'Quick return. Man breaks into Gaol. Officials to be charged', *The West Australian*, 23 Jan. 1947, p. 14; 'Dwyer appeal to open to-day', *Townsville Daily Bulletin*, 23 April 1947, p. 1; 'To be heard in camera. Appeal of dismissed warder', *The Northern Miner*, 23 April 1947, p. 1.

was demoted and transferred to another prison.<sup>134</sup> When Dwyer appealed his dismissal, management requested that the appeal be heard inside the prison, to ‘obviate the necessity of the transport of prisoners giving evidence’.<sup>135</sup> The inquiry had highlighted systemic problems in Townsville prison and the attitude of prison administrators towards accountability, illustrated by a tendency to manipulate punishments and records.<sup>136</sup> Even though the Appeal Board came to a different conclusion regarding Dwyer’s punishment the Governor in Council considered that demotion and transfer were appropriate. The variation can be understood when the reader considers that evidence was given to the Appeal Board inside the prison. This was where Dwyer had the potential to craft his defense and exert influence over witnesses, it also ensured the evidence and findings would not be open to public scrutiny. This indicates there was sufficient evidence presented, that the public was not allowed to be privy to, which warranted strong sanction.<sup>137</sup>

The same tactics were attempted in the 1954 appeal described earlier<sup>138</sup> when two prisoners attempted to escape and the officer appealed against his punishment.<sup>139</sup> After the proceedings were originally open to the public the hearing was moved inside the prison and the evidence given that day was not

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<sup>134</sup> W Rillie & E Southerst ‘Inquiry into certain charges against D.C. Dwyer (Supt), E.C. Watermon (Chief Warder), J.M. Gormon (Warder), C.C. Thwaite (Warder)’, note from the Under Secretary, Chief Secretary’s Dept. 22 May 1947, inquiry batch no. 113 I, QSA., item 136863.

<sup>135</sup> ‘Dwyer appeal to open today’, *Townsville Daily Bulletin*, 23 April, 1947, p. 1; After the prisoners and officers gave evidence, the Appeal Board found that only two of the four charges were substantiated and the punishment was therefore considered excessive. ‘The Dwyer appeal’, *Townsville Daily Bulletin*, 25 April, 1947, p. 1.

<sup>136</sup> In this instance, only the Chief Prison Officer and the Superintendent were held responsible, even though other staff were involved in supervising the prisoners, controlling their movements and accounting for keys.

<sup>137</sup> The Appeal Board considered that the penalty was ‘excessively harsh’ and recommended that Dwyer be fined £10 and reinstated, however, the Governor in Council did not agree with the Appeal Board’s decision and instead demoted and transferred Dwyer. W Rillie & E Sutherst, ‘Inquiry into certain charges against D.C. Dwyer (Supt), E.C. Watermon (Chief Warder), J.M. Gormon (Warder), C.C. Thwaite (Warder)’, 24 March 1947, note from the Under Secretary, Chief Secretary’s Dept. 22 May 1947, inquiry batch no. 113 I, QSA., item 136863.

<sup>138</sup> ‘Jail warder’s appeal in closed court’, *The Courier Mail*, 7 April 1954, p. 8.

<sup>139</sup> ‘Dangerous state of gaol security’, *Daily Bulletin*, Rockhampton, 2 June 1954, p. 4.

released.<sup>140</sup> The findings of the Appeal made it evident there were serious systemic problems needing urgent attention.<sup>141</sup>

It is also apparent from the inquiries discussed earlier, that officers were expected to be sober and discrete in their off-duty behaviour and diligent in their duties because their actions reflected on the prison service. One of the charges originally made against Dwyer in the 1947 investigation was that ‘he used intoxicating beverages to excess’.<sup>142</sup> While this charge was not substantiated, Dwyer’s unexplained and regular absences from the prison and the state of his sobriety were explored during the investigation to assess his performance. As Superintendent of Townsville Prison, his failure to report a missing firearm and its subsequent recovery a few months later from a prisoner, along with his selective recording of punishments to manipulate the remissions system, was not viewed as diligent application of his duties by the investigating officers, W Rillie S.M. and Public Service Inspector E Sutherst.<sup>143</sup>

Prison management was determined to project the image of a disciplined and well-ordered prison system, especially given the negative publicity described earlier in the chapter. In 1958, departmental expectations concerning security and personal behaviours did not appear to have been understood by two officers who were charged with ‘being absent from duty without authority’ and ‘drinking intoxicating liquor in public while dressed in the uniform of the prison service.’ Both were suspended from duty without pay and were subsequently recommended for dismissal. The Public Services Commissioner said he believed members of ‘Magistracy, the Police Force and the Prison Service...must [possess] a high degree of probity, morality and trustworthiness’ and regardless of the absence of a regulation ‘prescribing that

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<sup>140</sup> ‘Secret Inquiry at gaol’, *Daily Bulletin*, Rockhampton, 7 April 1954, p. 4.

<sup>141</sup> ‘Highly dangerous state at city jail’, *The Courier Mail*, 2 June 1954, p. 3; ‘Hacksaws being taken into Boggo Road Gaol’, *The Courier Mail*, 4 June 1954, p. 3.

<sup>142</sup> W Rillie & E Southerst, ‘Inquiry into certain charges against D.C. Dwyer (Supt), E.C. Watermon (Chief Warder), J.M. Gormon (Warder), C.C. Thwaite (Warder)’, inquiry batch no. 113 I, QSA., item 136863.

<sup>143</sup> *ibid.*

officers of the Prison Service should not drink whilst in uniform. [ I ] do not think that ...absolves the officers concerned from the charge of improper conduct.' After appeals, it was decided to reinstate them with a fine of £5 and not reimburse the wages<sup>144</sup> they had lost while under suspension (an effective loss of £375 each).<sup>145</sup> When considered in conjunction with the other investigations where suspension, recommendation for dismissal and loss of wages were applied, it is apparent the Public Services Commissioner, Appeals Board and the Governor in Council considered diligence and sobriety to be important. In this instance, the two officers caused a very real risk to the community when they absented themselves from duty without authority. When the 1959 Prison Regulations were released this issue was addressed in regulation 17, which stated

Prison Officers are required at all times without as well as within the Prison, to conduct themselves in a decorous manner and maintain respect for themselves and the Prison Service. They shall not enter any licensed premises or partake in intoxicating liquor in public in uniform or any part of uniform, clothing or head-dress by which they may be identified with the prison service. They shall not unduly frequent or loiter in or about any licensed premises.<sup>146</sup>

The conduct of officers was considered so important that of the 440 regulations under the *Prisons Act 1958*, regulation six through to seventy, specified the tasks and conduct, both on and off duty, for all base and middle management officers.

## ***Conclusion***

This chapter has examined press reports that had the potential to influence the community's attitude to punishment and found that they conveyed an emphasis on retribution and deterrence. The new regulations, to be discussed in the next chapter, reflected the Government's understanding of the community's expectations and it will be seen that there was a focus on

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<sup>144</sup> An example of the wage for a warder was £712 per annum or £13 per week. 'List of applicants for promotional positions', 9 June 1953, p. 3. QSA., item 293136.

<sup>145</sup> Cabinet submission 669, 'Appeal under Section 32 of the Public Service Act, 1922 to 1958, by James Perrin and Edward Burgess, Warders, H.M. Prison Brisbane (Decision of Appeals Board)', QSA., microfilm 23541.

<sup>146</sup> Queensland Government, *Prisons Regulations of 1959*, Brisbane, 1981.

retribution, through containment and security, and deterrence through the application of punishment. In reporting international, national and local incidents the media kept the dangerousness of prisoners at the forefront of public consciousness. However, most of the reports lacked depth and focused on the sensational details without exploring the underlying causes. Perhaps as Jewkes states, people wanted to read news reports to be shocked and outraged<sup>147</sup> or the press might have had an interest in preserving the high regard in which public administrators were held. Either way, the tenor of the reports helped to justify a regime of strict discipline within Queensland prisons. This is also evident in the parliamentary debates around the 1958 Prisons Bill that will be discussed in the next chapter, when members of parliament voiced the will of their constituents. In addition, these expressions of public opinion show an expectation that prisoners should be rehabilitated into conforming members of society, but union officials contended that any 'training' of prisoners in employable skills should not be at the expense of skilled tradesmen.

Reform was further stymied by prison administrators who continued to implement practices that contradicted the Government position. Investigators were intolerant of systemic problems that occurred throughout the period under review, in most cases holding the defendant/s accountable for their actions and recommending severe sanctions. The exception was when allegations were raised by prisoners. In these instances the perception of their dangerousness and untrustworthiness permitted practices and offences against them to continue. This chapter also showed prison staff were expected to not only be diligent in their duties but sober and discrete in their off-duty behaviour. The severity of punishments imposed on staff who infringed regulations demonstrated the high standard that was expected when behaviour reflected upon the Prison Service. The Government's understanding of the community's expectations in this regard became evident in the new regulations, which will be discussed further in Chapter 4. These put an emphasis on the behaviour of all officers, both on and off duty.

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<sup>147</sup> Y Jewkes, *Handbook on Prisons*, Willan, Devon, 2007, pp. 449 - 450.



The next chapter will examine the *Prisons Act 1958* and compare it with the *Prisons Act 1890* as well as legislation from other jurisdictions. It will explore legislated reforms, especially those brought about by the issues discussed in this and the preceding chapters. These may take the form of rehabilitation opportunities, regulations regarding the diligence and sobriety of staff, improved management practices; or alternatively the lack of reform where token changes allowed embedded attitudes and practices to continue.

## Chapter 4 Devil's in the detail: *Prisons Act 1958*

The previous chapters described contemporary theories, practices and attitudes that might have influenced legislators when they drafted the new Prisons Act and subsequent regulations. Chapter 3 examined some community responses to prison incidents, including disturbances, escapes and the consequences of maladministration. The subsequent investigations and the evident need for reform provided leverage to modernise prison legislation and this chapter examines the principal objectives of the Queensland *Prisons Act 1958* and the motivations of the legislators. It also considers whether the new legislation improved on previous legislation or simply relabelled outdated ideas and policies. The 1958 Queensland prison legislation will be compared with its predecessor, the *Prisons Act 1890* and with legislation from other jurisdictions which were considered during the review period<sup>1</sup>, namely New South Wales, Victoria, New Zealand and the United Kingdom. This comparison with previous and other jurisdictional legislation is important because it indicates the reform direction Queensland's legislators preferred to pursue, for example was there a preference towards security, deterrence, or rehabilitation? It will be seen that some sections and regulations were replicated verbatim from the other legislations, some were modified to suit local conditions and some were expanded upon, while others were completely disregarded. To provide ease of referencing for the reader this chapter will follow the same sub-headings and numerical sequence of sections as the *Prisons Act 1958*.

This thesis argues that the *Prisons Act 1958* was a missed opportunity to reform Queensland's prison system. It thus evaluates whether the new legislation embraced contemporary thinking about rehabilitation, thereby creating a solid foundation for implementing rehabilitative ideas, or whether it reinforced previously held conservative practices that tended to be retributive

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<sup>1</sup> Legislation, documents and notes either referring to or from the different jurisdictions were uncovered during archival searches relating to the review of the Queensland Prisons Act.

in nature. J Wanna and T Arklay state that under the Coalition Government there was a large increase in legislation in the justice portfolio. Forty-five new Acts and 89 amended Acts were legislated in the first term of the new government and even more were to follow in its next three terms.<sup>2</sup> This prompted the Leader of the Opposition to criticise the Government's habit of rushing its legislative program into the House and providing inadequate time for public consultation. As an example this legislation, amongst other parliamentary business, was initiated in Parliament on the 20 November 1958<sup>3</sup>, underwent five drafts and debates, and was assented to on the 16 December 1958. Wanna and Arklay also claim much of the legislative output was, 'generally neither path breaking nor adventurous in nature...many of these acts passed during these years were tinkering with existing statutes...the Parliament was used as a final body of authorisation for decisions made ...by the executive and the bureaucracy'.<sup>4</sup> This chapter considers if this was true for the *Prisons Act 1958* and did it therefore become a missed opportunity in prison reform.

### ***Historical background***

The historical background to the Queensland *Prisons Act 1958* extends at least as far back as the United Kingdom's *Prisons Act 1823* (Figure 4.1).<sup>5</sup> This Act classified prisoners into different categories and abandoned the silent system in favour of the separate system.<sup>6</sup> Sir William Crawford (also refer to Figure 2.2) had visited America in the early 1800s where he was impressed by the Pennsylvania System (also named the separate system). He believed this could be implemented in UK prisons and be more cost effective than the Auburn

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<sup>2</sup> T Wanna & T Arklay, *The Ayes Have It: The history of the Queensland Parliament, 1957 - 1989*, 2010, Canberra, p.125 - 126.

<sup>3</sup> Hansard, Prison's Bill, Initiation in Committee, 4/3/1958 - 3/12/1958, p. 1485; Draft notes for the Minister to introduce the Prison's Bill. QSA., PRV 9251/1/33.

<sup>4</sup> T Wanna & T Arklay, *The Ayes Have It: The History of the Queensland Parliament, 1957 - 1989*, 2010, Canberra, p. 166.

<sup>5</sup> For a detailed commentary regarding the content of Figure 4.1 refer to N Johnston, *Forms of Constraint: A History of Prison Architecture*, University of Illinois Press, Chicago, 2000; JS Kerr, *Out of sight out of mind*, S.H. Ervin Gallery, Sydney, 1988; N Morris & DJ Rothman, *The Oxford History of the Prison*, Oxford University Press, Oxford, 1998.

<sup>6</sup> N Johnston, *Forms of Constraint: A History of Prison Architecture*, University of Illinois Press, Chicago, 2000, p. 89.

System (the silent system).<sup>7</sup> The Inspector of Prisons in NSW, H Maclean, was influenced by Sir Walter Crofton's Irish System and he drafted the NSW regulations based on it and his own experiences, which included meetings with Crofton and Sir Edmund Du Cane, from whom he subsequently received ongoing support (Figure 4.1).<sup>8</sup> The prisons, in what was to become Queensland, had originally been administered under the NSW legislation of 1840 entitled *An Act for the Regulation of Gaols Prisons and Houses of Correction*. Following an investigation by WE Parry-Okeden and W Kinnaird in 1887, the Queensland *Prisons Act 1890* was passed and remained in force without any 'material alterations' until the 1958 review.<sup>9</sup> The new Prison Bill repealed *The Prisons Act 1890 to 1945*, *The Walking to Prison Act of 1852* and *The Removal of Prisoners Act of 1853*.<sup>10</sup> In a speech entitled 'The Problem of Prisons', the Queensland Minister for Justice, Alan Whiteside Munro, claimed that whereas previously the main aim of prison administration had been to keep prisoners behind walls, it was now important to give greater thought to rehabilitation and moral redemption.<sup>11</sup> Consistent with this belief, Munro initiated the Prison's Bill on 20 November, 1958,<sup>12</sup> which he said was a 'modernisation, of existing laws and was to legislate changes in practice that had occurred since 1890 while facilitating further improvements in prison administration'.<sup>13</sup> But just how 'modern' were the regulations that had been developed?

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<sup>7</sup> *ibid.*, p. 90.

<sup>8</sup> JS Kerr, *Out of sight out of mind*, S.H. Ervin Gallery, Sydney, 1988, p. 102; Also refer to S O'Toole, *The History of Australian Corrections*, University of New South Wales Press, Sydney, 2006, p. 161.

<sup>9</sup> S Kerr, letter to the Under Secretary Department of Justice, 'Re: the new Prisons Act', 31 July 1958, QSA., PRV9251/1/33.

<sup>10</sup> AW Munro, Confidential document for Cabinet regarding approval for the introduction of a Bill to consolidate and amend the law relating to prisons and the custody of prisoners, 30 Oct. 1958. QSA., PRV9251/1/33, JUS W63, item 20378.

<sup>11</sup> AW Munro, 'The problem of prisons'. Based on his reference to Mr. Kerr and Mr. Smith as being in charge, it is thought that this speech was delivered in approximately 1958. QSA., 13257/1/31, item 293136.

<sup>12</sup> Hansard, Prison's Bill, Initiation in Committee, 4/3/1958 - 3/12/1958, p. 1485; Draft notes for the Minister to introduce the Prison's Bill. QSA., PRV 9251/1/33.

<sup>13</sup> Hansard, Prison's Bill, Initiation in Committee, 4/3/1958 - 3/12/1958, p. 1486; AW Munro, Confidential document for Cabinet regarding approval for the introduction of a Bill to consolidate and amend the law relating to prisons and the custody of prisoners, 30 Oct. 1958. QSA., PRV9251/1/33, JUS W63, item 20378.

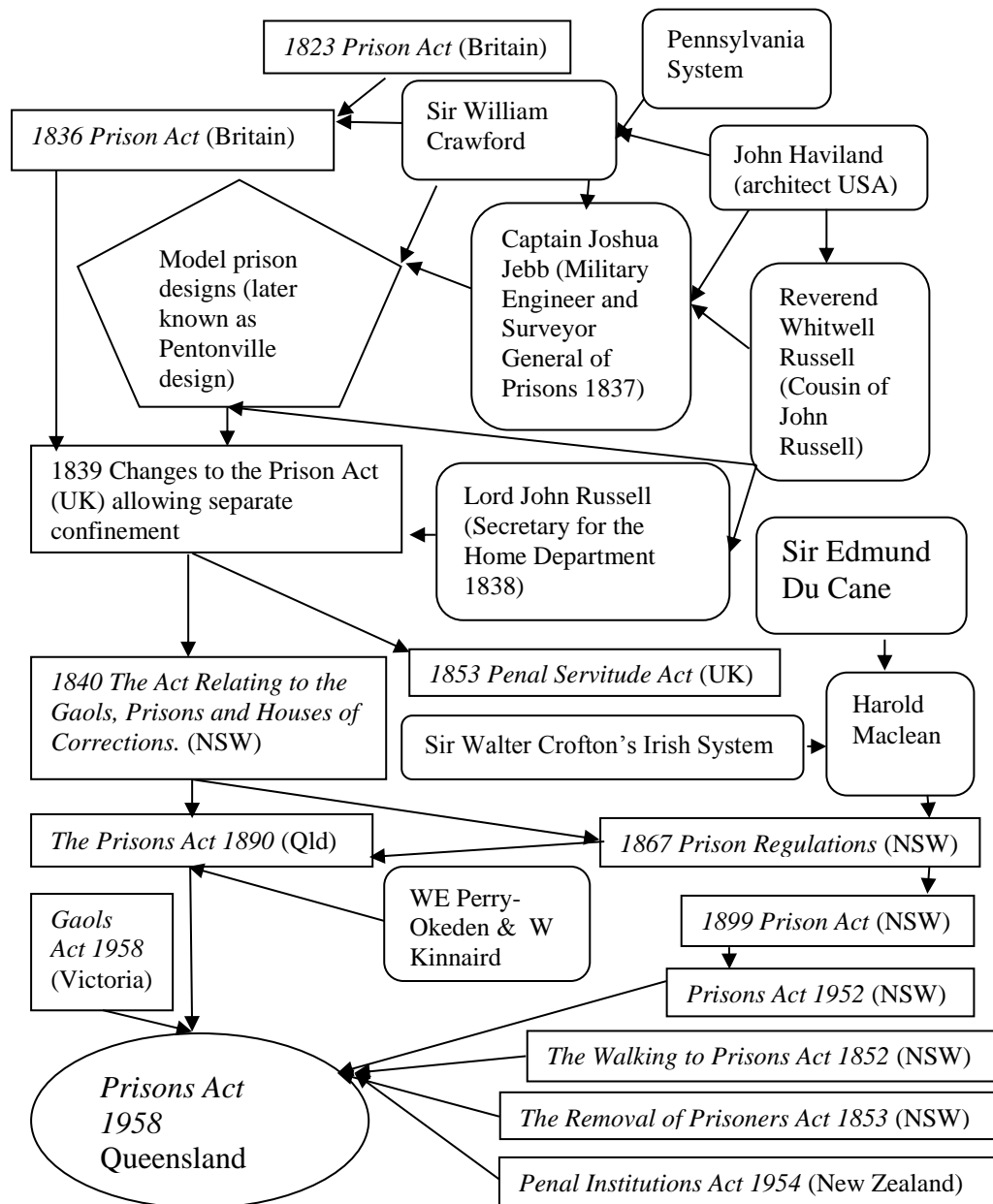


Figure 4.1 Legislation tree of influence

During the second reading of the Prison's Bill, Munro conceded that the Bill did not introduce any significant new principles; rather, it consolidated what he believed to be modern principles that had already been implemented without legislative support. It also followed legislation renewal in other jurisdictions, particularly New Zealand whose legislation was drawn upon extensively in drafting the Bill. The comparison table between legislations (Annex A) shows that after Queensland's *The Prisons Act 1890* (78 similarities), New Zealand's legislation (43 similarities) had the second greatest number of similarities with the new Act, while NSW legislation had

29 similarities and Victorian legislation had 34.<sup>14</sup> This Chapter analyses the *Prisons Act 1958* with reference to these other jurisdictions.

### ***Legislation introduction and powers of the Governor in Council***

The first five sections of the *Prisons Act 1958* provide the standard preliminary descriptions of the parts, repeals, definitions and proclamations. The definition of ‘prison officers’ was altered after the first draft<sup>15</sup> of the Bill in response to a letter from the Comptroller-General, Stewart Kerr, who recommended administrative heads continued to be employed under the *Public Services Act* and the term warder be omitted since it was no longer used.<sup>16</sup> The definition of ‘warder’ was replaced with ‘prison officer’, which did not include the Comptroller-General or the Deputy Comptroller-General.<sup>17</sup> The Public Service Commissioner asked whether prison officers should be employed as public servants or, whether they should be employed under the *Prisons Act*. He believed that if they were employed under the *Prisons Act*, there would need to be additional ‘machinery clauses’ regarding aspects such as appointments, promotions, appeals and salaries, which were already included in the *Public Services Act*. Alternatively, he suggested some powers could be delegated, with limitations, to persons such as the Under Secretary of the Department of Justice or the Comptroller-General.<sup>18</sup> Eventually, it was decided that all staff (i.e. not restricted to senior administrators) would be employed under the *Public Services Act*.<sup>19</sup> Section 6(a) gave the Governor in Council the authority to approve construction of new prisons and alterations to existing prisons which incorporated and updated section 8 (1) and (2) of the

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<sup>14</sup> Some of these similarities were common to several jurisdictions.

<sup>15</sup> Department of Justice, ‘The Prison’s Bill, draft number 1’, 1958, QSA., JUS/W63, item 20378.

<sup>16</sup> S Kerr, letter to the Under Secretary Department of Justice ‘Re Draft Bill relating to Prisons and Custody of Prisoners’, 22 July 1958, QSA., PRV 9251/1/33.

<sup>17</sup> Department of Justice, ‘The Prison’s Bill, draft number 2’, 1958, QSA., JUS/W63, item 20378.

<sup>18</sup> Public Services Commissioner, ‘Re Bill to consolidate and amend the law relating to Prisons and the custody of prisoners’, 23 Oct. 1958, QSA., JUS/W63, item 20378.

<sup>19</sup> Department of Justice, ‘The Prison’s Bill, draft number 3’, 1958, QSA., JUS/W63, item 20378.

1890 Act. Sections 5(b) and (c), which authorised reconstruction and demolition of prisons, were unique to the Queensland legislation.

Section 7(1) provided the authority to create regulations. It contained sections carried forward from the 1890 Act, with some being expanded or updated and others being new and not found in the legislation of other jurisdictions. Legislation similar to the 1890 Act included sections: (a) the management of prisoners, (c) religious ministrations and (d) rewards and punishments. Subsections from the 1890 Act that were expanded or reworded were: (b) work and remuneration, (e) remission for good conduct, (o) staff discipline, promotion and delegation and (p) management of prisons. New areas in this section related to: (f) visits, (g) expenditure of prisoners earnings, (h) medical treatment, (i) education and training, (j) diet and rations scale, (k) management of habitual prisoners, (l) directing prisoners' remuneration to maintenance payments, (m) regulating entry related to tidal waters abutting a prison and (n) penalties for persons other than prisoners.

In response to the expanded responsibilities and workload of the Comptroller-General, section 8 created the positions of one or more Deputy Comptroller-Generals to assist as required. *The Prisons Act 1890* had only permitted the appointment of a Deputy in the case of the Comptroller-General's absence.<sup>20</sup> Previous chapters have noted there was a Deputy Comptroller-General in place for several years which started with Rutherford in 1947, however, this position was appointed at the same level as prison Superintendents and as will be discussed in Chapter 5, on occasions these duties were undertaken simultaneously.

The First United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Geneva in 1955<sup>21</sup> acknowledged that staff selection and training were important aspects of prison management, and the

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<sup>20</sup> Queensland Government, *The Prisons Act 1890*, Section 16, Brisbane.

<sup>21</sup> AM Lamers, 'Personnel: The training of the personnel of penal institutions in the Netherlands', First United Nations Congress on the prevention of crime and the treatment of offenders Geneva 1955.

new legislation was framed to improve vetting of the physical and intellectual capabilities of staff at recruitment. Medical examination prior to appointment to the prison service was altered under section 9(a) from testing for diseases likely to shorten life to testing for any disease likely to render the person ‘incapable of performing the duties of the office in question’.<sup>22</sup> As described in previous chapters, senior management harbored concerns about the intellectual quality of existing staff, therefore, educational standards were raised in the second draft of section 9(2), after Kerr recommended: ‘1) examination before appointment to the Service; 2) before confirmation of appointment; 3) before appointment to a higher classification or rank’.<sup>23</sup> This required prospective appointees to pass an entrance examination and employees to pass examinations before they could be promoted to higher positions (up to the rank of Chief Prison Officer). The legislation would make Queensland the only Australian jurisdiction at the time that provided legislation for compulsory entrance and promotional examinations for staff.

The new sections 10 and 11 addressed the provision of medical care to prisoners. Section 10 stipulated the appointment of sufficient medical officers to meet the needs of each prison, but it contained limited details.<sup>24</sup> Unlike other jurisdictions, section 11 of the Queensland Act allowed for the employment of different medical and other professionals, including psychiatrists, psychologists, dentists, chemists, medical orderlies, nurses and, as a general catch all, ‘such other persons having professional or skilled trade qualifications’.<sup>25</sup> This was added in the third draft when Kerr stated, ‘it is apparent that in the near future officers such as education officers, trade training officers, other than warders, and officers of like nature will have to be considered by the Department. Most other states now have officers of this

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<sup>22</sup> Queensland Government, *The Prisons Act 1890*, Section 24, Brisbane; Department of Justice, ‘The Prison’s Bill, draft number 1’, 1958, QSA., JUS/W63, item 20378.

<sup>23</sup> S Kerr, letter to the Under Secretary Department of Justice ‘Re Draft Bill relating to Prisons and Custody of Prisoners’, 22 July 1958, QSA., PRV 9251/1/33.

<sup>24</sup> In contrast, NSW legislation was reasonably detailed; it ensured the rights of medical officers to maintain private practices, permitted a suitably qualified replacement doctor from the same practice to attend if required, and allowed the Government Medical Officer to meet any shortfalls in medical coverage. New South Wales Government, *Prisons Act 1952*, section 9, Sydney.

<sup>25</sup> Queensland Government, *Prison Act 1958*, section 11 (1), Brisbane.



class appointed'.<sup>26</sup> While psychologists and psychiatrists were already attending the prisons, they were generally limited to performing psychiatric and psychological evaluations for the courts or the parole board. This addition to the Act allowed them to be employed by the prisons and potentially deliver therapeutic and rehabilitative programs.

The appointment of a Visiting Justice (VJ) as an independent person to monitor prison management was included in the 1890 Act and continued in the 1958 Act section 12. Similar provisions for 'overseeing officials' also existed in the legislation of NSW, Victoria and the UK.<sup>27</sup> All the VJ's previous duties under section 27 of the 1890 Act were incorporated in the new legislation and most of the wording was similar in the new regulations 90 to 100. The significant variation under regulation 90 included the VJ being permitted to receive requests from prisoners. Previously, under Queensland's *Prison Act 1890* section 27(2), he was limited to the receipt of complaints.

Section 13 allowed 'ministers of religion or accredited representatives of any religious denomination' to be appointed to the prisons with the privileges and duties prescribed by the regulations. The Queensland regulations<sup>28</sup> included security measures and restrictions to chaplains making public comments regarding prison matters. This was unlike other jurisdictions' legislation which was restricted to matters of religious ministrations.<sup>29</sup> Initially the chaplain was to be appointed by the Minister; however, Kerr's

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<sup>26</sup> S Kerr, letter to the Under Secretary Department of Justice 'Re Draft Bill relating to Prisons and Custody of Prisoners', 22 July 1958, QSA., PRV 9251/1/33.

<sup>27</sup> New South Wales Government, *Prisons Act 1952*, section 10, Sydney; Victorian Government, *Gaols Act 1958*, section 16, Melbourne; Appointment of a board of visitors for each prison with at least two being Justices of the Peace. United Kingdom, *Prison Act 1952*, section 6, Office of the Public Sector Information.

<sup>28</sup> Queensland Government, *Prisons Regulations 1959*, regulations 101 – 106 & 434, Brisbane.

<sup>29</sup> New South Wales Government, *Prisons Act 1952*, regulations 54 - 58, NSW. Sydney; United Kingdom, *Prison Act 1952*, sections 9 – 10, Office of Public Sector Information, viewed 9 April 2011, <http://www.legislation.gov.uk/ukpga/Geo6and1Eliz2/15-16/52/data.pdf>; Victoria Government, 'Social Welfare Act 1960, Division III- Prisons Division (regulations)', regulations 87 – 92, *Government Gazette*, 3 Aug. 1962, Melbourne.

recommendation which was adopted, suggested that this could occur through the Under Secretary, ‘on recommendation by the Comptroller-General’.<sup>30</sup>

Section 14 permitted prisoners to be discharged who had been imprisoned for defaulting on fines or contempt of court and for those who were unable to find sureties to keep the peace or be of good behaviour. This section provided prison administrators with a valuable option for relieving overcrowding by allowing certain prisoners to be discharged if the Governor in Council remitted their outstanding payments. This innovation permitted the discharge of these short term prisoners to create room for serious offenders to be detained within the existing infrastructure.

### ***Powers and duties of the Comptroller-General of Prisons***

Sections 15 and 16 modernised the powers and duties of the Comptroller-General.<sup>31</sup> Such changes included Section 15(a), which made the Comptroller-General responsible for ensuring all prisoners were employed; however, the 1958 Act did exempt ‘bodily or mentally incapacitated’ prisoners from this requirement, thereby allowing each such case to be treated humanely. Section 15(c) was updated to include the Comptroller-General hearing all applications<sup>32</sup> by prison officers as well as any complaints against them. Kerr recommended section 15(d) which related to movement of prisoners, be made into a new section. He also recommended another subsection be added to include movement ‘from any prison to any other place as specified in the Order’. His motivation was to allow provision for medical testing/treatment at different facilities, other than the standard hospitals and to permit prisoners to attend morgues to identify relatives or attend funerals.<sup>33</sup> These amendments were made to the second draft and subsequently included transfer of prisoners under section 16, which contained both similarities and updates in subsections

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<sup>30</sup> S Kerr, letter to the Under Secretary, Department of Justice ‘Re: Proposed New Prison’s Bill’, 16 Sept. 1958, QSA., JUS W63, item 20378.

<sup>31</sup> New South Wales Government, *Prisons Act 1952*, sections 21–22, Sydney.

<sup>32</sup> Applications may include requests for holiday leave, transfer to another prison or any other requests referred to the Comptroller-General.

<sup>33</sup> S Kerr, letter to the Under Secretary Department of Justice ‘Re Draft Bill relating to Prisons and Custody of Prisoners’, 22 July 1958, QSA., PRV 9251/1/33.

(1) (ii–iv) between the old and new Acts. Subsections 2 and 3 contained another aspect not legislated in other jurisdictions, namely providing the Comptroller-General the power to authorise sufficient escorting staff, including police, whenever a prisoner was taken outside a prison, the escort to be reported to the Minister.

In the event of the absence of the Comptroller-General or when that position was temporarily vacant, section 17 delegated the required authority to the Deputy Comptroller-General or, in the Deputy's absence, to the Brisbane Prison Superintendent. This legislated delegation of authority allowed decisions to be made without the Comptroller-General's position, or his Deputy, being replaced in their absence. This was not previously the case, nor was it stipulated in the legislation of other jurisdictions and may be considered as a cost saving activity so that higher duties were not paid for a replacement

### ***The Law of Prisons***

The accommodation and segregation of prisoners was specified under section 18, where subsections (1) (a–c) expanded the 1890 Act requirements to provide, where possible, a single cell for each male prisoner. This demonstrated continued support for the separate system described in Chapter 2. This section also made provision for punishment cells to be separate from ordinary cells and for female and male prisoners to be accommodated in separate areas to prevent 'seeing or conversing with each other'. Subsections (1) (a) and (c) allowed for (at the discretion of the Comptroller-General) dormitory accommodation for female and male prisoners as a means of rehabilitation. It will be seen in the coming chapters that while intended for rehabilitation, dormitories often were used as a response to overcrowding. Subsections (1) (d), (e), (h), (i) and (j) were new sections in the Queensland legislation. These related to classification of prisoners and permitted segregation (h) based on age, offence and criminal history, (d) for medical or mental health reasons, (e) of prisoners under 25, (j) of prisoners under 17, and (i) of prisoners who had not been convicted (including deportees and

remandees).<sup>34</sup> Subparagraphs (f) and (g) were new to Queensland legislation but were similar to NSW legislation. Subsection (1) (f) provided that troublesome prisoners may be ‘kept apart from all other prisoners for such period as may be considered necessary’.<sup>35</sup> Queensland’s subsection (g) required the provision of a ‘sick bay’ (NSW legislation called this a ‘lock hospital’<sup>36</sup>) for those requiring medical attention. Section 18(2) modified section 38 of the 1890 Act to stipulate that punishment cells must have a means for allowing prisoners to contact staff at any times and that the medical officer must be satisfied the cell could be used without detrimentally affecting the prisoner’s health.

Section 19 of the 1958 Act provided authority to detain prisoners in a prison or police gaol and brought together sections 11, 13 and 43 of the 1890 Act. The provisions in the combined sections remained fundamentally the same.

Section 20 dealt with prisoners who were in the legal custody of the Superintendent of the last receiving prison. It was divided into subsections (1) (a)–(c) and (2) with its content similar to that of the Queensland 1890 Act and the New Zealand *Penal Institutions Act 1954*.<sup>37</sup> In the event that a prisoner was removed to a different prison from the one stated in the court order, section 21(1) allowed their imprisonment to still be legal. Subsection (2) also permitted any person acting under proper authority to ‘convey the prisoner to

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<sup>34</sup> Victoria also allowed separation based on classification which took ‘regard of age, social history, criminal record, aptitude and suitability for training and employment, nature of current offences, length of sentence and need for security.’ Victoria Government, *Social Welfare Act 1960, Division III Prisons Division (regulations)*, regulation 108, *Government Gazette*, 3 Aug. 1962, Melbourne.

<sup>35</sup> NSW legislation was more descriptive: it stated the purpose of this separation was to ‘prevent contamination arising from the association of prisoners’. It may occur for the ‘whole or any part of his imprisonment’ and it ‘shall not be deemed to be solitary confinement’ under any legislation that specifies solitary confinement for a limited period of time. New South Wales Government, *Prisons Act 1952*, sections 22 (1–2), Sydney. The contamination aspect may be viewed as a medical condition requiring isolation; however, it is more likely that disruptive prisoners involved others either as co-offenders or victims in their dysfunctional behaviour, necessitating isolation as a management tool. New South Wales Government, *Prisons Act 1952*, sections 22 (1–2), Sydney.

<sup>36</sup> New South Wales Government, *Prisons Act 1952*, section 5 (3), Sydney.

<sup>37</sup> Queensland Government, *The Prisons Act 1890*, Section 44, Brisbane; New Zealand Government, *Penal Institutions 1954*, Section 16 (2), Wellington.

or from a prison'. This subsection updated section 44 of the 1890 Act while legislation in other jurisdictions was silent on the issue.

Section 18 above noted that, where possible, separate accommodation should be provided for prisoners of different classifications. Section 22 then stated that the different classifications as stipulated in the regulations were to receive the appropriate treatment and labour relevant to the specified classification. Subsection (1) required that prisoners who had not been convicted<sup>38</sup> or who were under the age of 25, be classified separately and given 'appropriate treatment or labour'. This particular section contained content from regulation 118 in the *Prison Act 1890*. The remainder of section 22 related to the photographing and fingerprinting of prisoners and the recording of personal particulars. Both sections 22 and 23<sup>39</sup> have no precedents in earlier Queensland prison legislation.<sup>40</sup> The remainder of section 23 (i.e., subsections (2) to (4)) related to provisions allowing prisoners to send personal possessions to people outside the prison and to request items required to be used during the defense of their court cases. These sections also pertain to property retained in the prisoner's possession at their own liability; such property could be transferred to an external person only after a written request from the prisoner had been approved by the Comptroller-General or, for items valued over £50, by the Under Secretary.<sup>41</sup> Queensland was the only jurisdiction that contained these provisions in its legislation.

Official visitors who could enter prisons and converse with prisoners were limited in the 1890 Act to Ministers of the Crown, members of the judiciary, a Visiting Surgeon and a Visiting Justice, except when approval had been

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<sup>38</sup> These included 'unconvicted prisoners, appellants and prisoners on remand'.

<sup>39</sup> Section 23 relates to prisoner property.

<sup>40</sup> NSW legislation contained provision for the surrender of property for safe keeping on reception and fingerprinting of the prisoner. New South Wales Government, *Prisons Act 1952*, ss. 18 (1) & 19, Sydney.

<sup>41</sup> While the reason for this is not documented it can be surmised that the senior level of authority required to approve this would act as a deterrent to prisoners or their associates using the 'valuable' item as a commodity to pay for alternative goods, services or protection.

obtained from the Minister, the Comptroller-General or a Visiting Justice.<sup>42</sup> This was changed in section 24 of the *Prisons Act 1958* where the term 'Police Magistrate' was replaced with 'Stipendiary Magistrate' and the Superintendent became the approving authority rather than a Visiting Justice. This ensured the Superintendent could decide who, when and potentially why any visitors entered the prison. NSW limited the official visitors who could visit any gaol at any time to Judges of the Supreme Court and the Chairman of the Quarter Sessions.<sup>43</sup> Similarly, Victoria allowed Judges of the Supreme Court and Justices who had jurisdiction in Victoria to visit any gaol at any time.<sup>44</sup>

The enforcement of labour during incarceration continued with both section 73 of *The Prisons Act 1890* and section 25 of the 1958 Act permitting the medical officer to apply painful tests to detect malingering. Unlike the 1890 Act, the new Act required the Superintendent or Visiting Justice to be present when these tests took place.

Section 26 of the 1958 Act pertained to the suspension of a prisoner's sentence during any period of escape, appeal (unless the prisoner remained in custody and requested to be treated as an ordinary prisoner serving a sentence), bail or for any other reason.<sup>45</sup> This was an addition not included in the legislation of other jurisdictions and removed any ambiguity as to what constituted 'time served'.

The granting of early release, which is different from remission, was possible for Queensland prisoners. Under section 27(1), any prisoner whose discharge date fell on a Sunday was to be released on the immediately preceding

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<sup>42</sup> Queensland Government, *The Prisons Act 1890*, section 53, Brisbane.

<sup>43</sup> New South Wales Government, *Prisons Act 1952*, section 11, Sydney.

<sup>44</sup> Victorian Government, *Gaols Act 1958*, section 17, Melbourne.

<sup>45</sup> This meant that when a prisoner was no longer in physical custody the calculation of their sentence stopped during that period of absence. In the case of a prisoner who appealed their sentence, they would normally revert to the classification of a remand prisoner, however, if they requested to be treated as a prisoner serving a sentence all of their time in custody was credited as 'time served' if the outcome of the appeal resulted in a custodial sentence.

Saturday. If a prisoner was serving a sentence longer than twelve months, under subsection (2), the Comptroller-General could grant early release of up to seven days. The requirements in both these subsections had been included in the previous legislation. Subsection (3), which allowed prisoners with sentences shorter than twelve months to be discharged 24 hours early, was new to Queensland.<sup>46</sup> Subsection (4) included a new provision that was unique to Queensland, a prisoner could request to remain in prison after his discharge date for a night or 'until he was able to leave'. Kerr asked for this inclusion on practical grounds because there may be late evening discharges for fine payments or, in the case of discharges from farms, flooding or lack of public transport may render egress impractical.<sup>47</sup>

Section 28 (1) specified the reporting requirements when a prisoner died in custody. It contained some changes from the 1890 Act; in particular, the Coroner investigating the death could not be the Visiting Justice of the same prison. The police would investigate the death if required and collect the necessary evidence, and then the coroner would make his recommendations from the investigation. Therefore, for the prison administrators the main relevance of this section was the appropriate and timely removal of the body. While NSW had a similar provision for investigating deaths in custody and reporting to a coroner,<sup>48</sup> the Queensland legislation went further than those of other jurisdictions in that it specified requirements regarding the release of the body of the deceased prisoner to relatives. If the body remained unclaimed, after three days it could be buried by the Government Undertaker or, if the prisoner had been serving a life sentence, the body could be used for medical research. This three-day limit was added after Visiting Justice, R Kennedy, recommended a 'period of time should be set' to protect the Comptroller-

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<sup>46</sup> NSW had a similar provision in section 41 (1).

<sup>47</sup> Department of Justice, 'The Prison's Bill, draft number 2', 1958, QSA., JUS/W63, item 20378; S Kerr, letter to the Under Secretary Department of Justice 'Re Draft Bill relating to Prisons and Custody of Prisoners', 22 July 1958, QSA., PRV 9251/1/33.

<sup>48</sup> New South Wales Government, *Prisons Act 1952*, section 43, Sydney.

General<sup>49</sup> where a body otherwise could remain unclaimed for an extended period and the deceased's relatives may later complain about the manner of its disposal.

Section 29 updated without changing the 1890 Act's reporting requirements for prisoners who were to appear in a Supreme or Circuit Court sitting and the verdicts of those sittings.

The use of labour during incarceration, including hard labour, was common practice in all jurisdictions. The NSW *Prisons Act 1952*,<sup>50</sup> the New Zealand *Penal Institutions Act 1954*<sup>51</sup> and the Victorian *Gaols Act 1958*<sup>52</sup> stipulated that even prisoners not sentenced to hard labour could still be required to perform work. Victoria also included the requirement that the labour could only be that 'which is not severe'.<sup>53</sup> Queensland had defined what hard labour constituted for many years. Under section 39 of *The Prisons Act 1890* hard labour was to 'consist of work at the tread-mill, shot-drill, crank, capstan, stone-breaking, work upon public roads or streets, or any other public work, and such other description of industrial labour as may from time to time be prescribed by the Minister'. In 1955, Visiting Justice R Kennedy had recommended that mention of out-dated labour methods such as treadmills should be removed from the 1890 Act.<sup>54</sup> This definition was not altered until the Government changed and the Queensland Prisons Act was updated so that in section 30 (1), hard labour was defined as 'any manual, industrial or trade labour of the type performed in the community and as may from time to time be determined by the Comptroller-General'. In both the 1890 and 1958 Queensland legislations, every prison was required to make provision for hard labour.

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<sup>49</sup> R Kennedy, 'Letter regarding The Prison's Bill', 21 July 1958, QSA., PRV9251/1/33. In this letter, the reference was to clause 27 (3); however, this clause was renumbered in the second draft.

<sup>50</sup> New South Wales Government, *Prisons Act 1952*, section 20 (1), Sydney.

<sup>51</sup> New Zealand Government, *Penal Institutions 1954*, Section 16 (2), Wellington.

<sup>52</sup> Victorian Government, *Gaols Act 1958*, section 23, Melbourne.

<sup>53</sup> *ibid.*

<sup>54</sup> R Kennedy, letter to the Under Secretary Department of Justice regarding legislative provisions, 28 Nov. 1955, QSA., JUS/W63, item 20378.



Under section 31 of the *Prisons Act 1958*, a Judge of the Supreme or Circuit Courts was able to direct a Superintendent to produce a prisoner to appear before the court for any specified reason. This section was similar to the provisions in section 76 of the 1890 Act, except that a 'Judge of any District Court' was no longer specifically defined as a justice who could order a prisoner to appear.

### ***The Discipline of Prisons***

The discipline of prisoners and the definition of offences against the Queensland *Prisons Act 1958* commenced from section 32, in subsection (1); while there were some new provisions many minor offences were either identical or updated slightly from section 28 in *The Prisons Act 1890*. Minor changes were made to section 32 (1) and the updated provisions included paragraph (a), which related to compliance with directions. The 1958 Act included the clause 'fails to comply' which meant that unintentional omissions could be penalised. The requirement for a prisoner to work was included in section 30 (2). In paragraph (b) of section 32 (1), failure to work due to idleness, carelessness or a lack of diligence was classified as an offence; consequently, a prisoner who had the capacity to work could be penalised for failing to work or mismanaging work. Paragraphs (c) and (d) related to behaviour and language, either used or written, that could be considered an offence; the changes include the addition of writing offensive language, rather than just the inclusive 'use' of offensive language. Previously, these offences were grouped together, along with insolence which could not be used towards the 'Visiting Justice, Visiting Surgeon, or any prison officer'.<sup>55</sup> The 1958 Act omitted prison officer from this section, instead sub-paragraph (d) was expanded from 'behaves obscenely or indecently'<sup>56</sup> to include 'offensive, threatening, insolent, insulting, disorderly...' thereby including more general offences that could apply to a wider range of behaviors and to any personnel.

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<sup>55</sup> Queensland Government, *The Prisons Act 1890*, Section 28 (4), Brisbane.

<sup>56</sup> *ibid.*, Section 28 (5), Brisbane.

Paragraphs (e) and (f) were similar in content to the previous legislation with (e) maintaining the sanctity of the Divine service, while (f) continued the premise that information to and from prisoners should be controlled. Such information included mail, newspapers and ‘any’ documents. The modernisation of this section was restricted to changing the content from plural to singular, thereby ensuring that any single instance could constitute an offence. To discourage mischievous complaints, paragraph (i) replaced the words ‘prefers any false complaints’ from the 1890 Act 28 (3) as an offence, to ‘makes any groundless or frivolous complaint’. Paragraph (r) in the 1958 Act went further by including ‘knowingly makes any false allegations against any officer, prisoner or other person lawfully in the prison’.<sup>57</sup> Making a noise or disorderly conduct under paragraph (j) was an offence. Whereas the 1890 Act defined improper noise as ‘shouting, whistling, singing...’,<sup>58</sup> under the new Act this was changed to ‘makes any unauthorised noise...by any means whatsoever...’. How this section was applied will be discussed through some case studies in Chapter 5. While the silent system was not officially adopted in Queensland, there were several sections in the legislation, including this one, which discouraged communication.

Under section 11(1), psychiatrists and psychologists could be appointed to prisons. However, general prison staff were not provided with procedures or training to deal with mental health issues, as a result many instances of self-harm were instead treated as offences. Section 67 of the 1890 Act made it an offence for prisoners to willfully contract an illness, injure themselves, or to prevent healing to ‘evade labour’. Sections 32 (1) and (k) of the 1958 Act removed ‘evade labour’; instead it became an offence for prisoners to inflict injury on themselves or to prevent healing and added that it was an offence if a prisoner ‘counsels or procures another to do so’. The New Zealand Act had a similar provision in section 32 (2) (g), which stated that it was an offence if

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<sup>57</sup> New Zealand legislation had a similar offence and wording in section 32:2 (c).

<sup>58</sup> Queensland Government, *The Prisons Act 1890*, Section 28 (8), Brisbane.

a prisoner ‘wilfully wounds or injures himself or pretends illness’.<sup>59</sup> Feigning sickness to avoid work was an offence in the 1890 Act; however, in the 1958 Act, the wording ‘pretending to be sick’ in paragraph (p) was considered sufficient, regardless of the reason; which was similar to Section 32 (2) (g) of New Zealand’s *Penal Institutions Act 1954* which contained the phrase ‘or pretends illness’. Other offences in this section included damaging or vandalising property or any part of a prison. This was an offence under paragraphs (l) and (m) in both the old and new Prisons Acts, the new Act also contained the clause ‘any property that is not his own’. Section 32 (1) (k) of the New Zealand legislation provided the basis for these Queensland paragraphs, while the Victorian legislation section 38 also included provision for damaging property. Gambling in any form was prohibited under paragraph (n) of the Queensland 1958 Act and the 1890 Act section 28(9). The misuse or mishandling of food or rations was an offence under both the 1890 and 1958 Acts with the latter Act including indulgences<sup>60</sup> in section (o) which allowed for variations due to classification privileges.

Prison offences in section 32 (1) of the Queensland *Prisons Act 1958* contained four new paragraphs: paragraphs (g), (h), (q) and (s). Paragraph (g) stipulated prisoners could not move between different locations in the prison without authority and paragraph (h) prohibited possessing, giving or receiving of any articles without authority. Visiting Justice Kennedy recommended adding the phrase ‘not issued to him by the prison authorities’ to subparagraph (h) after he viewed the first draft of the Prison’s Bill. This was consequently changed to include the words ‘not issued to him by the Superintendent’.<sup>61</sup> Paragraph (q) defines a generic ‘catch-all offence’, namely ‘commits any nuisance or in any other way, offends against good order and discipline of the prison’, while paragraph (s) required prisoners to submit to having their identification characteristics and photographs recorded. These four paragraphs

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<sup>59</sup> New Zealand Government, *Penal Institutions 1954*, Section 32 (2) (g), Wellington.

<sup>60</sup> Indulgences may include any luxury items a prisoner was permitted to receive or purchase including extra food items or reading material.

<sup>61</sup> R Kennedy, ‘Letter regarding The Prison’s Bill’, 21 July 1958, QSA., PRV9251/1/33. In this letter the reference was to clause 31 (1) (h) however, due to changes in a preceding clause this was renumbered in the second draft to 32 (1) (h).

were substantially similar to offences found in New Zealand's *Penal Institutions 1954 Act*.

In the remainder of section 32, subsection (3) continued giving the Superintendent power to hear and determine punishments for offences against discipline, a similar provision had been included in the 1890 regulation 195. Subsection (7) (a–b) specified the types and duration of dietary punishments that the Superintendent could impose, including up to three days bread and water or seven days half rations<sup>62</sup> which were similar to the provisions in the 1890 Act. Section 32 (7) (c) in the Queensland's *Prisons Act 1958* specified a new punishment, namely 'exclusion from work or leisure, or both, in association with other prisoners for a period not longer than fourteen days'. This was effectively separate confinement, also known as 'separate treatment'.<sup>63</sup> The New Zealand legislation mentioned in Chapter 2 allowed for the exclusion from association through work for fourteen days and privileges could be forfeited or postponed for up to 28 days.<sup>64</sup> The New Zealand legislation provided more options for punishment of disciplinary offences and the Superintendent also had the option of applying 'any one or more' of the penalties,<sup>65</sup> however, there were no additional official 'secondary' punishments. This differed from Queensland where a breach of discipline incurred disorderly marks, as well as loss of indulgences, mail, visits, overtask marks and potential loss of remission. Chapter 5 provides a description of these secondary punishments and their application following an offence.

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<sup>62</sup> A half rations punishment is based on the food entitlement for a working male prisoner. This was defined in a ration scale within regulation 317; non-working males were to receive four fifths of a working male's rations. This definition provided a measurable amount that could be applied to subsection (11) where 'the term "half rations" meant one-half of a non-working ration'. A daily ration consisted of approximately 6 ounces (180 gram) of bread, 1 ounce (30 grams) of oatmeal, 5 ounces (120 grams) meat and 5 ounces (120 grams) of vegetables.

<sup>63</sup> Chapter 3 identified that the application of this punishment was generally limited to HM Prison Townsville under Superintendent Whitney with fewer than ten instances per annum, whereas dietary punishments in Townsville ranged between 40 and 100 instances per annum during the same period.

<sup>64</sup> New Zealand Government, *Penal Institutions 1954*, Section 34 (3) (e) (b), Wellington.

<sup>65</sup> *ibid.*, Section 34 (3), Wellington.

The other subsections under Queensland's section 32 that were similar to the New Zealand legislation were subsections (5) & (6). Subsection (5) gave the Visiting Justice authority to determine disciplinary offences referred to him by the Superintendent and subsection (6) entitled a prisoner to be present, heard and cross-examine any witnesses during the Superintendent's or Visiting Justice's hearings.

The following section 32 subsections were new to the Queensland *Prisons Act 1958* and were not contained in the legislation of other jurisdictions. Subsection (2) made it an offence for anyone to 'attempt to commit any offence against discipline'; this included anyone who 'aids, counsels, or procures the commission of any such offence'. Subsection (4) (a) required any disciplinary offence committed by a prisoner against the Superintendent to be referred to the Visiting Justice. Where other offences had been committed and did not involve the Superintendent subsection (4) (b) gave the Superintendent the option of referring second and subsequent offences to the Visiting Justice for determination.<sup>66</sup> If a prisoner was confined in a punishment cell for four days or longer, subsection (9) required a medical officer to visit the prisoner at least twice during that period. This was included after Kerr recommended that a medical officer visit any prisoner on bread and water rations 'at least twice each week'.<sup>67</sup> Subsection (10) allowed the Superintendent or Visiting Justice to make the final decision regarding disciplinary punishment allowed under section 32 of the *Prisons Act 1958*. This was achieved by removing the ability of prisoners to appeal punishments for section 32, offences against discipline, under the *Justice Acts 1886 to 1956*.<sup>68</sup> While this reduced the loss of time and resources caused by processing complaints by prisoners who were dissatisfied with the punishments they received, it also meant the prevention of judicial reviews that ensured transparency, consistency of punishments and the prevention of possible abuse of power.

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<sup>66</sup> In addition to the VJ being independent from the prison administrators he also had different sentencing options available.

<sup>67</sup> S Kerr, Letter to the Under Secretary, Department of Justice 'Re: Proposed New Prisons Acts', 16 Sept 1958, QSA., JUS W63, item 20378; Department of Justice, 'The Prison's Bill, draft number 2', 1958, QSA., JUS/W63, item 20378.

<sup>68</sup> Queensland Government, *Justices Act 1886–1956*, part IX, Brisbane.

Major offences which could be committed by prisoners were specified in section 33. Subsection (1) paragraphs (a)–(f) and (i) remained the same as in the 1890 Act.<sup>69</sup> Paragraph (a) included ‘escape’ as an offence, whereas previously only attempting escape had been specified. Threatening a prison officer with grievous bodily harm had been an offence in the 1890 Act; this was expanded in the 1958 Act paragraph (d) to include threatening ‘any prisoner’. Paragraphs (f) and (i) were the same in both Acts, with (f) relating to mutinies, riots or tumults, while (i) provided another ‘catch-all offence’, namely ‘commits any other act of gross insubordination’. Liberal Member for Windsor, Percy Smith, recommended that the term ‘gross insubordination’ needed to be clearly defined in light of the types of incidents that had been occurring. He considered it was useless to attempt to rehabilitate some prisoners but it was necessary to control all prisoners.<sup>70</sup> The *Prisons Act 1958* did not provide a definition of gross insubordination; however, new offences were added that were not included in other jurisdictions’ legislation. These were (g) ‘organises, attempts to organise, or takes part in any resistance or opposition to authority’, which provided the authorities with the opportunity to charge prisoners who may have instigated a disturbance while not directly participating in the action and, (h) ‘continues to make any noise or creates a disturbance... after being ordered...’ to desist on ‘two or more occasions’. While this offence could be applied in various contexts, it was most frequently applied on occasions when several prisoners ‘rallied up’ by creating a reverberating noise in the enclosed accommodation blocks by kicking their cell doors, banging objects or any loose furniture in their cells. Subsection (2) was new to this Act and almost identical to the New Zealand legislation.<sup>71</sup> Both made it an offence to attempt any of the offences listed in the preceding subsection or to ‘aid, counsel or procure the commission of any such offence’. Subsection (6) was an administrative entry summarised from the 1890 Act which allowed the sentencing Justice to enter the court’s determination in the

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<sup>69</sup> These also had similarities with both the Victorian and New Zealand legislation.

<sup>70</sup> Hansard 4/03/1958 – 3/12/1958, *Prison’s Bill*, QSL. Brisbane, p. 1495.

<sup>71</sup> New Zealand Government, *Penal Institutions 1954*, Section 32 (3), Wellington.

‘Conviction Book’. This then provided sufficient warrant for the execution of a sentence.

Subsections (3, 4, 7, 8 and 9) do not appear in the legislation of other jurisdictions or in the previous Act. They were general administrative provisions or an expansion of the requirements in section 32. Subsections (3, 8 and 9) related to the lawful establishment of a determining court, having the court closed to the public and ensuring safe custody of the record of proceedings. Visiting Justice R Kennedy recommended retention of the existing constitution of the court (i.e., two Justices, one of whom was a Stipendiary Magistrate) under section 30 of the 1890 Act; this had been removed from the first draft of the Prison’s Bill. The reason he gave for recommending two Justices was that one of the Justices would be the Visiting Justice who would ‘get an inside knowledge of the things that matter in connection with maintaining discipline in the gaol and can be of much help to that end, as well as protection to the staff against unjust and unwarranted attacks’.<sup>72</sup> Comptroller-General Kerr made a similar recommendation citing as his reasons:

a) he [the Visiting Justice] is, by nature of his position, familiar with prison requirements as regards discipline and conduct of prisoners; b) his knowledge of the requirements and practice are invaluable to any presiding magistrate; c) he can assist in providing proper balance of punishments—another essential part of prison management. Consistency of discipline and punishment are most important in control of prisoners and enforcement of discipline.<sup>73</sup>

It appears that both Kennedy and Kerr considered the VJ’s role in this instance to be the prevention of undue leniency. In contrast, FP Byrne, Under Secretary for the Department of Justice, considered ‘the role of the Visiting Justices is that of the prisoner’s friend and courts held in a prison and not being open to the public make it more desirable that the prisoner have the

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<sup>72</sup> R Kennedy, ‘Letter regarding The Prison’s Bill’, 21 July 1958, QSA., PRV9251/1/33. The reference was originally to clause 32 in this letter; however, due to the removal of a clause, it was renumbered in the second draft.

<sup>73</sup> S Kerr, letter to the Under Secretary Department of Justice ‘Re Draft Bill relating to Prisons and Custody of Prisoners’, 22 July 1958, QSA., PRV 9251/1/33.

benefit of the services of the Visiting Justice'.<sup>74</sup> This disparity may exist because Byrne is viewing the role of VJ as an independent overseer who is there to support the prisoners and report on any detrimental prison conditions or practices. Conversely Kennedy and Kerr may have seen the role as another part of the disciplinary hierarchy and to assist in prison management. Section 33(4) is similar to the provision in section 32(6) that allowed the prisoner to be present, heard, call for evidence and to cross-examine witnesses; this subsection allowed proceedings to continue in his absence if he behaved in a 'disorderly, riotous, or indecorous manner'. Section 33(7) was similar to section 32(9) in that both required at least two visits by a medical officer for any prisoner held in solitary confinement for longer than four days. However, section 33 (7) required visits twice per week, because under subsection (5) the sentencing options included up to an additional twelve months of hard labour or up to seven days of solitary confinement on bread and water for the first offence and; up to an additional eighteen months of hard labour or, up to fourteen days of solitary confinement served in periods of no more than seven days, with a minimum of a seven day break between confinements for second and subsequent offences.

The punishments for major offences varied between jurisdictions and were to remain harsh in the drafts of the Prison Bill until questioned by the Minister prior to the final draft. Under the 1890 Act the punishment for offences relating to escape and threatening a prison officer under section 29 was up to six months of hard labour or, solitary confinement for up to 'fourteen days, either continuously or at intervals'; while under section 30 of the 1890 Act the punishment for a first instance of other offences was hard labour for up to twelve months, or solitary confinement for up to fourteen days or, for a male, up to twelve lashes. For second and subsequent offences, the punishment was increased to up to eighteen months of hard labour or up to 28 days of solitary confinement for periods of up to fourteen days or, for males, up to 24 lashes. In the 1952 NSW legislation, escape was subject to a cumulative sentence of

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<sup>74</sup> FP Byrne, 'Letter to the parliamentary Draftsman, Re: Prison's Bill', 21 Oct. 1958, QSA., PRV 9251/1/33.



up to seven years<sup>75</sup>, whereas other offences could receive sentences of up to 28 days of confinement in a cell on a restricted diet.<sup>76</sup> New Zealand allowed different punishment options that could be applied individually or in any combination. New Zealand's primary punishment options<sup>77</sup> included: loss of up to three months of remission; loss or forfeiture of privileges for up to three months; an immediate negative classification change or a delay in a positive classification change of up to three months; exclusion from working with others for up to 28 days; a restricted diet for not more than fifteen days; or confinement in a cell for not more than fifteen days. In the drafts for Queensland's *Prison Act 1958* the punishment of bread and water rations, which could be applied by the Visiting Justice under both sections 32 and 33, had not been changed from the 1890 Act and remained in the first four drafts of the Prisons Bill. It was not until AW Munro, Minister for Justice, questioned the severity of this punishment<sup>78</sup> that a comparison was made with NSW, Victoria and UK legislation.<sup>79</sup> After this comparison was completed the Minister indicated that he expected it to be reduced in the fifth draft from fourteen days to seven days bread and water rations for minor offences for the first major offence and, from 28 days to fourteen days for second and subsequent major offences.<sup>80</sup>

Section 34 of the Queensland *Prisons Act 1958* stated that any additional terms of imprisonment given under this Act were cumulative upon each other and on any other terms of imprisonment. This was a mandatory requirement, whereas the previous Act allowed the adjudicating Justices to direct the sentences to be served concurrently if they considered it appropriate.<sup>81</sup>

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<sup>75</sup> New South Wales Government, *Prisons Act 1952*, section 34, Sydney.

<sup>76</sup> *ibid.*, section 24 (3).

<sup>77</sup> New Zealand Government, *Penal Institutions 1954*, Section 33 (3), Wellington.

<sup>78</sup> AW Munro, 'Notes- 10<sup>th</sup> November, 1958. Re draft no. 4 of Prison's Bill', 10 Oct. 19 Nov. 1958, QSA., JUS W63, item 20378.

<sup>79</sup> Byrne, FP, File note in response to Ministers phone question, 10 Nov. 1958, QSA., PRV 9251/1/33.

<sup>80</sup> AW Munro, 'Notes- 10<sup>th</sup> November, 1958. Re draft no. 4 of Prison's Bill', 10 Nov. 1958, QSA., JUS W63, item 20378.

<sup>81</sup> Queensland Government, *The Prisons Act 1890*, Section 32, Brisbane.

Corporal punishment could still be administered under section 35, however, the 1958 Act required the medical officer to certify that the prisoner was up to receiving the punishment 'without danger to life or health'. 'Whipping' remained a judicial punishment option in the Criminal Code and even though it was not used by the courts Kerr stated that while corporal punishment remained in the Criminal Code<sup>82</sup> there needed to be a method available to administer the decision of the court. He considered that prison was the most appropriate location for this and there needed to be authority in the prison legislation for this to occur.<sup>83</sup>

Sections 36 and 37 dealt with administrative matters. Section 36 (1) required the Superintendent to record any determinations regarding disciplinary offences made under section 32 in the 'Superintendent's Punishment Book'. It will be seen in the next chapter that the entries were dependent on the integrity of the Superintendent making them. Therefore, the Visiting Justices' reports under section 36 (2) could potentially be based on incorrect information that was unlikely to be detected. However, section 37 (1) provided more accountability by requiring signatures from the charging officer and the determining Justices. Subsections (2) and (3) were similar in content to the 1890 Act and related to entries made in the Conviction Book and authority to certify copies of those entries by the Superintendent. Subsection (1) was new to Queensland legislation, but the entire section was similar to entries in the Victorian *Gaols Act 1958*.<sup>84</sup>

The single section of the Queensland 1958 Act that had been in the 1890 Act and in the legislation of the other jurisdictions was 38 (1)(a) that dealt with the introduction of contraband to prisons. The wording of the New Zealand legislation contained the most similarity, with only 'institution' and 'inmate' respectively replaced by 'prison' and 'prisoner' in the Queensland

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<sup>82</sup> Refer to Section 18 of the Criminal Code and the application of whipping as a punishment.

<sup>83</sup> S Kerr, Letter to the Under Secretary, Department of Justice 'Re: Proposed New Prisons Acts', 16/9/1958, QSA., JUS W63, item 20378.

<sup>84</sup> Victorian Government, *Gaols Act 1958*, sections 46 & 47, Melbourne.

legislation.<sup>85</sup> In the first draft of the Queensland legislation, the offence under section 38 (1) (e) of photographing prisoners or prison-related items prompted a request from the Australian Journalists' Association that it be removed. It argued 'it was unnecessarily restrictive and constituted an interference with public interest'.<sup>86</sup> John E Duggan, the leader of the Opposition, had previously argued the advantages of taking photographs because he considered photographic evidence would assist in garnering public pressure for change, for example 'in prison design'. He also considered that the media could influence public perceptions.<sup>87</sup> In reply, Munro stated that he welcomed any publicity identifying inadequacies because this would provide pressure for more funds to be allocated to prisons.<sup>88</sup> Kerr was not in agreement, instead believing that other than for identification purposes, photographing prisoners without their consent was 'an unlawful assault'. He also considered it was 'likely to cause embarrassment to the prisoner, his relatives and friends' and most important of all it was a threat to security as there already existed sufficient authority to authorise 'photographs in the interests of public good'.<sup>89</sup> Under Secretary of the Department of Justice, FP Byrne, added that the clause was derived from the New Zealand Act and there were no similar clauses in the Victorian, New South Wales or South Australian Prisons Acts.<sup>90</sup> Ultimately the restrictive clause remained in the legislation.

Of the remaining parts of section 38, only subsection (3) (a), which dealt with entering or attempting to enter a prison without authority and subsection (5), which stated that a prison officer convicted of an offence against section 38 would forfeit his office, had similar provisions in the 1890 Act. Section 38 related to offences committed by persons other than prisoners and included the authority to arrest and prosecute followed by the possible penalties.

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<sup>85</sup> New Zealand Government, *Penal Institutions 1954*, Section 43 (1) (a), Wellington.

<sup>86</sup> T Sweeney, 'Australian Journalists' Association letter of request', 25 Nov. 1958, QSA., Jus/W63, item 20378.

<sup>87</sup> Hansard 04/03/1958- 3/12/1958, *Prison's Bill*, QSL., Brisbane, p. 1737.

<sup>88</sup> *ibid.*, p. 1738.

<sup>89</sup> S Kerr, 'Letter Re: Prison's Bill- Photographing of prisoners', 25 Nov. 1958, QSA., Jus/W63, item 20378.

<sup>90</sup> FP Byrne, 'Confidential letter to the Honourable the Minister, Re: Prison's Bill', 25 Nov. 1958, QSA., Jus/W63, item 20378.

Subsections (1) to (7) had similar provisions in other jurisdictions, while subsection (8) had similarities with the UK Act;<sup>91</sup> both the UK and Queensland required publishing and display of offences under this section. Subsection (9) allowed the prosecution of offences against this section under *The Justices Act, 1886 to 1958*. After the first draft, the Parliamentary Draftsman considered Section 39 was restating the previous section but specific to prison officers and consequently the section was omitted.<sup>92</sup> Byrne asked for the inclusion of a ‘provision whereby it shall not be a defence that a prison officer charged with an offence under section 38 (1) (a) or (b) or (c) to allege that he had authority...otherwise it is the word of the Superintendent against that of the prison officer’.<sup>93</sup> Kerr explained to the Under Secretary of the Department of Justice, that punishment of officers who commit offences against this section was double that of other perpetrators because ‘this type of conduct strikes at the whole root of honest prison administration...any officer who resorts to this practice is guilty of very despicable conduct...the reason for increased penalty is an endeavor to provide a strong deterrent’.<sup>94</sup> This section was refined in the subsequent drafts to restrict the authority to introduce items into the prison to those nominated in the Act or allowed by the authority of the Superintendent. After the last draft, the maximum penalty for a prison officer who committed offences against section 38, which had been twice that of other perpetrators in the previous drafts, was removed.<sup>95</sup> This meant that any offenders against section 38 would be subject to the same penalties, regardless of their employment. This was not to prevent separate action being taken for breaching employment conditions under the *Public Services Act 1922*.

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<sup>91</sup> United Kingdom, *Prison Act 1952*, Section 42, Office of the Public Sector Information.

<sup>92</sup> J Seymour, Parliamentary Counsel and Draftsman, ‘Letter to the Under Secretary, Department of Justice, Re: Prison’s Bill’, 14 Oct. 1958, QSA., PRV 9251/1/33.

<sup>93</sup> Byrne, FP, ‘Letter to the parliamentary Draftsman, Re: Prison’s Bill’, 21 Oct. 1958, QSA., PRV 9251/1/33.

<sup>94</sup> S Kerr, ‘Re: New Prisons Act – Proposed increase to penalty for offences by officers’, 21 Nov. 1958, QSA., PRV 9251/1/33.

<sup>95</sup> Department of Justice, ‘The Prison’s Bill, draft number 5’, 1958, QSA., JUS/W63, item 20378; Unsigned document titled ‘Prison’s Bill. Amendment to be moved’, QSA, JUS/W63, item 20378.

### ***General provision in the Act***

Section 39 was unique to Queensland's 1958 Act and it allowed determining Justices to direct a person, who had been sentenced to imprisonment for fourteen days or less, to serve their sentence in 'the nearest lock-up or watchhouse instead of a prison'. By allowing this it reduced prison overcrowding and the cost and inconvenience of transporting some short term prisoners.

Indemnity for officers committing any breach 'under or against the provisions of this Act' was provided in section 40 for any complaints not initiated within three months of the matter being committed. In addition, the defendant was to be provided one month's notice of any action that was to be taken and if such action was defeated, discontinued or failed, the section allowed for the recovery of full costs from the plaintiff. While this is a replication of parts of the 1890 Act<sup>96</sup> the indemnity only appears in Queensland legislation. As described previously, a prisoner's contact with the outside world is severely restricted and it was risky to make official complaints while in custody. The possibility existed for the defendant either directly or through third parties (other prisoners or staff) to retaliate or coerce the plaintiff to withdraw their complaint. If a plaintiff was discharged from prison more than two months after the alleged offence, there would not be enough time once free to give the required notice of intent and begin the action within the three month deadline. It would appear that time constraints severely limited the ability to make complaints unless the prisoner was discharged soon after the offence occurred and immediately began proceedings. At this point the ex-prisoner's integrity could be questioned because the complaint had not been made to the VJ or Superintendent at the time of the offence.

The remaining sections were unique to the Queensland *Prisons Act 1958*. Section 41 was administrative and the next two sections provided compassionate consideration for discharged prisoners. In section 42, a prisoner with insufficient means on discharge could receive a small sum of

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<sup>96</sup> Queensland Government, *The Prisons Act 1890*, s. 77, Brisbane.

money and a 'rail warrant to the place of arrest or prospective place of employment'. In addition, section 43 stated that if a prisoner received an injury during the course of providing 'useful labour' while in custody and was 'totally or partially incapacitated for work', then the Governor in Council could authorise payment of what he considered to be a 'reasonable' amount of compensation. In the first draft the *Workers' Compensation Act 1916-1956* did not apply to prisoners. When Munro examined this he suggested that some other provision should be made to cover prisoners injured at work.<sup>97</sup> Kerr replied that he believed that 'would open the gate for a flood of maliciously self-inflicted injuries'. He recommended the Governor in Council determine each case on its merits 'without embarrassment to any Government or setting a precedent'.<sup>98</sup> In the subsequent drafts the authority to approve a payment lay with the Minister,<sup>99</sup> until the fourth draft when the authority was transferred to the Governor in Council.<sup>100</sup>

Section 44 was administrative and related to any 'proclamation, regulation or rule made under' the *Prisons Act 1958*.

For prisoners who were convicted of failing to pay family maintenance Section 43 in the first draft allowed money to be withdrawn from their remuneration and paid to their partners.<sup>101</sup> Visiting Justice Kennedy did not believe that a 'wife starver should be singled out to have the benefits of his labour'<sup>102</sup> and while Munro was in favour in principle, he considered that its implementation was problematic and wanted to discuss the proposal further.<sup>103</sup>

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<sup>97</sup> AW Munro, 'Rough notes of matters to be discusses and considered following on a perusal of the Draft no.1 of a Bill for the "prisons Act of 1958"', 29 July 1958, QSA., JUS/W63, item 20378.

<sup>98</sup> S Kerr, Letter to the Under Secretary, Department of Justice 'Re: Proposed New Prisons Acts', 16 Sept. 1958, p. 2. QSA., JUS W63, item 20378.

<sup>99</sup> Department of Justice, 'The Prison's Bill, draft number 2', 1958, QSA., JUS/W63, item 20378.

<sup>100</sup> Department of Justice, 'The Prison's Bill, draft number 4', 1958, QSA., JUS/W63, item 20378.

<sup>101</sup> Department of Justice, 'The Prison's Bill, draft number 1', 1958, QSA.. JUS/W63, item 20378.

<sup>102</sup> R Kennedy, 'Letter regarding The Prison's Bill', 21 July 1958, p. 2. QSA., PRV9251/1/33.

<sup>103</sup> AW Munro, 'Rough notes of matters to be discusses and considered following on a perusal of the draft no.1 of a Bill for the "*Prisons Act of 1958*"', 29 July 1958, QSA., JUS/W63, item 20378.

Kerr replied that he had envisioned this provision to only apply to tradesmen<sup>104</sup> adding that ‘the offending party should ...not escape his responsibility [to pay maintenance or alimony] by serving a short period of imprisonment’.<sup>105</sup> This section targeting prisoners with a trade background was subsequently deleted from the third draft of the Prison’s Bill.<sup>106</sup> However, under s. 7 (1) (l) there was capacity for payments to occur from any prisoner where a court order had been made. This would assist the prisoners’ ex-wives if the prisoners made sufficient remuneration to allow a deduction. Another section Kerr recommended but was not included, authorised the Governor in Council to remit part or the whole of a sentence. His reason for this was that there had been cases in which prisoners were wrongly committed to prison. The sentences subsequently had been remitted and ‘subterfuge adopted’ to explain the early release to the prisoners.<sup>107</sup> This recommendation was an attempt to legislate the ability to ‘cover up’ cases of wrongful imprisonment.

### ***Legislation comparisons and contributions***

The Queensland *Prisons Act 1958* had 44 sections containing 172 subsections and paragraphs. Of these, 78 subsections were replicated, updated or expanded from the 1890 Act. Subsections not in the 1890 Act but similar to other legislation consisted of ten subsections similar to NSW; ten subsections similar to New Zealand; three subsections similar to Victoria and one subsection similar to the UK. Another ten subsections were similar to legislation from two or more jurisdictions.

The sections in the Queensland legislation that were similar to NSW legislation related to the commissioning or decommissioning of a prison;<sup>108</sup>

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<sup>104</sup> S Kerr, Letter to the Under Secretary, Department of Justice, ‘Re: Proposed New Prisons Acts’, 16 Sept. 1958, p. 2. QSA., JUS W63, item 20378.

<sup>105</sup> S Kerr, ‘letter to the Under Secretary, Department of Justice, Re: Proposed new Prison’s Bill’, 17 Sept. 1958, QSA., JUS/W63, item 20378.

<sup>106</sup> Department of Justice, ‘The Prison’s Bill, draft number 3’, 1958, QSA., JUS/W63, item 20378.

<sup>107</sup> S Kerr, letter to the Under Secretary Department of Justice ‘Re draft Bill relating to Prisons and Custody of Prisoners’, 22 July 1958, QSA., PRV 9251/1/33.

<sup>108</sup> Queensland Government, *Prison Act 1958*, section 5 (1) (a), (b), Brisbane.

appointment of medical officers;<sup>109</sup> an introductory sentence regarding the powers and duties of the Comptroller-General;<sup>110</sup> the transfer of prisoners to allow building or renovation;<sup>111</sup> segregation of troublesome prisoners;<sup>112</sup> sick bays for ill prisoners;<sup>113</sup> photographing and fingerprinting of prisoners;<sup>114</sup> the requirement for prisoners on reception to surrender all possessions for safe keeping;<sup>115</sup> and the ability of the Comptroller-General to release short-term prisoners 24 hours early.<sup>116</sup> These sections were mostly administrative except for those pertaining to the segregation of troublesome prisoners, the maintenance of identification records and the surrender of possessions for safe keeping. This indicates that NSW legislation helped make Queensland's prisons more manageable, but did not provide many innovative ideas for rehabilitative reform.

Victoria's *Gaols Act 1958* contributed the following to the Queensland legislation: a police lock-up or watch house could be declared a police gaol;<sup>117</sup> regulations permitting educational and vocational training of prisoners;<sup>118</sup> the requirement for a Justices' Conviction Book to be maintained at each prison which was to be signed by the Justices and the officer proffering the charge (this signing of the Conviction Book did provided a level of accountability). The declaration of a police gaol was an expedient measure to reduce prisoner movement. Regulations supporting rehabilitative programs, other than the administrative management of education and work programs, were not explicitly mentioned elsewhere in the legislation, thereby leaving prison reform in the area of rehabilitative programs to be buried within the functions of various staff, if their duties, budgets and organisational priorities allowed them.

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<sup>109</sup> *ibid.*, section 10, Brisbane.

<sup>110</sup> *ibid.*, section 15, Brisbane.

<sup>111</sup> *ibid.*, section 16 (1) (v), Brisbane.

<sup>112</sup> *ibid.*, section 18 (1) (f), Brisbane.

<sup>113</sup> *ibid.*, section 18 (1) (g), Brisbane.

<sup>114</sup> *ibid.*, section 22 (2), Brisbane.

<sup>115</sup> *ibid.*, section 23 (1), Brisbane.

<sup>116</sup> *ibid.*, section 27 (3), Brisbane.

<sup>117</sup> *ibid.*, section 5 (1) (e), Brisbane.

<sup>118</sup> *ibid.*, section 7 (1) (i), Brisbane.



The specific contributions from the UK *Prisons Act 1952* were the requirement to advertise prosecutable offences and the penalties that may be incurred.<sup>119</sup> While not stated explicitly in the sources considered, this section was probably intended to eliminate any claim of ignorance of the law.

The contributions from New Zealand's *Penal Institution Act 1954* related to the inclusion of additional offences and punishments, more powers for police and prison officers and, allowing a prisoner to be present and cross examine witnesses during hearings. These sections included the restriction of prisoners' unauthorised movement in the prison;<sup>120</sup> prisoners' not being permitted to possess articles not issued to them;<sup>121</sup> and regulations requiring photographs, fingerprints or other identifying characteristics to be taken.<sup>122</sup> The Visiting Justice was given the authority to determine matters referred to him and;<sup>123</sup> hearings were to be held in the presence of an accused prisoner, who would be permitted to cross-examine witnesses.<sup>124</sup> An additional punishment option was included that imposed exclusion from work and/or leisure<sup>125</sup> and any attempt to commit a major offence would be treated in the same manner as committing an offence.<sup>126</sup> Taking photographs of any prisoner, area or object in a prison was an offence<sup>127</sup> and, unless authorised, prison officers could also be charged with offences under section 38.<sup>128</sup> To provide sufficient authority, police and prison officers were granted the power to seize articles suspected of being used to commit offences against the Prisons Act.<sup>129</sup>

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<sup>119</sup> *ibid.*, section 38 (8), Brisbane.

<sup>120</sup> Queensland Government, *Prison Act 1958*, s. 32 (1) (g), Brisbane.

<sup>121</sup> *ibid.*, section 32 (1) (h), Brisbane.

<sup>122</sup> *ibid.*, section 32 (1) (s), Brisbane.

<sup>123</sup> *ibid.*, section 32 (5), Brisbane.

<sup>124</sup> *ibid.*, section 32 (6), Brisbane.

<sup>125</sup> *ibid.*, section 32 (7) (c), Brisbane.

<sup>126</sup> *ibid.*, section 33 (2), Brisbane.

<sup>127</sup> *ibid.*, section 38 (1) (e), Brisbane.

<sup>128</sup> *ibid.*, section 38 (4), Brisbane.

<sup>129</sup> *ibid.*, section 38 (7), Brisbane.

Aspects that were new to Queensland's *Prisons Act 1958* related to authorising regulations that permitted prisoner visits;<sup>130</sup> allowing prisoners to spend their prison earnings;<sup>131</sup> legislating the provision of medical, dental and optical treatment;<sup>132</sup> providing a suitable diet and rations scale;<sup>133</sup> providing treatment and employment for habitual criminals;<sup>134</sup> direct payment to wives under the *Maintenance Act*;<sup>135</sup> the requirement for staff to pass exams before being employed or promoted;<sup>136</sup> the appointment of professional staff who were qualified in various fields;<sup>137</sup> legislating the appointment of a chaplain;<sup>138</sup> classification of all prisoners and separation of young offenders;<sup>139</sup> release and possession of prisoner's possessions;<sup>140</sup> suspending the sentence while the prisoner was on appeal or not in custody;<sup>141</sup> providing for the prisoner immediately after discharge;<sup>142</sup> disposal of the body after a death in custody;<sup>143</sup> the ability of the Superintendent to refer offences to the Visiting Justice;<sup>144</sup> the requirement for prisoners on dietary restrictions to be visited by a medical officer;<sup>145</sup> determinations pertaining to minor offences to have no right of appeal;<sup>146</sup> definition of dietary punishment of half rations;<sup>147</sup> treatment of prisoners who organised disturbances or continued to make noise;<sup>148</sup> the closure to the public of court hearings for major offences;<sup>149</sup> and possible compensation for prisoners injured while performing work.<sup>150</sup> Thus, Queensland had legislated in some new areas and provided some improvements to prison conditions for prisoners. Furthermore, the legislation

<sup>130</sup> *ibid.*, section 7 (1) (f), Brisbane.

<sup>131</sup> *ibid.*, section 7 (1) (g), Brisbane.

<sup>132</sup> *ibid.*, section 7 (1) (h), Brisbane.

<sup>133</sup> *ibid.*, section 7 (1) (j), Brisbane.

<sup>134</sup> *ibid.*, section 7 (1) (k), Brisbane.

<sup>135</sup> *ibid.*, section 7 (1) (l), Brisbane.

<sup>136</sup> Queensland Government, *Prison Act 1958*, section. 9 (2), Brisbane.

<sup>137</sup> *ibid.*, section 11, Brisbane.

<sup>138</sup> *ibid.*, section 13, Brisbane.

<sup>139</sup> *ibid.*, section 18 (1) (d), (e), (h)–(j), Brisbane.

<sup>140</sup> *ibid.*, section 23 (2) – (4), Brisbane.

<sup>141</sup> *ibid.*, section 26, Brisbane.

<sup>142</sup> *ibid.*, section 27 (4) & 42, Brisbane.

<sup>143</sup> *ibid.*, section 28 (2) – (4), Brisbane.

<sup>144</sup> *ibid.*, section 32 (4), Brisbane.

<sup>145</sup> *ibid.*, section 32 (9) & section 33 (7), Brisbane.

<sup>146</sup> *ibid.*, section 32 (10), Brisbane.

<sup>147</sup> *ibid.*, section 32 (11), Brisbane.

<sup>148</sup> *ibid.*, section 33 (1) (g) & (h), Brisbane.

<sup>149</sup> *ibid.*, section 33 (8), Brisbane.

<sup>150</sup> *ibid.*, section 43, Brisbane.

required a higher level of education for recruitment and promotion. However, it also reduced transparency regarding punishment by limiting appeals and public access to hearings.

## **Conclusion**

This chapter has shown that the Queensland *Prisons Act 1958* contained several new features pertaining to various aspects of the management of prisons and prisoners. While a large proportion of the Act was based on the previous Prisons Act, some parts were adapted from other jurisdictions and other sections appear to have been unique to Queensland. Overall, the legislation provided some opportunities for the development of prisoners through education and vocational training and allowed compensation if they were injured during that work. The remainder of the Act reflected the intention to ensure that prisons operated efficiently by regulating staff recruitment, behavior and promotion while also defining numerous actions and behaviours as offences, by staff, prisoners and others. The chapter shows that as Wanna and Arklay had stated, this was mainly ‘tinkering’ with existing legislation with little time devoted to consultation.<sup>151</sup> This ‘modernisation’ of the *Prisons Act 1958* provided some reform in the area of administration that reinforced a conservative approach to prison management, while reform in the area of prisoner rehabilitation was limited.

Chapter 5 will discuss the tension that existed between the application of reform and the need to maintain discipline and security, particularly because prison staff and administrators favoured a conservative application of prison management. This tension will be examined by considering disciplinary statistics and case studies to determine whether prisoners and staff actively supported or opposed the policies enacted in the *Prisons Act 1958*. It considers the application of the legislation and assesses whether the *Prisons Act 1958* provided the groundwork for an improved prison system or whether it was in fact a missed opportunity for reform.

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<sup>151</sup> T Wanna & T Arklay, *The Ayes Have It: The History of the Queensland Parliament, 1957-1989*, 2010, Canberra, p. 166.

## **Chapter 5 Policy on the prison floor**

The previous chapter examined the *Prisons Act 1958* in detail and discussed the new or updated sections and how they compared with legislation in other jurisdictions. This chapter investigates the application of prison management principles in the years after 1958 by using case studies and statistical analyses to evaluate the responses of prison staff and prisoners to the Act. Because of their influence upon prison management there will be an initial introduction to the key prison administrators during the period under review. This will be followed by a discussion of staff development and its limitations with some examples provided of the trafficking of contraband, goods and services. The use of infrastructure as an aid to reinforce the prison regulations will be considered, and to demonstrate this, case studies will be drawn on to show that the enforcement of silence continued as an example of outdated regulations. The application of regulations, as evidenced by the records of punishments, will be considered and trends will be depicted in several graphs, while the implications of secondary punishments imposed as a consequence of disorderly marks will be discussed. The extent to which prisons relied on employment and education as rehabilitation options will be considered, and it will be seen in this and the next chapters that these were under resourced. Parole and the alternative of remitted discharge will be discussed, especially with respect to the support for and consequences of these discharge options. These discussions, with statistical data, will show how policy was applied following the *Prisons Act 1958* and it will be seen that a conservative approach to discipline and security remained a primary focus of the prison administrators.

### ***Prison administrators***

Leaders influence the application of policy in their organisations and it will be seen that Queensland's prison administrators encouraged the enforcement of strict discipline. Under the 1890 and 1958 Prison Acts, they had the authority to determine what constituted breaches of the regulations and to apply

punishments, which will be examined later in this chapter. The leaders (in this case, prison superintendents and the Comptroller-General) promoted or suppressed the enforcement of disciplinary regulations modulating the severity and regularity of punishment. It is thus necessary to briefly consider their backgrounds and Figure 5.1 depicts the duration of their tenures.

The Comptroller-General prior to the *Prisons Act 1958* was William Rutherford who first commenced in the newly created position of Deputy Comptroller-General on 1 December 1947.<sup>1</sup> He was then promoted to Comptroller-General on the 20 August 1948 following the resignation of his predecessor and held this position until 1957. Rutherford had a reputation for not being as strict as his successor. He allowed prisoners to be creative with their rations,<sup>2</sup> which was seen by prison staff as indulging the ‘crims’, while a member of parliament considered him to be ‘too warm hearted and compassionate’<sup>3</sup> and many years later would still speak of these attributes with derision. The next Comptroller-General whose tenure spanned the period being reviewed in this thesis was Stewart Kerr (DOB: 12 May 1908). Kerr was a Detective Sargent<sup>4</sup> who worked in the police CIB for fifteen years prior to becoming Deputy Comptroller-General of Queensland Prisons on 25 November 1948.<sup>5</sup> He continued in that position<sup>6</sup> under Rutherford until he became Comptroller-General on 21 November 1957. Kerr was considered by some staff to be a ‘top prison administrator’,<sup>7</sup> however, when he first applied for the Comptroller-General’s position none of the applicants were regarded as suitable for appointment. Nevertheless, after the short-term interim

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<sup>1</sup> JF Whitney, *Report of the Comptroller-General of prisons for the 18 months ended 30<sup>th</sup> June, 1948, with Statistical Tables for the year ended 31<sup>st</sup> December, 1947*, Brisbane, 1948, p. 6.

<sup>2</sup> This involved withholding some meat from the lunch rations and making this into pasties for dinner.

<sup>3</sup> JR Stephenson, *Nor iron bars a cage*, Boolarong, Brisbane, 1982, p. 48; Parliamentary Debates, *Prisons Act Amendment Bill*, 9 December 1969, p. 2235, QCSA library.

<sup>4</sup> ‘Gaol Inquiries’, *Townsville Daily Bulletin*, 28 Dec. 1948, p. 2.

<sup>5</sup> W Rutherford, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1949*, Brisbane, 1949, p. 7.

<sup>6</sup> Kerr also served briefly as the Superintendent of Brisbane Prison in 1957 because both the Superintendent’s and Deputy Comptroller-General’s positions held the same classification which enabled exchange of positions.

<sup>7</sup> JR Stephenson, *Nor iron bars a cage*, Boolarong, Brisbane, 1982, p. 64.

appointee resigned Kerr was offered the job.<sup>8</sup> He then remained in the position until he was forced into retirement in 1974.

Another long-term administrator was Alan Sydney Joseph Whitney (DOB: 6 Jan. 1915) who was first appointed to Queensland prisons on 8 April 1936 as a base-grade officer when his father, James Francis Whitney, was Comptroller-General (1935<sup>9</sup> to 1948). Whitney then served in the Provost Corp during World War II<sup>10</sup> and from 1952 to 1971 he was superintendent in several gaols before being appointed Deputy Comptroller-General in 1971. In 1974, he was promoted to Comptroller-General following Kerr's retirement (refer to Chapter 7 p. 239). A very experienced prison administrator was Major William Lomas Philipe Sochon (DSO) (DOB: 25 Dec. 1904) who had an extensive international prison and military career before moving to Australia and joining Queensland Prisons on 18 January 1960 as Superintendent of Townsville Prison. In 1927 Sochon was appointed assistant house-master at Portland Borstal Home, England. In 1929 he became Assistant Superintendent of police and prisons in Sarawak, Borneo, remaining there until 1938 after which he returned to England to work in several prisons before joining the British Army during the war and being seconded to the A.I.F. He returned to Sarawak where he was awarded the D.S.O. for his services and, in 1947, became Commissioner of police and prisons there. In 1953 he was Commissioner of prisons in Singapore then he moved to Queensland and served as Deputy Comptroller-General from 1962 until he retired on 31 December 1970.<sup>11</sup>

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<sup>8</sup> 'List of applicants for the position of Comptroller-General', 29 March 1957, QCSA historical display.

<sup>9</sup> Whitney JF was first appointed as Deputy Superintendent Brisbane Prison in 1926 when he had been recruited from the NSW prison service to pursue a 'more rigid policy of prison discipline'. 'A prison policy', *Townsville Daily Bulletin*, 4 Sept. 1926, p. 4.

<sup>10</sup> King, T, *Boggo Road and beyond*, Watson Ferguson, Brisbane, 2007, p. 65.

<sup>11</sup> 'Executive Prison Job', *The Courier Mail*, 6 April 1962; 'Prison system is claimed inadequate', *The Courier Mail*, 12 Sept. 1962; 'Application for long service leave', QSA., item A22339.

A person recruited from the New South Wales prison service<sup>12</sup> and appointed Superintendent of Brisbane Prison on 6 January 1958 was Robert F Smith (DOB: 13 Feb. 1908). He held the Brisbane position until he retired in 1971 when<sup>13</sup> John Roy Stephenson (born 1911) took over as Brisbane Prison Superintendent and served in the position until 1974. Stephenson had a family background in law enforcement<sup>14</sup> and commenced as a temporary base-grade prison officer in 1936. He resigned from the prison service but after a few years re-joined. He was promoted from the rank of prison officer to Chief Prison Officer (bypassing the First Class and Senior Prison Officer ranks) in eight years. Later, in 1963, he was promoted to Superintendent of Townsville Prison and moved from there to the Brisbane position.<sup>15</sup>

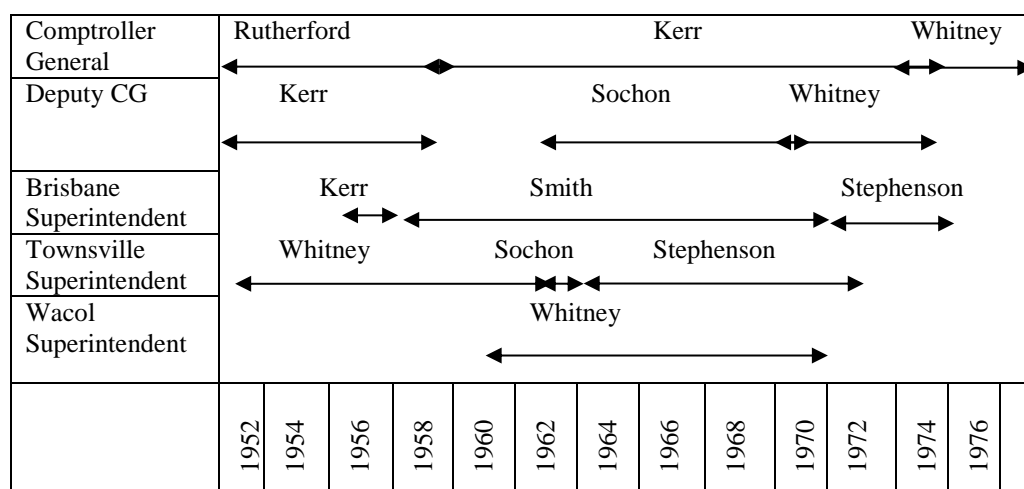


Figure 5.1 Significant Prison Administrators 1952–1974<sup>16</sup>

It is evident most of these men had worked for many years in the police or prisons industry, in addition to Whitney and Sochon who also served in the

<sup>12</sup> King, T, *Boggo Road and beyond*, Watson Ferguson, Brisbane, 2007, p. 78.

<sup>13</sup> 'Staff role and positions register-HM Prison Brisbane (Boggo Road)', 27/3/1969 - 31/12/1973. QSA., item 271643.

<sup>14</sup> Stephenson's father was a policeman and grandfather was a prison superintendent. JR Stephenson, *Nor iron bars a cage*, Boolarong, Brisbane, 1982, p. 3.

<sup>15</sup> JR Stephenson, *Nor iron bars a cage*, Boolarong, Brisbane, 1982.

<sup>16</sup> Some administrators held multiple positions simultaneously. W Rutherford, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1952 – 1956, Brisbane; TJ Quinn, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, 1957, Brisbane; S Kerr, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1958 – 1973, Brisbane; AJ Whitney, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1974 – 1975, Brisbane.

military. It could be argued this background inclined them, as a collective, toward maintaining a disciplined prison service with regimented routines and, where possible, to employ like-minded staff. In 1961, Kerr claimed there was a list of ‘very suitable applicants’ to fill vacancies at Brisbane Prison<sup>17</sup> and while this list has not been uncovered, earlier staff lists have indicated a high proportion had served in military or paramilitary services.<sup>18</sup> Although prison officers may have had similar philosophies to Kerr, this is not to say that differences of opinion did not exist within the prison service.

### ***Staff discontent***

Distrust and division between rank-and-file prison officers and senior management became apparent in 1963 when the rank-and-file complained about staffing levels and the lack of promotional opportunities. They told the press about the employment of ‘old and feeble’ staff, understaffing and ‘false reports...filed by the Department against a warder’.<sup>19</sup> They also disagreed with an assessment made by Kerr that there were insufficient senior staff capable of managing Townsville Prison, countering that many officers could perform the duties and that there were others ‘who had qualified by passing the required examinations’.<sup>20</sup>

After the 1958 Act, qualifying examinations became part of the prison staff professional development and promotion track, while the previous lack of qualifications was considered a ‘severe handicap in prison administration and a distinct disadvantage to the staff’.<sup>21</sup> Kerr believed Queensland was a long

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<sup>17</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1961*, Brisbane, p. 3.

<sup>18</sup> Of nineteen staff listed as being employed between 17 Sept. 1930 and 30/ Oct. 1933, thirteen had been in the military, police or prisons. General correspondence, QSA., item 271724; Of twenty one staff who applied for promotion in 1953, twelve were identified as serving in the military. ‘List of applicants for promotion’, 9 June 1953, QSA., item 293136.

<sup>19</sup> ‘Danger in Handling Prisoners’, *Truth*, 17 April 1963.

<sup>20</sup> *ibid.*

<sup>21</sup> Staff training was an innovation introduced in 1958, S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1960*, Brisbane, p. 2.



way behind other states in terms of creating a more 'knowledgeable' staff<sup>22</sup> and the absence of organised training hindered the implementation of prison reform. To address this he authorised staff lectures and qualifying exams,<sup>23</sup> but still lacked confidence in lower and middle management to perform higher duties, and some examples of this will be discussed in Chapter 6.<sup>24</sup> Lack of promotional opportunities, for lower and middle managers, frustrated those who had developed expectations of promotion from the ranks because of the successful completion of promotional exams. Even so, promotion from within the system tended to hinder change as inefficient or inappropriate practices were entrenched and not easily dislodged by regulation based assessments.

### ***Bending the rules***

JR Stephenson, who rose to the rank of Superintendent, tells a story in his reminiscences that illustrates that a prison sub-culture existed in which the bending and manipulation of rules was accepted by both prisoners and staff. In 1939, when Stephenson was a junior officer being measured for his Prison Service uniform, a prisoner quietly asked him to bring two ounces of good tobacco when he came back for his fitting. Prison-issue tobacco was generally poor quality but supplying a prisoner with non-standard issue tobacco was against the regulations. Stephenson was aware of this so did not supply the better quality tobacco. Subsequently, he later discovered horse hair sown into the crotch of all his trousers, which caused extreme discomfort when worn. He learnt from this experience that 'the rules needed to be bent a little at times' and 'it was difficult to upset tradition at Boggo Road',<sup>25</sup> which indicated the granting of favours in the form of goods and services was a

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<sup>22</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1962*, Brisbane, p. 1.

<sup>23</sup> Promotional examinations for First Class Warder, Senior Warder and Chief Warder included 'Arithmetical computation, Prison practice and procedure and, English'. Executive Council minutes, 'Scale of salaries for male warders', 13 June 1957, no 2287, pp. 1-4, QSA., item 845904.

<sup>24</sup> W Rutherford, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1949*, Brisbane, 1949, p. 7; 'Executive Prison Job', *The Courier Mail*, 6 April 1962; 'Prison system is claimed inadequate', *The Courier Mail*, 12 Sept. 1962; 'Staff role and positions register- HM Prison Brisbane (Boggo Road)', 27/3/1969 - 31/12/1973. QSA., item 271643.

<sup>25</sup> JR Stephenson, *Nor iron bars a cage*, Boolarong, Brisbane, 1982, p. 18.

regular occurrence. It appears that Stephenson thought it was acceptable to manipulate at least some of the rules, which must have sent conflicting messages to his subordinates. It is apparent this was a systemic problem, part of a culture not restricted to Stephenson that was discussed in Chapter 3 and will be discussed further in Chapter 6; however, Stephenson did have the courage to admit this and other revealing facts in his memoirs.

The systemic problem of favours, which extended back deep into prison history, demonstrates officers' selectiveness in the application of regulations, in this case the restriction on tobacco. Both prisoners and officers were permitted to carry and use tobacco, although inferior quality tobacco was issued to prisoners. Prisoners provided services to staff on a daily basis in the form of meals or uniforms and the quality of these services could vary, depending on the relationship between the prisoner and the officer. This working relationship could also affect the degree of policy enforcement the officer chose to exercise. While movement of tobacco was ignored, other forms of trafficking not condoned included the smuggling of alcohol or mail, both of which were considered to have the potential to compromise the safety and security of the prison (refer to Chapter 6 p. 198).

### ***Change from the outside in***

In contrast to the staffs' entrenched attitudes, the design of Queensland's prisons underwent major changes as described in the previous chapters. Victorian-era prison designs of the 1800s with no plumbing, sparsely furnished cells, small high windows and surrounded by high solid perimeter walls were superseded by seweried cells with large windows and wire perimeter fences. These modern designs offered the opportunity to use contemporary offender management techniques. Yet, while this new infrastructure reflected general reforms, some earlier thinking was still evident in the areas of physical comfort and discipline. Cost and convenience appeared to have been higher priorities than the comfort of prisoners; for example, prisoner exercise yards in facilities built in the 1800s and still in use, contained small sections of roofing which was inadequate protection from hot

or inclement weather (Fig. 5.2). In addition, to deal with the chronic overcrowding in Brisbane Prison, general purpose rooms were converted to dormitories. These make-shift dormitories were intended to accommodate 40 prisoners with an open recess in the corner containing a toilet and shower; however, because of the ongoing shortage of accommodation, in 1963, they held 88 prisoners.<sup>26</sup>



Figure 5.2 Exercise yards and shelters in Brisbane Prison c. 1950<sup>27</sup>

Victorian-era prison designs discouraged prisoners conversing by making it difficult to see each other or speak without the guards hearing, whereas the new designs made this difficult to police. In spite of the structural changes reflecting contemporary penal management, the *Prisons Act 1958* carried forward offences relating to unnecessary conversations and making noises. This allowed the prison officers to enforce the regulations as they considered appropriate. Chapter 4 provided a detailed comparison of *The Prisons Act 1890* and *Prisons Act 1958* and some examples of enforcement of the 1958 Act will be considered shortly.

<sup>26</sup> 'Brisbane Jail is "Too Full"', *Sunday Mail*, 10 Nov. 1963.

<sup>27</sup> Exercise yards and shelters in Brisbane Prison, circa 1950. Private collection of SD Webb held in QCSA historical collection.

Prison regulations under the *Prisons Act 1958* pertaining to conversation or noise related offences included: regulation 35 ‘prison officers shall prevent improper and unauthorised communications between prisoners’; regulation 260 ‘they [prisoners] shall not attempt to hold any unauthorised conversation with any person or other prisoner’; section 32 every prisoner commits an offence against discipline who- (j) ‘Makes any unauthorised noise in the prison, or in his cell, by any means whatsoever’; or if ordered to desist on two or more occasions commits a major offence against section 33 (h). Alternatively, officers could use the offence described in section 32(d) behaves ‘in a disorderly manner’.<sup>28</sup> Prison files record some examples of these offences and their punishments:

In Brisbane Prison on 13 October, 1959 ‘at about 10.20am whilst in the shower yard outside “B” wing I [the officer]<sup>29</sup> heard [prisoner’s name] whistling, I told him to stop. When the prisoner I was escorting had finished I heard [prisoner’s name] whistling again. I asked him why and he said he had nothing else to do’. This prisoner received 48 hours punishment.<sup>30</sup>

On 15 October 1959, ‘at 6:50 pm I [the officer] entered the wing and saw [prisoner’s name] up at the top front window of his cell (B.5) talking to [another prisoner’s name] in cell No.8’. Both prisoners received 24 hours punishment.<sup>31</sup>

In Townsville Prison, ‘on the 3<sup>rd</sup> day of February 1960, [prisoner’s name] a prisoner, failed to comply with a regulation of the prison Regulation 35: ‘unnecessary communication’. He received three days on half rations in a punishment cell.<sup>32</sup>

In Brisbane Prison, ‘30.11.70... Being a prisoner you did make an unauthorised noise in the prison by any means whatsoever: shouting & banging on the table with your shoe’. Prisoner received three days half rations.<sup>33</sup>

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<sup>28</sup> Queensland Government, *Prisons Act 1958*, Brisbane, 1983, s. 32 (d), (j), s. 33 (h).

<sup>29</sup> These records were released for inclusion within this study within the 65-year exclusion period; consequently, the names of offenders and officers have been omitted for privacy reasons.

<sup>30</sup> Breaches Prison Act 1959, QSA., RS 132257/1/63, item 293165.

<sup>31</sup> *ibid.*

<sup>32</sup> ‘Superintendent’s punishment book - HM Prison Townsville’, p. 116. QSA., RS13258/1/4, item, 293202.

<sup>33</sup> ‘Superintendent’s Punishment Book- Brisbane Correctional Centre’, 12/6/1959 - 26/1/1971, QSA., item 271619.

In Brisbane prison on the 24 December 1970, 23 prisoners were charged with making unauthorised noise in their cells. All prisoners were cautioned.<sup>34</sup>

Based on additional charges listed in the ‘Superintendents Punishment Book’ it is suspected the caution in the last example was applied to prevent inflaming a tense situation during the Christmas period. Offences relating to whistling, talking and making other noises, were enforced by prison officers through to at least 1970, with the support of Superintendents who continued to apply dietary punishments. Later in this chapter there is an analysis of the severity of the punishments.

In 1959, Kerr stated in his annual report that, ‘the new Act and Regulations provide for better administration of the Department, stricter discipline and security’.<sup>35</sup> This was despite reforms in the *Prisons Act 1958* indicating professional staff,<sup>36</sup> including psychologists<sup>37</sup> and education officers,<sup>38</sup> would be employed to provide rehabilitative programs. It seems that Kerr’s objective was to run the Department more efficiently with a reform focus on discipline and security. It will be seen over the next two chapters that Kerr possessed a limited commitment to rehabilitative programs and his focus on discipline and punishment raised the risk of a system which could become excessively repressive. To prevent this occurring it was especially important for decision making and management to be open to outside scrutiny.

## ***Oversight***

Transparency in the Queensland prison system was discussed in parliament in 1958, but administrators managed to limit its implementation. Minister for

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<sup>34</sup> *ibid.*

<sup>35</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1959*, Brisbane, p. 1.

<sup>36</sup> This refers to staff that require a particular educational qualification to perform their duties, for example- psychologist, medical doctors. This does not refer to the professionalism of staff.

<sup>37</sup> Queensland Government, *Prison Act 1958*, s. 11 (1), Brisbane.

<sup>38</sup> S Kerr, letter to the Under Secretary Department of Justice ‘Re Draft Bill relating to Prisons and Custody of Prisoners’, 22 July 1958, QSA. PRV 9251/1/33.

Justice, Alan Whiteside Munro, said he would welcome any publicity identifying inadequacies in the management of prisons because it would then lead to additional funding. This sentiment was supported by Liberal member, Percy Raymond Smith, who said ‘we [government institutions] should not be afraid of scrutiny and should prevent anything that might appear to stifle inquiry’.<sup>39</sup> Yet, when there was the opportunity to legislate for open ‘scrutiny’ in the *Prisons Act 1958*, this openness as discussed in Chapter 4, was limited by making it an offence to photograph or communicate with a prisoner without authority.<sup>40</sup> To maintain a level of accountability and ensure the health and hygiene of Queensland prisons, a Visiting Justice (VJ) continued to be appointed to each prison.<sup>41</sup>

The role of the VJ was to provide an independent observer who could attend the prisons on a regular basis and report to the Minister regarding health, hygiene and discipline. The responsibilities also included conducting trials for more serious prison offences and investigating prisoner complaints. Prisoners were entitled to lodge complaints with the Justice; however, their only means of achieving this was by either asking an officer to place their name on a list or, by approaching the VJ during an inspection. Both methods failed to provide anonymity or protection from recrimination. In the former case, the officer could question the prisoner regarding the complaint and might choose not to list the prisoner’s name, or at some time later remove his name if it was listed by someone else. The alternative was to approach the VJ during his inspection; however, the Justice was always accompanied by the Prison Superintendent or a senior officer who would then be aware of which prisoners made complaints. The reality of retaliation following a complaint (or threatened complaint) is evidenced in two examples on 9 January 1959. A prisoner was charged with being insolent to a prison officer after he said, ‘if I don’t get my tobacco, I will see the bloody VJ’. He pleaded not guilty but was sentenced to seven days separate confinement by the superintendent. On the

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<sup>39</sup> Hansard 04/03/1958 - 3/12/1958, *Prisons Bill*, QSL. Brisbane, p. 1738.

<sup>40</sup> Queensland Government, *Prisons Act 1958*, s. 38 (1), Brisbane, 1960.

<sup>41</sup> Queensland Government, *Prisons Act, 1890, and Rules and Regulations relating to Prisons*, s. 27, Brisbane, 1928; Queensland Government, *Prisons Act 1958*, s. 12, Brisbane, 1960.

same day, another prisoner was charged with ‘wilfully prefers a false complaint- by stating to the Visiting Justice on 8 January 1959 that he was not getting full rations and that he had had no green vegetables for eight (8) days’. The superintendent sentenced this prisoner to half rations for seven days.<sup>42</sup> Both cases reveal that making complaints regarding prison conditions sometimes resulted in reprisal. A level of transparency was incorporated in the *Prisons Act 1958* through the oversight and reporting by the Visiting Justice, but its application was hindered by the actions of both the officers and Superintendents by the potential ramifications for the complainant. To further diminish its effectiveness the sympathies of the VJ, as discussed in Chapter 4, could also bias the transparency where the role of the Visiting Justice under section 32 was considered. Another aspect spoken about by prison authorities in 1958 was rehabilitation. The aim of a modern functional and accountable prison administration is to achieve community safety, and this is enhanced by the provision of opportunities for prisoner rehabilitation.

### ***Prisoner rehabilitation***

Some of the rehabilitation opportunities identified in Chapter 2, such as education and employment, were available to select prisoners willing to work within the existing system. But this was not readily available, as evidenced by the barrister mentioned in Chapter 3, who stated that no one had approached his client about any rehabilitation opportunities while he was in custody.<sup>43</sup> Even though the *Prisons Act 1958* s. 7 (1) (i) introduced ‘educational and vocational training of prisoners’ and Regulation 433 stated ‘...reading and general studies shall, as far as practicable, be encouraged by the Comptroller-General, Superintendents and Senior Officers of every prison’,<sup>44</sup> for several years educational opportunities were limited to a few hours per week provided

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<sup>42</sup> ‘Return under section 27, of all punishments inflicted on prisoners confined in the prison at Townsville during the month of January 1959’. QSA., A/19955, item 293187.

<sup>43</sup> ‘Chance remote of reforming youths in jail’, *Courier Mail*, 19 July 1957, QSA., RS13257/1/31, item 293136.

<sup>44</sup> Queensland Government, *Prisons Regulations of 1959*, 1981, Brisbane.

by part-time and volunteer teachers<sup>45</sup> (see Chapter 6 for a more detailed discussion).

The other activity thought to encourage rehabilitation was prison employment or training; however, in 1960 Kerr stated that the 'prison population [overcrowding] and limited accommodation have hampered training of prisoners towards rehabilitation'.<sup>46</sup> Under the *Prisons Act 1958* prisoners sentenced to hard labour were required to perform whatever tasks were allocated to them. Regulation 418 expanded this further to allow an officer to direct any other prisoner<sup>47</sup> to perform work; therefore, prisoners were not permitted to refuse work if they were capable of performing the task. The regulations included several incentives for prisoners to work and alternatively, punishments if they failed to work. Punishments included withholding tobacco, matches or cigarettes (regulation 338) and; failure of a prisoner to work could be regarded as a breach of discipline resulting in punishments associated with prison offences. Incentives included: gratuity payments (regulation 345); receiving up to six overtask marks per week<sup>48</sup> (regulation 347); being employed on a state farm meant sentences were calculated as 28-day months, the remaining days of the calendar month were added to a prisoner's remission (regulation 351); prisoners who performed heavy duties might receive additional rations (regulation 324) and; prisoners working long hours or more than five days per week might be granted an extra ounce of tobacco each week (regulation 330). While prison labour was legislated, data has not been uncovered to establish the employment generated in each prison, instead, the departmental annual reports identify the amount of revenue earned or value of articles manufactured. The value was determined by the cost of

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<sup>45</sup> CL Searle & SE Riethmuller, 'Investigation and report on provision of educational facilities at Boggo Road Prison', 1968, p. 1. QSA., item 1018707; 'School will be in at the jail', *Courier Mail*, 10 Nov. 1968; 'The 3 warts of Stuart Creek', *The Sunday Mail*, 7 July 1968.

<sup>46</sup> S Kerr, 'Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1960', Brisbane, p. 1.

<sup>47</sup> These include those prisoners on remand or not sentenced to hard labour.

<sup>48</sup> Twelve overtask marks are equivalent to one day of remission.



materials plus a five to ten percent markup;<sup>49</sup> it has not been established if this included any overhead costs. The focus on cost recovery indicates application of the prison employment policy by the administrators was intent on justifying prison labour in terms of financial outcomes rather than employment generated, skills taught or total work hours achieved.

### ***Punishments applied***

Other statistics collated from the annual reports and punishment registers relate to prisoner punishment and show the trends between locations, which were influenced by the superintendent at the time. The following pages examine data regarding prison offences between 1952 and 1975 to demonstrate how punishment was applied which can indicate the response to a particular aspect of a policy. The graphs depict data from the last seven years of *The Prisons Act 1890* and seventeen years after the *Prisons Act 1958* commenced so that any trends between the old and new Prisons Acts could be captured. The figures reveal how certain regulations were breached by prisoners and enforced more often by staff. It is acknowledged that similar to the ‘dark figure’ of crime, which is unreported and unrecorded offences in the community, there is probably a ‘dark figure’ of prison offences which are those ignored or dealt with unofficially and therefore go unrecorded. It should also be noted that with each of the recorded punishments there were also secondary punishments automatically applied. These occurred because any convictions imposed by the Superintendent included a ‘disorderly mark’ by virtue of the conviction (Regulation 405).

Consequences of receiving a disorderly mark included: the loss of two days remission for each disorderly mark; an additional loss of one day of remission for each day spent in a punishment cell (Regulation 361); the loss of one week of indulgences for each day spent in a punishment cell (Regulation 362); no visits or mail received while in a punishment cell without special authorisation

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<sup>49</sup> S Kerr, *Annual report of the Comptroller-General of Prisons for the year ended 30 June, 1959*, Brisbane, 1959, p. 2.

(Regulation 370);<sup>50</sup> loss of all overtask marks<sup>51</sup> if breaching a position of trust (Regulation 348) and; the potential loss of all remission if a prisoner committed more than three discipline-related offences (Regulation 411).<sup>52</sup> It can be seen how even a ‘caution’ would still incur a conviction, resulting in the associated disorderly mark having immediate and potentially long term ramifications. Offences relate to breaches of discipline and the examples included in this chapter reveal the nature of some of these offences.

These examples have been selected to highlight some of the punishments for what appear to be minor infringements. It will be seen that some significant variations in the graphs align with staff transfers, indicating either some prison superintendents had a propensity towards formal punishment or some managed their prisons without formal enforcement. An example of a person who retained administrative positions throughout the period under review and eventually became Comptroller-General was ASJ Whitney.

As a summary of his influence, Whitney was the Townsville Prison Superintendent from 1952 to 1961 and Figure 5.3 reveals an increase in the punishment on half rations starting in 1957 from an average of 4.1 to 5.4 days. This increase cannot be directly attributed to the new legislation because during the same period in Brisbane Prison there was a decrease in the average dietary punishments. Figure 5.4 reveals that the number of offences relating to ‘disobedience of orders, disorderly conduct, loitering at work, and other breaches’ (i.e., discipline-related offences) increased in both Townsville and Wacol Prisons under Whitney with a corresponding increase in the imposition of dietary punishment (Figure 5.6). There is also a noticeable decline in the values shown in this graph when Whitney left Townsville Prison. It is worthy of note that Whitney was transferred from Townsville Prison to become Wacol Prison Superintendent and subsequently became Deputy Comptroller-General then Comptroller-General. His promotions indicate that both Kerr and

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<sup>50</sup> Visits were only permitted on certain days of the week; therefore, a prisoner would miss the visit for the week if he was under punishment during the visits days.

<sup>51</sup> Twelve overtask marks are equivalent to one day’s remission.

<sup>52</sup> Queensland Government, *Prisons Regulations of 1959*, Brisbane, 1981.

the Government approved of the way in which he applied discipline. Kerr's faith in dietary punishment was evident when, as Deputy Comptroller-General and, for a period of time in 1956-57 also Brisbane Prison Superintendent, the average duration of half rations at Brisbane Prison (Fig. 5.3) increased from 3.5 to 4.3 days. It then declined to 2.6 days in 1959 under RF Smith who was Superintendent between 1958 and 1971.

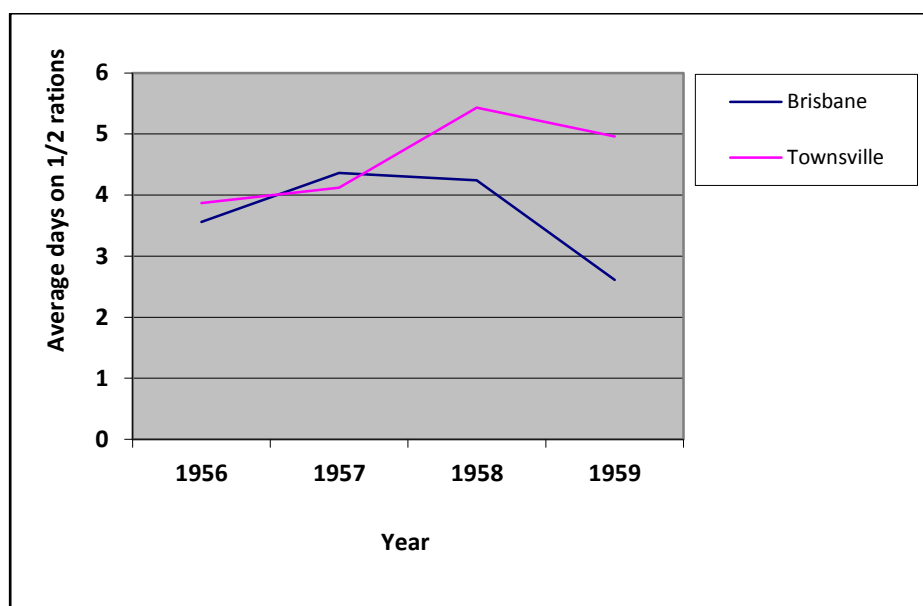


Figure 5.3 Average periods of half rations imposed in 1956 to 1959.<sup>53</sup>

<sup>53</sup> 'Superintendents Punishment Book- HM Prison Townsville', 31/8/1951 - 21/3/1967, QSA., RS 13258/1/4, item 293202; 'Superintendent's Punishment Book- Brisbane Correctional Centre', 3/7/1951 - 9/7/1959, QSA., item 271618.

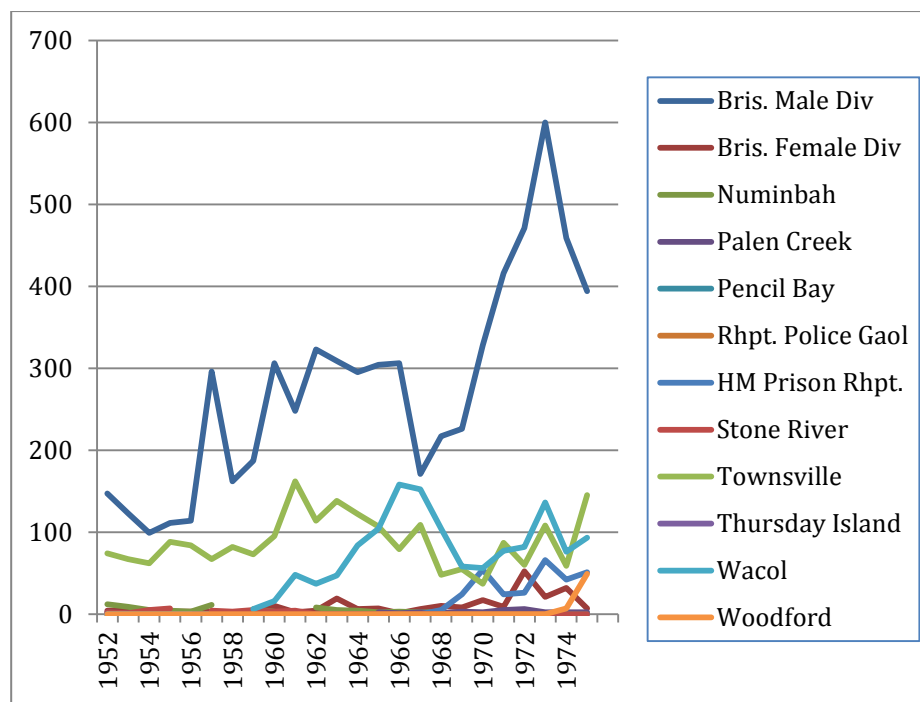


Figure 5.4 Number of offences in Queensland prisons (i.e., disobedience of orders, disorderly conduct, loitering at work and other breaches).<sup>54</sup>

Instances of insubordinate conduct<sup>55</sup> or language<sup>56</sup> in Brisbane Prison under Kerr (Figure 5.5) increased sharply to 52 cases in 1959 before declining to low numbers under Smith. Some of the variation in this graph may be attributable to the use of the generic offence of ‘disorderly conduct’ or other

<sup>54</sup> W Rutherford, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1952 – 1956, Brisbane; TJ Quinn, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June, 1957*, Brisbane; S Kerr, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1958 – 1973, Brisbane; AJ Whitney, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1974 – 1975, Brisbane.

<sup>55</sup> The offence of ‘commits any other act of gross insubordination’ was a major offence under both Prisons Acts and punishment determined by the VJ. Queensland Government, *Prisons Act, 1890*, and *Rules and Regulations relating to Prisons*, s. 30 (3), Brisbane, 1928; Queensland Government, *Prisons Act 1958*, s. 33 (i), Brisbane, 1960.

<sup>56</sup> Insubordinate conduct and language is the category used in the annual reports commencing from 1892 when *The Prisons Act 1890* began operation, W Townley, *Sheriff’s Report upon the gaols of the colony for the year 1892*, Brisbane 1893; In 1892 obscene language was a separate category in the annual report, then for the report of 1901 there was a reporting format change when the ‘offences committed’ categories were condensed without an explanation of the groupings and the category of ‘Obscene language’ was removed. AT Peirson, *Report of the Deputy Comptroller-General of Prisons for 1901*, Brisbane, 1902, p. 19; It is assumed the reference to language in the category of ‘Insubordinate conduct or language’ then refers to *The Prisons Act 1890* s. 28 (4) ‘Uses profane, obscene, blasphemous, indecent, or abusive language...’ and *Prisons Act 1958* section 32 (c) Uses or writes obscene, insolent, insulting, threatening, profane, indecent or abusive words.

offences against discipline (Figure 5.4) which were expanded under the *Prisons Act 1958*, rather than specific offences relating to insubordination or language.

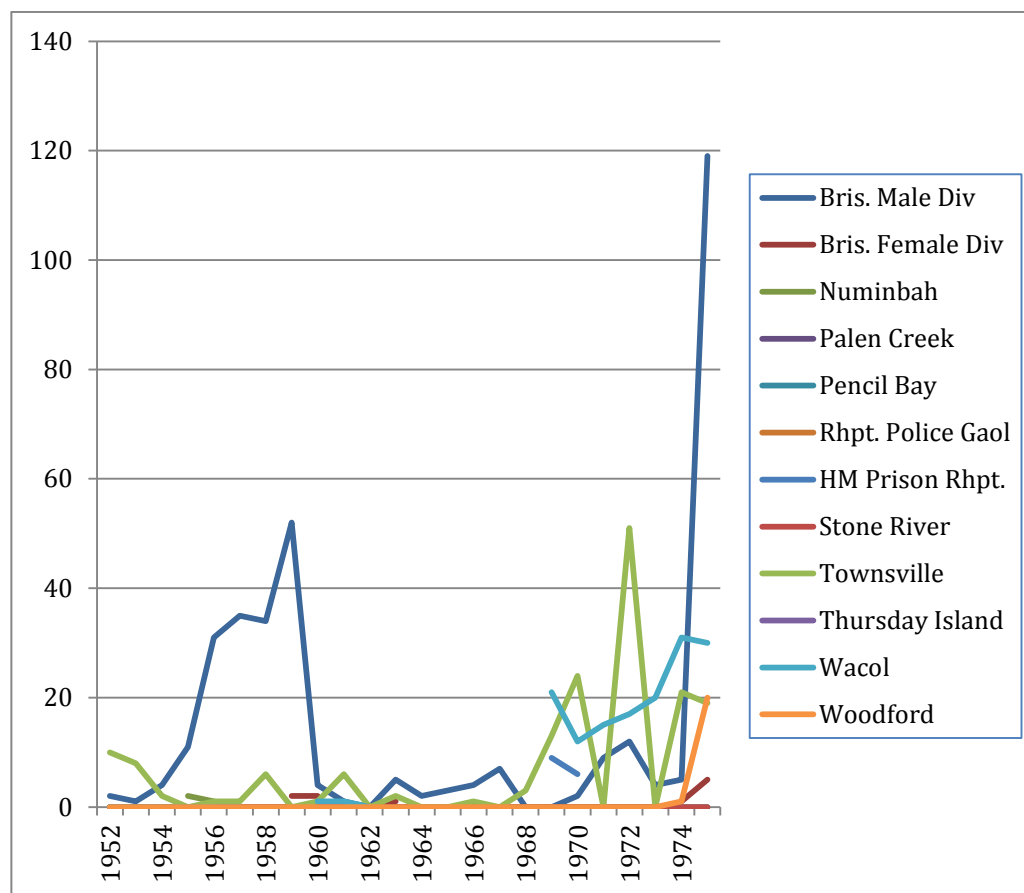


Figure 5.5 Number of cases of insubordinate conduct or language in each prison.<sup>57</sup>

It can be seen from Figure 5.6 that the imposition of punishments between the prisons mirrored the total offences which included disobedience of orders, disorderly conduct and loitering at work (Figure 5.4). Once the figures are added together to eliminate individual prison variations, Figure 5.10 shows an overlap of the trend lines for the period under review. Reduced versions of

<sup>57</sup> W Rutherford, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1952 – 1956, Brisbane; TJ Quinn, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June, 1957*, Brisbane; S Kerr, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1958 – 1973, Brisbane; AJ Whitney, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1974 – 1975, Brisbane.

Figures 5.4 and 5.10 have been included below Figure 5.6 for ease of reference.

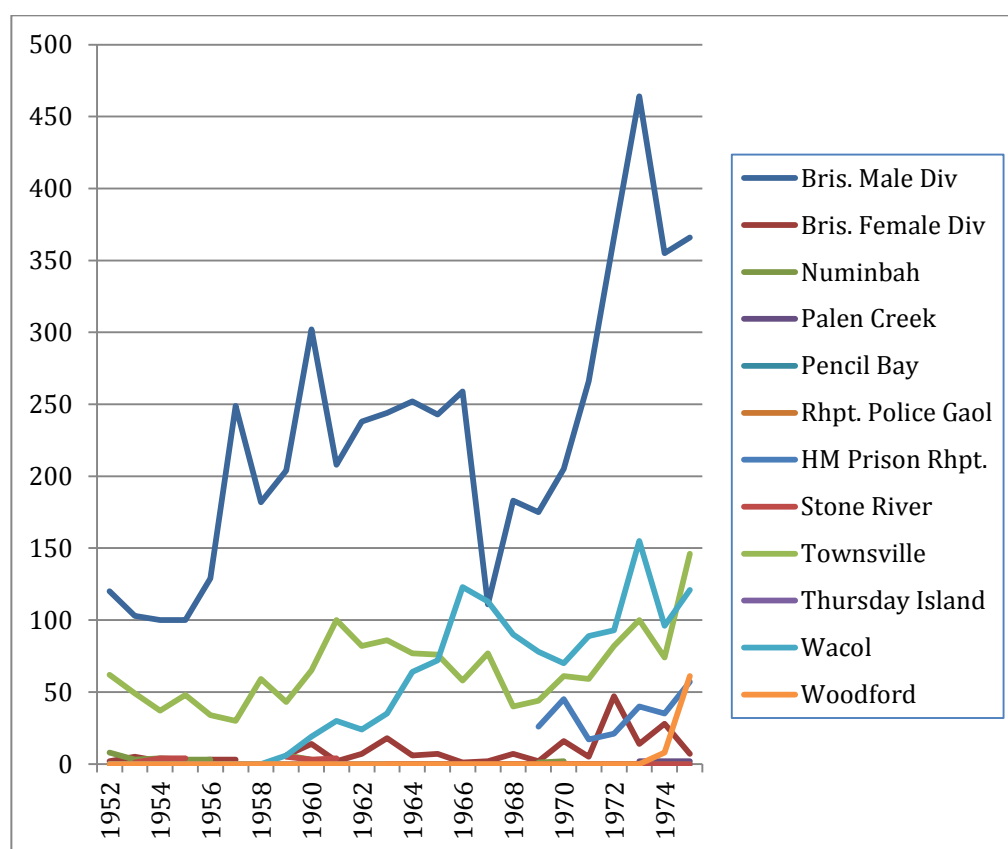
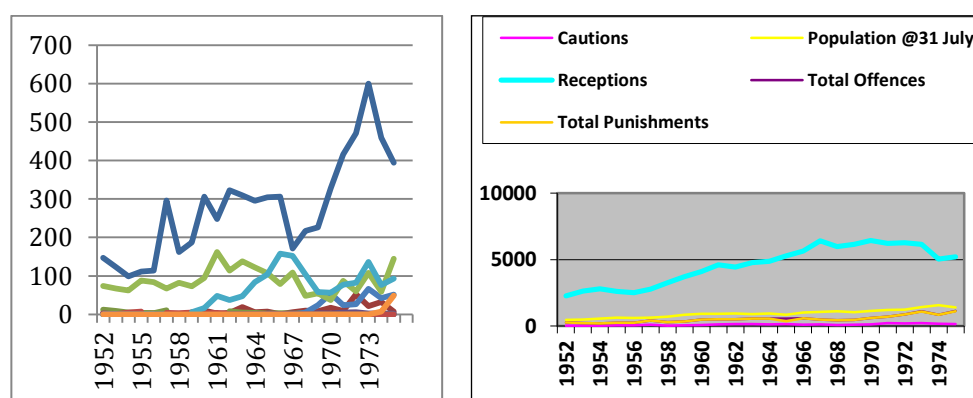


Figure 5.6 Number of cases of punishment in Queensland prisons.<sup>58</sup>



Total Offences  
(Smaller version of Figure 5.4)

Total offences and prison population  
(Smaller version of Figure 5.10)

<sup>58</sup> W Rutherford, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1952 – 1956, Brisbane; TJ Quinn, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, 1957, Brisbane; S Kerr, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1958 – 1973, Brisbane; AJ Whitney, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1974 – 1975, Brisbane.

Cases in which additional sentences (Figure 5.7) were applied remained relatively low until the late 1960s, which indicates most offences were dealt with internally by the Superintendents without being referred to the Visiting Justice. Some examples of sentences by the VJ include five prisoners charged under *The Prisons Act 1890* with ‘gross insubordination’ in Townsville Prison in 1957. They received sentences of between three and eighteen months hard labour<sup>59</sup> and a fine. In another example a prisoner was charged with two counts of being ‘insolent to a prison officer’ on the 15 and 16 November 1957 and was sentenced by the VJ on 16 January 1958 to fourteen days concurrent with the original sentence.<sup>60</sup> On the same day he was also sentenced for insolence on the 17 November 1957 to Superintendent Whitney and received three weeks hard labour cumulative to his original sentence.<sup>61</sup> Yet, another offence of insolence by the same prisoner on 29 November was dealt with by Whitney who sentenced him to three days half rations. These examples indicate there were inconsistencies in sentencing practices and referrals for sentencing. Even under the *Prisons Act 1958* one prisoner was sentenced by the VJ in October 1959 for ‘inflicting injury upon himself by cutting his left wrist’ and received one month cumulative on his indeterminate sentence;<sup>62</sup> while another who ‘inflicted an injury upon himself by burning his initials upon his left arm’ in the same month, was charged before Superintendent Whitney, convicted and cautioned.<sup>63</sup>

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<sup>59</sup> ‘Return under section 27, of all punishments inflicted on prisoners confined in the prison at Townsville during the month of January 1959’, sheets 3 – 4, QSA., A/19955, item 293187.

<sup>60</sup> *ibid.*, sheet 4, QSA., A/19955, item 293187.

<sup>61</sup> ‘Return under section 27, of all punishments inflicted on prisoners confined in the prison at Townsville during the month of January 1959’, sheet 5, QSA., A/19955, item 293187.

<sup>62</sup> EH Baker, ‘Return under section 99, of all punishments inflicted on prisoners confined in the prison at Townsville during the month of October 1959’, QSA., A/19955, item 293187.

<sup>63</sup> ‘Superintendents Punishment Book- HM Prison Townsville’, 31/8/1951 - 21/3/1967, p. 108, QSA., RS 13258/1/4, item 293202.

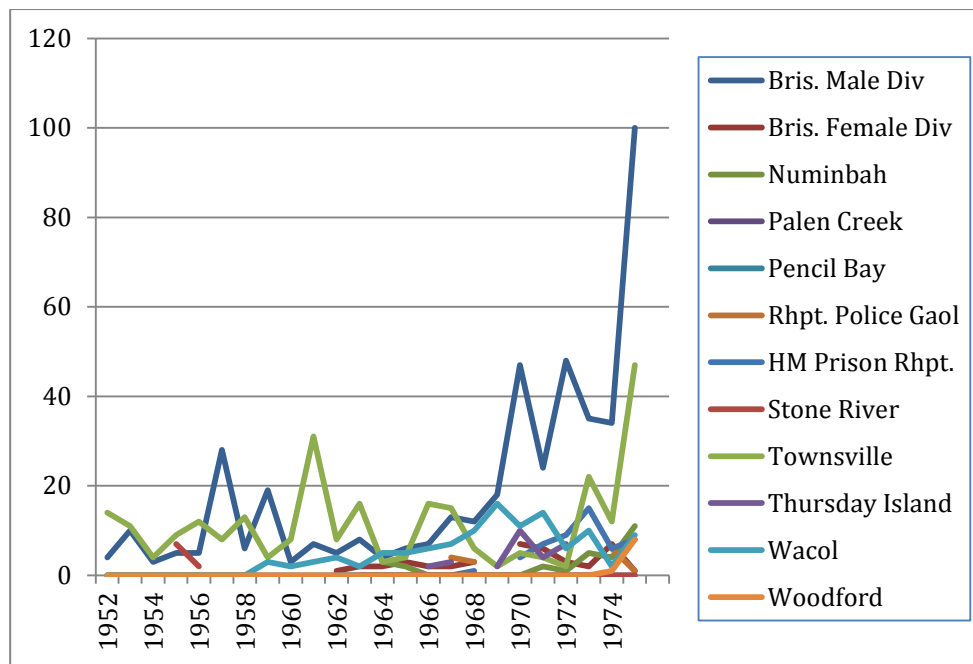


Figure 5.7 Additional sentences applied in Queensland prisons.<sup>64</sup>

An alternative to dietary punishment was the application of separate treatment which generally involved confining prisoners to their cell or the detention area<sup>65</sup> for the duration of the punishment. Separate treatment involved ‘exclusion from work or leisure, or both, in association with other prisoners for a period not longer than fourteen days’.<sup>66</sup> There was minimal use of separate treatment during the period under examination and the little that did occur was restricted almost exclusively to Townsville Prison (Figure 5.8) during Whitney’s administration. The minimal use may be viewed as either a lack of faith by other superintendents in separate confinement as an effective punishment or, operationally it may have caused an unjustifiable additional workload for staff to supervise an able bodied prisoner in his cell while others were at work or in the exercise yards.

<sup>64</sup> W Rutherford, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1952 – 1956, Brisbane; TJ Quinn, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, 1957, Brisbane; S Kerr, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1958 – 1973, Brisbane; AJ Whitney, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1974 – 1975, Brisbane.

<sup>65</sup> The ‘detention area’ generally consisted of cells located separately to the main prisoner accommodation where ‘punishment’ was applied without impacting on the running of the remainder of the prison. Having it separate also ensured the restriction of contact with other prisoners who may communicate or pass food to the prisoner under punishment.

<sup>66</sup> Queensland Government, *Prisons Act 1958*, Brisbane, section 32 (7) (c).



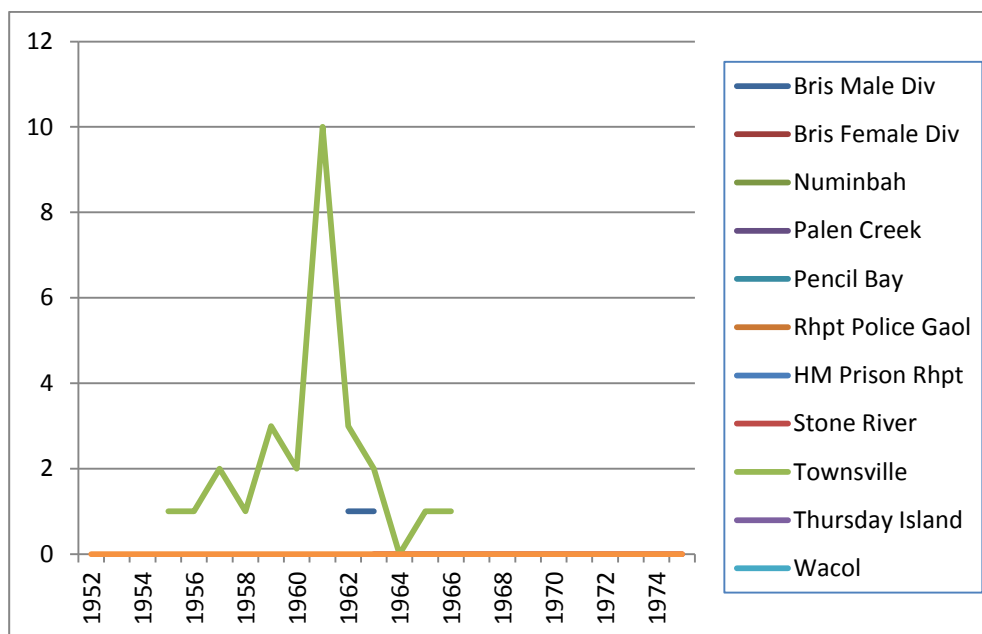


Figure 5.8 Number of applications of separate confinement in Queensland prisons.<sup>67</sup>

The use of cautioning (Figure 5.9) declined noticeably in 1958 in both Brisbane and Townsville prisons while the rest of the State remained almost constant after the 1958 Act commenced (Figure 5.10). There were also very few instances of prisoners being found not guilty or having the charges withdrawn.<sup>68</sup> A possible explanation is offences considered to be insignificant or unproven had the documentation either disposed of or, were still deemed guilty and cautioned to uphold the officer's word against that of the prisoner, even though the determining authority (in this case, the superintendent) may have accepted there were no grounds for further punishment.

<sup>67</sup> W Rutherford, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1952 – 1956, Brisbane; TJ Quinn, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June, 1957*, Brisbane; S Kerr, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1958 – 1973, Brisbane; AJ Whitney, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1974 – 1975, Brisbane.

<sup>68</sup> 'Superintendents Punishment Book- HM Prison Townsville', 31/8/1951 - 21/3/1967, QSA., RS 13258/1/4, item 293202; 'Superintendent's Punishment Book- Brisbane Correctional Centre', 3/7/1951 - 9/7/1959, QSA., item 271618; 'Superintendent's Punishment Book- Brisbane Correctional Centre', 12/6/1959 - 26/1/1971, QSA., item 271619.

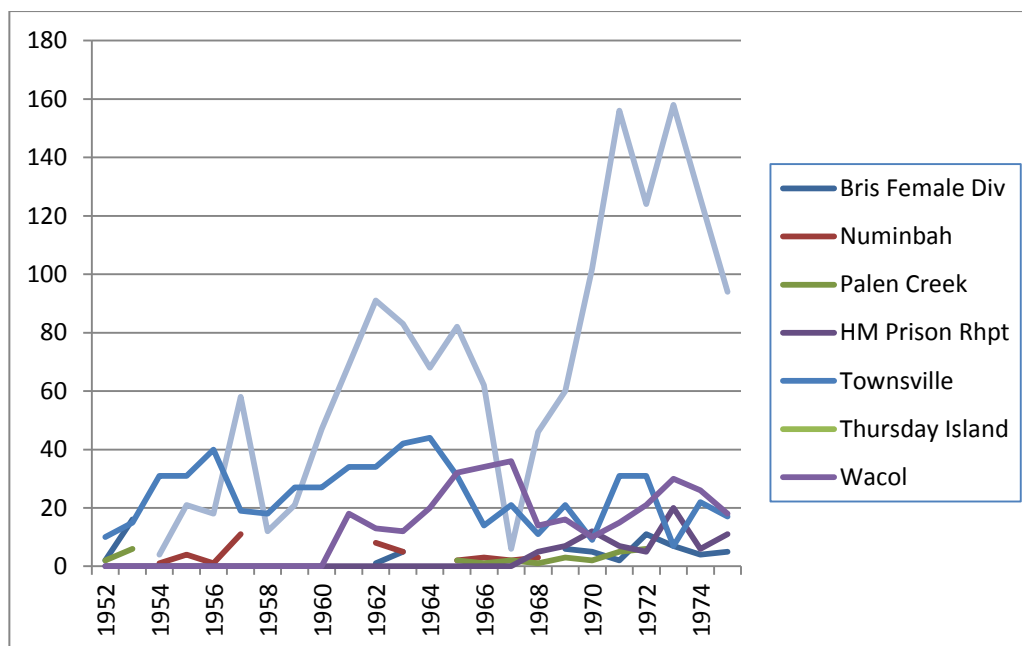


Figure 5.9 Number of cautions given in Queensland prisons.<sup>69</sup>

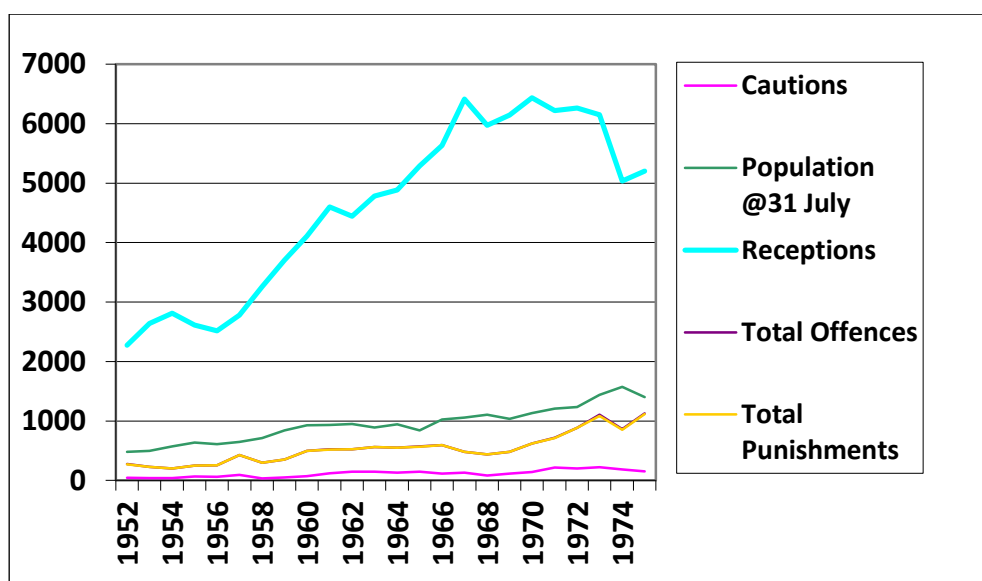


Figure 5.10 Totals of key values.<sup>70</sup>

<sup>69</sup> W Rutherford, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1952 – 1956, Brisbane; TJ Quinn, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June, 1957*, Brisbane; S Kerr, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1958 – 1973, Brisbane; AJ Whitney, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1974 – 1975, Brisbane.

<sup>70</sup> W Rutherford, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1952 – 1956, Brisbane; TJ Quinn, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June, 1957*, Brisbane; S Kerr, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1958 –

As an example of offences and punishments at a particular location, Figure 5.11 shows that most offences in Brisbane Prison were discipline-related (including disobedience and loitering at work). The number of cautions tended to follow the same trend as the number of dietary punishments, whereas insubordination and additional sentences had different trends. It is possible that offences related to insubordination may have been dealt with as more generic offences. The total number of offences includes additional sentences that generally related to the most serious infractions, including escapes, which were referred to the Visiting Justice. While repeat offenders might be referred to the Visiting Justice for sentencing, the earlier example demonstrated this was not mandatory; possibly because a conviction and additional sentence by the Visiting Justice was not ‘almost certain’ nor did it incur a disorderly mark and the associated secondary punishments.

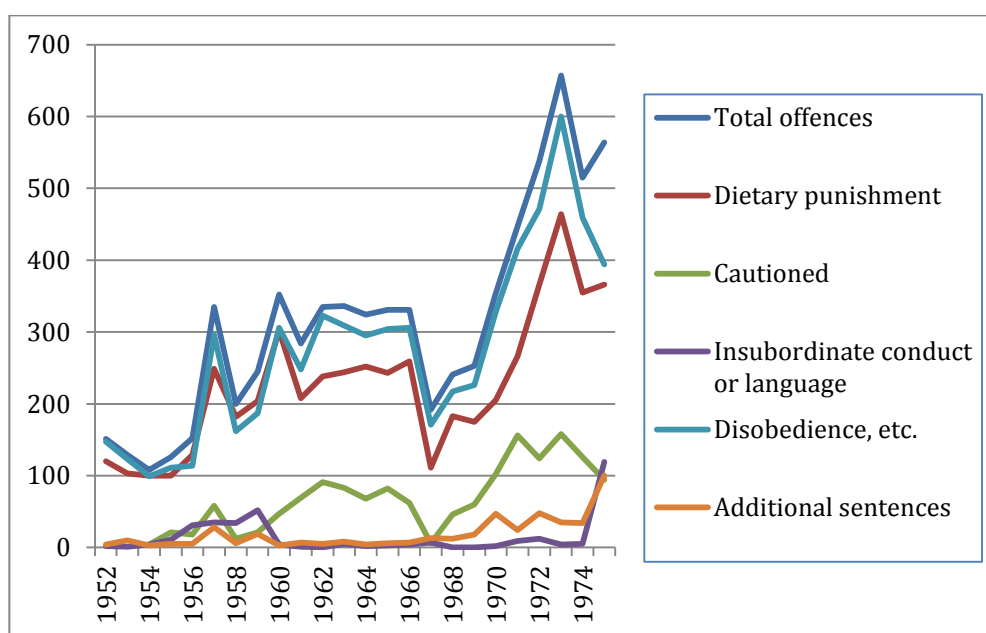


Figure 5.11 Numbers of offences and punishments at Brisbane prison.<sup>71</sup>

1973, Brisbane; AJ Whitney, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1974 – 1975, Brisbane.

<sup>71</sup> W Rutherford, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1952 – 1956, Brisbane; TJ Quinn, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, 1957, Brisbane; S Kerr, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1958 – 1973, Brisbane; AJ Whitney, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1974 – 1975, Brisbane.

Prisoner disturbances resulted in offences that also might be referred to the Visiting Justice.<sup>72</sup> In the 1950s and 1960s few serious disturbances involving several offenders and violence or destruction of property were officially recorded. While it is possible that there were, in fact, few serious disturbances, it is also possible that they did occur, but that they did not excite media interest or public concern or, caused little or no structural damage and therefore were dealt with summarily within the existing punishment framework described earlier ‘troublemakers’ were transferred and ‘talking was banned’.<sup>73</sup> In Kerr’s annual report for 1959, he commented on a disturbance and mentioned it was resolved by the use of ‘quick stern action’. In his report, he briefly described the occurrence as part of the ‘hardened criminals’ continuous fight to overthrow authority’ and how ‘overcrowding provides fertile grounds for agitation’.<sup>74</sup> Chapter 3 discussed national and international disturbances and the media’s portrayal of the dangerousness of prisoners, thereby encouraging prisons to take a strong stand on discipline. Queensland’s prison overcrowding was shown in Table 2.1 and it is possible Kerr was deflecting criticism of the ‘stern action’ by targeting ‘overcrowding’, of which the government was aware, and ‘hardened criminals’.

In addition to general overcrowding, there was also a high prisoner turnover with the annual number of receptions increasing rapidly from 3041 prisoners in 1959 to 4933 prisoners in 1967(Figure 6.1). This high turnover put pressure on prison staff to complete all the required steps<sup>75</sup> while still maintaining security. The pressure generated by this high workload and overcrowding meant the staff’s first priority was to provide essential services to offenders

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<sup>72</sup> *Prisons Act 1958*, section 33 (1) ‘(f) mutinies or takes part in any riot or tumult by prisoners; or (g) individually or in concert with other prisoners, organises or attempts to organise, or takes part in any resistance or opposition to lawful authority in the prison’.

<sup>73</sup> ‘Desperate criminals lead grim life in crowded jail’, *The Courier Mail*, 30 January 1958, p. 5.

<sup>74</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1959*, Brisbane, p. 2.

<sup>75</sup> The reception process included: checking and documenting warrants; recording physical features; recording and storing personal property; issuing prison uniform, toiletries and bedding; providing a meal; allocating a cell and work; providing a medical checkup and appropriate classification. The discharge process included: verifying discharge details; issuing personal property and; washing used clothing and bedding.

(for example food, clean clothing, bedding and visits). Other services associated with prisoner rehabilitation came to be regarded as of secondary importance.

When security measures were not applied appropriately there were several consequences. These included the smuggling of contraband, injury to staff and/or prisoners and escapes. While escapes might be the result of the inappropriate classification of a prisoner, they could also occur as a result of changes in a prisoner's personal circumstances, inattentiveness by the supervising staff or opportunistic, impulsive behaviour. After the *Prisons Act 1958* was introduced the number of escapes did not alter significantly (Figure 5.12), however, it did rise noticeably in Brisbane in 1972 after the introduction of weekend detention which will be discussed further in Chapter 6. The increase in the 1972 escape statistics can be attributed to the incident reporting process where a weekend detainee's failure to report was considered an escape, thereby elevating the 'escape' data.

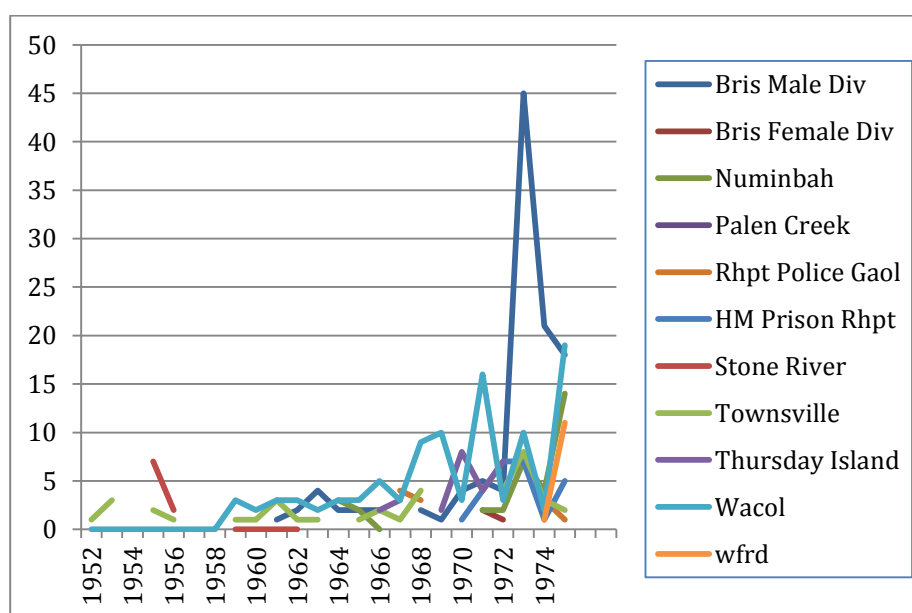


Figure 5.12 Number of escapes or attempted escapes in Queensland.<sup>76</sup>

<sup>76</sup> W Rutherford, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1952 – 1956, Brisbane; TJ Quinn, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June, 1957*, Brisbane; S Kerr, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1958 –

This section has examined how staff and prisoners responded to the *Prisons Act 1958* through the prisoners' failure to comply with policies which then resulted in the breaches recorded in the preceding tables, officers charging prisoners with the prison breaches and administrators' application of punishments to enforce the policies. The application of the formal disciplinary process under *The Prisons Act 1890* and the *Prisons Act 1958* was subject to influence from various factors, including: the Superintendent's attitude toward discipline; specifics of the offence; individual frequency of offending; regularity and nature of a particular offence by different prisoners (either acting individually or as a group); administration's intent (overtly or covertly) to deter an individual or to encourage enforcement of a particular rule and; the degree of professional respect with which the charging officer was held.

The punishments examined in this chapter occurred as a consequence of failures to observe prison regulations. The subsequent application of those regulations has been seen as inconsistent and in some cases apparently based on personalities, i.e. an offence against the Superintendent received a heavier penalty. While punishment was used by prison staff to enforce compliance, rehabilitative options provided incentives to be self-compliant, even when there was limited support from the prison administrators and staff.

### ***Prisoner education***

The *Prisons Act 1958* legislated prisoner education as a desired outcome and prison administrators considered it a feasible method of rehabilitation, but the prison population had low literacy levels<sup>77</sup> and the primary method of delivery was by correspondence. With the limited support provided, it is not surprising that participation in education was low (Table 5.1). For example, in 1966

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1973, Brisbane; AJ Whitney, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1974 – 1975, Brisbane.

<sup>77</sup> The last annual statistical report providing information on the educational standard of prisoners was in 1953. This showed the educational breakdown of the Queensland prison population as: 2750 - primary school education (level not specified), 10- secondary school, 2- university, 20- unable to read or write and twenty three- not stated. W Rutherford, *Annual report of the Comptroller-General of Prisons for the year ended 30 June*, 1953, Brisbane, 1953, p. 6.

Wacol prison only had thirteen prisoners participating in courses<sup>78</sup> and while Brisbane had 70 prisoners enrolled, of this number, only nine were active; the others were transferred, discharged or no longer participating.<sup>79</sup> Formal education appears to have been only for strongly self-motivated prisoners. Kerr acknowledged educational opportunities needed to be expanded, but resourcing to enable that to occur did not increase significantly after the passing of the *Prisons Act 1958* (see Chapter 6). Instead, prison administrators resorted to the use of volunteer organisations with minimal departmental support in what amounted to a token effort. Education was prioritised behind other options, including prison labour.

Education	HMP Wacol
1962	8
1963	4
1964	3
1965	16
1966	13
1967	17

Table 5.1 Prisoner education enrolments in Wacol prison.<sup>80</sup>

### ***Prisoner employment***

Prison labour has been viewed for many years as necessary; either as a deterrent, prison income stream or for rehabilitation. During the period under review, employment was intended to provide training as a rehabilitative option in preparation for discharge and as a meaningful occupation whilst in custody. As an example of some of the work available in 1958, Table 5.2 shows Townsville prison had work in both a prison and a farm context and provided a variety of positions. Some positions in the trade areas had the potential to provide meaningful work that taught or enhanced employable skills; while others, like gardening and cleaning were necessary but menial and then there was fiber teasing which provided stuffing for the mattresses

<sup>78</sup> CL Searle & SE Riethmuller, 'Investigation and report on provision of educational facilities at Wacol Prison', undated, QSA., item 1018707.

<sup>79</sup> 'Brisbane Prison education return, July 1966, Brisbane Technical Correspondence School', QSA., item 293157.

<sup>80</sup> CL Searle & SE Riethmuller, 'Investigation and report on provision of educational facilities at Wacol Prison', undated, QSA., item 1018707.

and was just menial. Given the numbers incarcerated each year it can be understood why there was high unemployment in the prisons. Employment, especially the more meaningful work, was generally provided to longer term prisoners because they were incarcerated long enough to acquire useful skills, provide continuity in the work area and give a return on the resources invested in them. Yet, while Kerr and other prison administrators supported prison employment,<sup>81</sup> they were unable to generate sufficient work to keep all prisoners meaningfully employed. Therefore, their intent was to support the provision of employment, but within the existing limited budget and infrastructure, which meant there would always be a percentage of idle and unemployed prisoners.

Prison Employment	
Fibre teasing	General Farm work
Mattress making	Dairying work
Tailoring	Cleaning
Boot making	Bread Baking
Boot repairing	Clerical
Tin Smithing	Brush Making
Carpentering	Book binding
Blacksmithing	Butchering
Wood cutting	Brick Building
Gardening	Painting

Table 5.2 Prisoner employment at Townsville prison.<sup>82</sup>

While employable skills were acquired by the select few, all long-term prisoners were unfamiliar with current affairs and their knowledge of the outside world became more redundant the longer the sentence, making reintegration difficult. The archaic infrastructure in Brisbane and Townsville contributed to the insulating effect, but the new prison and cell designs, as described in Chapter 2, began to reduce this sense of isolation. Both the 1890

<sup>81</sup> S Kerr, *Annual report of the Comptroller-General of Prisons for the year ended 30 June, 1959*, Brisbane, 1959, p. 2; S Kerr, *Annual report of the Comptroller-General of Prisons for the year ended 30 June, 1960*, Brisbane, 1960, p. 1; S Kerr, *Annual report of the Comptroller-General of Prisons for the year ended 30 June, 1961*, Brisbane, 1961, p. 1; S Kerr, *Annual report of the Comptroller-General of Prisons for the year ended 30 June, 1967*, Brisbane, 1967, p. 5.

<sup>82</sup> 'Form of Monthly report by Visiting Justice under s. 27, Townsville Prison for month of December 1958', 20 Jan. 1959, QSA., item 293159.



and 1958 Queensland prison legislation was silent on prisoner access to electronic media, but prison administrators restricted it. Intermittent, controlled listening to public radio stations was permitted from 1949<sup>83</sup> and television was introduced in Brisbane Prison in 1966.<sup>84</sup> The television sets were locked inside cupboards and access was controlled and monitored by the officers.<sup>85</sup> One form of media identified in *The Prisons Act 1890* and the *Prisons Act 1958* was newspapers, which were not permitted and possession was considered an offence.<sup>86</sup> These restrictions and the lagging introduction of common forms of media show that administrators hesitated to make contemporary technology freely available to prisoners. Restriction of access to newspapers was another demonstration that the *Prisons Act 1958* and its implementation did not reflect the government's claims about modernising the legislation and therefore the prisons.

## **Parole**

In addition to education and employment to assist rehabilitation, the other option mentioned in Chapter 1 and available to the mid-20th Century Queensland prisoner was parole; this was difficult to obtain but 'available' towards the end of a sentence. When the Prisoners Parole Bill was presented in 1937, there had been considerable parliamentary debate regarding the release of prisoners and effectively authorising a Parole Board to override a Judge's sentence.<sup>87</sup> This indicated popular resistance to the concept and even though the legislation was enacted, only 40 cases of parole were approved in a twelve year period from 1944.<sup>88</sup> Even under the *Offenders Probation and Parole Act 1959*, Table 5.3 shows that only small numbers of prisoners

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<sup>83</sup> W Rutherford, 'Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June, 1949', Brisbane, p. 2.

<sup>84</sup> S Kerr, 'Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1966', Brisbane, p. 2.

<sup>85</sup> 'The 3 warts of Stuart Creek', *The Sunday Mail*, 7 July 1968.

<sup>86</sup> Queensland Government, *Prisons Act, 1890, and Rules and Regulations relating to Prisons*, s. 28 (13), Brisbane, 1928; Queensland Government, *Prisons Act 1958*, s. 32 (1) (f), Brisbane, 1960.

<sup>87</sup> Hansard, Prisoners Parole Bill. Initiation in Committee and Second Reading, 11/8/1936-11/11/1937.

<sup>88</sup> Queensland Department of Corrective Services, 'Celebrating 40 Years of Community Corrections 1959-1999. A history of Community Corrections in Queensland', 1999, p. 3.

applied for parole and, of those, only a few were successful (refer to Chapter 6 p. 208 for a detailed discussion). Later, applications doubled and approvals quadrupled; however, the numbers were still small in proportion to those prisoners eligible and discharged by other means. This indicates that even though legislation supported release under supervision, prison administrators<sup>89</sup> and the Parole Board itself continued to apply an ultra-conservative approach to approvals.

Year	Total convicted prisoner discharges	Total discharged by remission or expired sentence	Parole applications	Number released on parole
1955	1923	1424	26	2
1956	1788	1390	31	3
1957	1988	1620	36	5
1958	2402	1778	52	10
1959 <sup>90</sup>	2959	2135	54	6
1960	3238	2164	93	27
1961	3606	2466	103*	25*
1962	3549	2364	129*	29*
1963	3334	2701	106*	26*
1964	3510	2814	NA	40
1965	3391	2891	115*	36*
1966	3616	3059	99*	23*
1967	4196	3588	NA	43
1968	4103	3513	118*	30*
1969	3977	3270	111*	35*
1970	4265	3499	129*	39*
1971	4138	3396	NA	31
1972	3852	3200	NA	58
1973 <sup>91</sup>	4097	2280	NA	135
1974	3497	2206	NA	147
1975	3207	1984	NA	162

Table 5.3 Discharge and parole data<sup>92</sup>  
(NA = data not available; \*data from Parole Board annual reports)

<sup>89</sup> Prison administrators provided recommendations to the Parole Board.

<sup>90</sup> Parole applications and releases for this reporting year were under the previous legislation.

<sup>91</sup> There was a change in statistical reporting format in the Prisons Department annual report for 1973.

<sup>92</sup> W Rutherford, *Annual report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1955- 1956, Brisbane; TJ Quinn, *Annual report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, 1957, Brisbane; S Kerr, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1958 – 1973, Brisbane; AJ Whitney, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1974 – 1975, Brisbane; M Hanger, *Annual Report of the Parole Board for the year ended 30<sup>th</sup> June*, for the years 1961, 1962, 1965, 1966, Brisbane; MB Hoare, *Annual Report of the Parole Board for the year ended 30<sup>th</sup> June*, 1968, Brisbane, 1968; BJ Jeffriess, *Annual Report of the Parole Board for the year ended 30<sup>th</sup> June*, 1963, Brisbane, 1963.

To understand the lack of parole applications, it is necessary to consider the different eligibility criteria and consequences for prisoners released on parole under the *Offenders Probation and Parole Act 1959*, as opposed to release by remission under the *Prisons Act 1958*. In both instances, prisoners must have exhibited good conduct while in prison. To receive remission, they must have been serving a sentence of over two months,<sup>93</sup> whereas to be eligible for parole, the sentence needed to be over six months.<sup>94</sup> To be released on parole, prisoners identified as habitual criminals must have served a minimum of two years, while other prisoners must have completed at least half their full time sentence.<sup>95</sup> Female prisoners, depending on their sentence and previous convictions, could receive a remission of between one third and one sixth of the sentence, whereas male prisoners could receive a remission of between one quarter and one sixth of their sentence.<sup>96</sup> Prisoners had to apply to the Parole Board for paroled release, but only a small proportion of applications were successful (Table 5.3). In contrast, remission was automatically calculated without request and generally only refused on the basis of poor behaviour.<sup>97</sup> Of the parole applications received, those from prisoners on prison farms were more likely to be granted. Kerr considered this was a natural progression<sup>98</sup> from the trust already placed in these prisoners and, as discussed in Chapter 2, farm prisoners originally had been selected because they were considered low risk. Once released, prisoners on parole had to satisfy various conditions including regular reporting to parole officers. If parole was cancelled for any reason, then the time spent while released on parole did not count toward the sentence.<sup>99</sup> Whereas those released on remission were considered to have served their sentence and were thus not required to satisfy further conditions, undergo supervision or receive penalties. This explains why, given the criteria and penalties, prisoners

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<sup>93</sup> Queensland Government, *Prisons Regulations of 1959*, r. 390, 1960, Brisbane.

<sup>94</sup> Queensland Government, *Offenders Probation and Parole Bill 1959*, s. 32 (iv), Brisbane.

<sup>95</sup> *ibid.*, s. 32 (a-c), Brisbane.

<sup>96</sup> Queensland Government, *Prisons Regulations of 1959*, r. 383 - 389, 1981, Brisbane.

<sup>97</sup> *ibid.*, r. 408 - 409, 1960, Brisbane.

<sup>98</sup> S Kerr, 'Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1964', Brisbane, p. 3.

<sup>99</sup> Queensland Government, *Offenders Probation and Parole Bill 1959*, ss.32 (2), 35 (4), Brisbane.

preferred to work towards their remitted date, rather than jeopardise their freedom (if parole were approved and they reoffended).

### ***Remission***

This preference towards remission also worked in the favour of prison administrators by reinforcing the punishment and rewards system relating to overtask or disorderly marks and earn remission. If a prisoner was granted parole all remitted days were irrelevant as the parole release date would generally be the earlier option. Furthermore, while prisoners were under parole supervision their behaviour in the community continued to reflect on the government, making the conservative approach to approvals more likely. Based on the eligibilities and consequences, it's easy to understand why even after the introduction of the *Prisons Act 1958* there were very few parole applications and approval.

### ***Conclusion***

Reform of an existing structure is difficult to achieve without reasonable support from all levels of authority. In Queensland's prisons, the leaders were either long-standing administrator's with backgrounds in paramilitary/military environments or had been promoted from within the Queensland prisons which also operated along paramilitary lines. This chapter has shown that when regulations were breached, superintendents generally applied punishment that reinforced prison officers' application of the rules. Prisoners reacted against some rules by failing to comply with them (for example making noise and unnecessary conversation) and at times staff were inconsistent in the application of rules in areas considered beneficial to both parties, i.e. the use of tobacco as a payment for services.

The rehabilitative options of employment and parole were also explored and it was seen how these changed little as a consequence of the introduction of the *Prisons Act 1958*. The option that did change was prisoner education, which was officially introduced under the 1958 Act. It will be seen in Chapter 6 that education was not readily embraced by prison authorities who under

resourced education programs and allowed them to self-evolve, mainly through the good will of volunteers. The lack of support for education and meaningful employment hindered the progression of these rehabilitation options and slowed the pace that may otherwise have been possible.

When considering prisoner release, the main methods were parole, remission or full time discharge after serving the full sentence. Each method led to release into the community, at which point the success or failure of rehabilitation efforts by prison authorities would become apparent. Of the discharge options, remission was the most common form of early release supported by the prison administrators and effectively granted by default unless there was reason to withhold it, as opposed to parole which was granted by exception. Parole was also the only option where the offender's behaviour in the community continued to reflect on the Prisons Department and Government after the prisoner's release. As we have seen in this chapter, except for the introduction of education, few rehabilitative reforms were embraced in the years immediately following the commencement of the *Prisons Act 1958*. The next chapter will consider these reforms and how they were applied.

## Chapter 6 Managing the possibilities of reform

The previous chapter examined Queensland's prison system following the commencement of the *Prisons Act 1958*. The continued need for staff development, prison release options and rehabilitation through education and prison employment were discussed. This chapter will consider how reform identified in the previous chapters was implemented in the decade post 1958. Here we will consider further the application of the policies to 1968. This will include reforms that were considered or recommended but not implemented and issues that had the potential to hinder the reform process. These included systemic problems that were reported, staff disciplinary and industrial issues, prisoner incidents, demonstrations and public responses to these. The Comptroller-Generals position on rehabilitation will be seen to develop further from the previously discussed foundation which supported prison security and discipline. It will be seen that he would discuss rehabilitation, and then his actions indicated a continued focus on security and discipline which will continue beyond this decade and be discussed further in Chapter 7.

This chapter commences with a discussion of the amendments to the *Prisons Act 1958* that the government soon passed because of the need for further reform. Indeed, despite the rhetoric associated with the introduction of the Act, within months it was the *Probation and Parole Act 1959* that was being lauded as the main instrument of prison reform, even though its purpose did not relate to prison management outside the scope of parole administration. Consideration in this chapter will be given to the operation of prisons under the *Prisons Act 1958* and its amendments. These operations were to be enhanced by improving the educational standard of prison staff but it will be seen that this was limited. There will then be an examination of prisoner support services which included psychiatric and psychological services, participation in sport, education and work, the departmental use of the classification committee, periodic detention and parole. These will reveal that after ten years of operation under the *Prisons Act 1958*, the substantial introduction of rehabilitative reform had failed to materialise.

### ***Rehabilitation in the background***

That the *Prisons Act 1958* did not lay the foundations of rehabilitative reform was apparent in 1959 when the Probation Bill was introduced. Minister for Justice, Alan Whiteside Munro, described the Probation Bill as ‘an important first step’, which ‘in conjunction with the new Prisons Act passed last year, will place penal legislation in this State on a much more satisfactory basis than it has been’.<sup>1</sup> The Probation and Parole Act authorised the release of offenders from court or prison and identified the mechanisms for the operation of the Parole Board and supervision of offenders once they were back in the community. The legislation will not be discussed in detail here because its function was outside the scope of prison management. However, eligibility for parole was stipulated in the *Prisons Act 1958* (see Chapter 4) and prison administrators believed that it contributed to rehabilitation by providing a good behaviour incentive for prisoners. Under the *Prisons’ Parole Act of 1937* the Board had consisted of two departmental Under Secretaries, the Comptroller-General of Prisons, the Commissioner for Police and the Governmental Medical Officer.<sup>2</sup> Now the Board was chaired by a Supreme Court Judge and the new Act created an administration separate from the Police and Prisons Departments to control Probation and Parole Officers.<sup>3</sup> Munro was confident that the new *Prisons Act* and *Regulations* provided for ‘better administration of the Department with stricter discipline and security’, and that the new *Offenders Probation and Parole Act* would aid the rehabilitation of prisoners,<sup>4</sup> marking a clear distinction between the two agencies and their responsibilities..

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<sup>1</sup> The legislation was ‘to a considerable extent based on the Victorian Act dealing with Probation and Parole’. ‘Notes for speech of the Minister for Justice (Hon. A Munro) in the initiation of a Bill to make provision for the release of offenders on probation. To provide for the establishment of a Parole Board and for other purposes’, p. 4, QSA., JUS W 64, item 20379; AT Dewar, ‘memo from Parliamentary Committee for the investigation on youth problems’, undated, QSA., JUS/W64 item 20379.

<sup>2</sup> Queensland Government, *Prisoners’ Probation Act of 1937*, Queensland Government Printer, Brisbane, 1937. s. 3 (2).

<sup>3</sup> AJ Mansfield, ‘letter providing comment on draft 2 of the Probation Bill’, 17 Feb. 1959. QSA., JUS/W64, item 20379.

<sup>4</sup> AW Munro, Report for Cabinet ‘Inadequacy of prison accommodation – extracts from annual reports of the Comptroller-General of Prisons’, p. 2. QSA., role 22359.

Was it possible that, when the changes identified in the previous chapters are considered and despite the progress made in the field of penology, the Queensland Prisons Department was still preoccupied with containment and discipline and relegated rehabilitation to post release? Answers to this question may be found in a political party newspaper and a subsequent annual report of the Comptroller-General. The *Queensland Liberal* recognised the *Prisons Act 1958* as ‘mainly an administrative measure...giving effect to some long overdue reforms’.<sup>5</sup> Kerr elaborated on these reforms as ‘better administration of the Department, stricter discipline and security, and provision for some financial assistance to indigent prisoners on discharge’.<sup>6</sup>

After the passing of the 1958 and 1959 Acts prisons became more a party political issue and prison management was often debated in the parliament. The Opposition was concerned that the government’s claims to be implementing rehabilitation programs were merely a smokescreen<sup>7</sup> and Colin James Bennett, ALP Member for South Brisbane, believed the prison service was still ‘crying out for reform’.<sup>8</sup> He was concerned about: the restrictions imposed on prison chaplains by the regulations; insufficient effort to encourage rehabilitation; the limited adult education and; the inhumane practice of locking prisoners in their cells from 4:30 pm every day.<sup>9</sup> The rushed passing of the *Prisons Act 1958* had not adequately addressed rehabilitative reform and the Opposition began to focus on the issue. By 1964, the Government was willing to concede that amendments were necessary in the area of prison escapees and ‘security patients’ which were not covered in the 1958 Act.<sup>10</sup> The Security Patients Hospital was under construction and appropriate legislation was required prior to commissioning. Also, prison escapees had previously been charged under *The Vagrants Gaming and other*

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<sup>5</sup> ‘Political hot potatoes. The ramifications of the Department of Justice’, *The Queensland Liberal*, 31 March 1959.

<sup>6</sup> S Kerr, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June, 1959*, Brisbane, p. 1.

<sup>7</sup> Parliamentary Debates, *Prisons Act Amendment Bill*, 12 March 1964, p. 2454, QCSA library.

<sup>8</sup> *ibid.*, p. 2464.

<sup>9</sup> *ibid.*, pp. 2465, 2466 & 2473; ‘Noble flays Boggo Road’, *Truth*, 15 Mar. 1964.

<sup>10</sup> Security patients were persons who had committed offences and were classified as ‘insane’. They were to be housed in the Security Patients Hospital once it opened.



*Offences Act* or *The Criminal Code*<sup>11</sup> and the amendments would allow police and prison officers the power to arrest escapees without a warrant and charge them under the *Prisons Act 1958*.<sup>12</sup> This was more appealing to the authorities because prosecutions under this Act provided additional deterrence through the mandatory cumulative rather than concurrent sentences.<sup>13</sup>

The Government also introduced an amendment that would allow prisoners to apply for leave of absence during the last weeks of their sentence to enable them to attend employment interviews and prepare for re-entry into the community after discharge.<sup>14</sup> The Minister for Health and Home Affairs, Dr Henry Winston Noble, wholeheartedly supported the proposal and the idea of prisoner employment while in custody. It had been pointed out during the debate that because of prison overcrowding, only 172 prisoners had been given the opportunity of education or trade training between July 1960 and June 1963.<sup>15</sup> Nevertheless, the 1964 amendments did nothing specifically to address the problem.

To remedy the overcrowding problem, a construction program commenced in 1964 that also provided training<sup>16</sup>, but the Opposition questioned the use of prison labour over unionised men. Horace Jason Davies, ALP Member for Maryborough, argued that ‘up-to-date rehabilitation buildings’ should first be built by skilled labour and the prisoners trained in them<sup>17</sup> rather than construction being used as a means to an end.<sup>18</sup> Harold Francis Newton, ALP Member for Belmont, brought up the recessions of 1952, 1956 and 1961,

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<sup>11</sup> Queensland Government, *Prisons Act Amendment Act of 1964 No 17*, Queensland Government Printer, Brisbane, 1964, s. 14.

<sup>12</sup> Parliamentary Debates, *Prisons Act Amendment Bill*, 12 March 1964, pp. 2437 - 2438, QCSA library.

<sup>13</sup> Queensland Government, *Prisons Act Amendment Act of 1964 No 17*, Queensland Government Printer, Brisbane, 1964, s. 34.

<sup>14</sup> Parliamentary Debates, *Prisons Act Amendment Bill*, 12 March 1964, p. 2438, QCSA library.

<sup>15</sup> ‘Brisbane Jail is “Too full”’, *The Sunday Mail*, 10 Nov. 1963; Parliamentary Debates, *Prisons Act Amendment Bill*, 12 March 1964, p. 2439, QCSA library.

<sup>16</sup> S Kerr, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June, 1964*, Brisbane, p. 2.

<sup>17</sup> Parliamentary Debates, *Prisons Act Amendment Bill*, 12 March 1964, p. 2445, QCSA library.

<sup>18</sup> *ibid.*, p. 2448.

which had caused severe unemployment in the building industry and claimed that if prison labour was utilised it would cost jobs in the Department of Works. He was also concerned that appropriate safety standards and compensation for injuries would not apply. Noble assured him that full compensation and 'all safety regulations would apply'.<sup>19</sup>

Even though in 1958 Munro said that prison labour would not be used for construction (see Chapter 3),<sup>20</sup> Noble now argued in its favour because there was no unemployment in the building industry and money allocated to prison construction using prison labour represented a small proportion of the total budget for the Government's building program.<sup>21</sup> This suggests a shift in government policy from an accent on creating employment and appeasing the unions, to cost saving<sup>22</sup> and no longer capitulating to union pressure.<sup>23</sup> Percy John Tucker, ALP Member for Townsville North, supported by Douglas John Sherrington, ALP Member for Salisbury,<sup>24</sup> continued to attack the Government over using prison labour as a cost-saving exercise. Presenting it as a rehabilitation scheme was merely a smokescreen because the Government had 'not extended itself in the field of rehabilitation and any improvements... have been brought about by the Prisoner Aid Society'.<sup>25</sup> The Government defended itself against the accusation of mindless cost cutting when John Chester Murray, Liberal Member for Clayfield, commended the Minister for effecting 'sensible savings': he would 'not hear any of this nonsense about

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<sup>19</sup> *ibid.*, pp. 2452-2453.

<sup>20</sup> A Munro, 'Prison Administration, Question of prison Labour', 27 June 1958, QSA., item 293136; S Kerr, 'Employment of prisoners at labour in Queensland Prisons', 19 June 1958, QSA., item 293136.

<sup>21</sup> Parliamentary Debates, *Prisons Act Amendment Bill*, 12 March 1964, p. 2472, QCSA library.

<sup>22</sup> The desire to be cost effective and remain within budget was evidenced in 1960 when Brisbane Prison overspent by £8,229 in the first half of the year and was subsequently forced to cease ordering some items. These items included: clothing and uniform; bedding and drapery; wood and coal until the end of the financial year when the cost could be carried over to the next year. S Kerr, 'Estimates – Excess expenditure', 23 Feb. 1960. QSA., 198741/271617.

<sup>23</sup> While the Building Workers Union had voiced objections to the Government regarding prison labour, they took 'no other direct action' in the subsequent months. 'Prisoners build', *The Sunday Mail*, 28 June 1964; This indicated the unions did not intend to pursue the issue at that time.

<sup>24</sup> Parliamentary Debates, *Prisons Act Amendment Bill*, 12 March 1964, p. 2461, QCSA library.

<sup>25</sup> *ibid.*, p. 2454.

exploiting men'.<sup>26</sup> Clive Melwyn Hughes, Liberal Member for Kurilpa, added that the passage of the Bill would alleviate both the 'shortage of prison accommodation and the drain on the public purse'.<sup>27</sup> This made it evident that while rehabilitation was the public rationale for using prison labour cost savings were more appealing in the parliament.

In addition to the use of prison labour, Tucker was also concerned about the standard of officer training because he considered that man management took longer than two months to learn. Furthermore, officers needed training in 'psychology and the rehabilitation and training of men'<sup>28</sup> and certain crimes required more than just detention. Thomas Aikens, the North Queensland Party Member for Townsville South, had a very different view: he considered that there were 'far too many Ministers and back-bench members of the Government who, despite their paralysing sartorial display, are prepared to listen to the "jelly-bellied" psychologists on the treatment of prisoners'.<sup>29</sup> Despite the many diversions to other prison topics, negative comments and objections from the Opposition, the 1964 Prisons Act Amendment Bill which related to the management of the Security Patients Hospital, security hospital patients, escapees and leave of absence was passed.<sup>30</sup>

While several shortfalls in rehabilitative opportunities were highlighted during the parliamentary debates, the majority of amendments were to enhance prison management and it was up to Comptroller-General Stewart Kerr to implement any explicit or implicit changes that were in the *Prisons Act 1958*.

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<sup>26</sup> *ibid.*, pp. 2461 - 2462.

<sup>27</sup> *ibid.*, p. 2466.

<sup>28</sup> *ibid.*, p. 2455.

<sup>29</sup> *ibid.*, p. 2458.

<sup>30</sup> *ibid.*, p. 2456, QCSA library; Further changes considered in the 1964 Amendment Bill to the *Prisons Act 1958* related to legislating support for a release-to-work program; providing training for officers; offering a cadet scheme; authorising facilities for 'the education, training, leisure and cultural activities of prisoners'; designating a farm area attached to a prison and; including professional men in the definition of 'prison service'. Parliamentary Debates, *Prisons Act Amendment Bill*, 5 December 1969, p. 2207, QCSA library; The change was to extend legal protection to all personnel working in the prisons, not just those 'appointed under the *Public Services Act*'. Parliamentary Debates, *Prisons Act Amendment Bill*, 5 December 1969, p. 2209, QCSA library..

### ***The Comptroller-General's stance***

As the Comptroller-General, Kerr had the ability to influence implementation of the prison legislation; therefore, it is appropriate to consider his views on prison management. In 1959, Kerr claimed prison overcrowding restricted rehabilitation opportunities and this could be remedied by expanding prison facilities.<sup>31</sup> As was discussed in earlier chapters, this did occur in the 1960s and it should have allowed for the implementation of effective rehabilitation programs but that was not the focus. Kerr was fundamentally committed to 'strict discipline', while acknowledging there needed to be some 'relaxation and expression of individuality permitted', though 'failures' were to be expected.<sup>32</sup> He wanted to apply contemporary penal practices within a selectively conservative disciplinary framework, and this is evident in his statement that:

a modern penal system should provide facilities for proper treatment of prisoners of the various categories, with strictest discipline and security, where necessary, adequate training with specialised assistance in relaxed conditions, so that full benefit may be given to those prisoners likely to be or capable of being restored to useful citizenship.<sup>33</sup>

Therefore, in 1959 he supported the expansion of the existing system of containment and discipline, down to the minute detail, such as the instruction that 'prisoners attending concerts are warned that applause is to be limited to hand clapping only. Whistling and shouting will not be tolerated and disciplinary action is to be taken against offenders'.<sup>34</sup>

In 1960, Kerr attended the Australasian Conference of Prison Administrators and found all jurisdictions faced similar issues, including: overcrowding, a

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<sup>31</sup> S Kerr, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June, 1959*, Brisbane, pp. 1 - 2.

<sup>32</sup> *ibid.*, p. 2.

<sup>33</sup> S Kerr, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June, 1959*, Brisbane, p. 2.

<sup>34</sup> RF Smith, memorandum to 'The Chief Prison Officer, no. 1 Division', 12 April 1960. QSA., 19874/271617.

high proportion of young male offenders, an ‘emphasis on treatment and training’, the need to prioritise staff training and to provide prisoners with psychiatric treatment.<sup>35</sup> He later stated there was a ‘real need for better treatment by way of training of prisoners – not better personal and physical treatment – with a view to rehabilitation’ and acknowledged that there had been inadequate effort to remedy the situation over a very long period.<sup>36</sup> His comments over the coming years suggest that this observation was an expression of concern over insufficient infrastructure and limitations on the use of prison labour, rather than a lack of qualified staff or rehabilitation programs.

The *Prison Act 1958* made provision for the employment of psychiatrists and psychologists and Kerr ‘anticipated’ this would occur.<sup>37</sup> In 1960 he reported their services had increased, but this was mainly to do with applications for parole.<sup>38</sup> There were 54 applications for parole in 1959 and mental health professionals were more risk assessors than preventative practitioners. Apart from assessing parole applications, Kerr’s focus for those with mental illness was limited to treating psychiatric prisoners so that they were manageable. He previously had stated ‘facilities for treatment of antisocial behaviour are essentially a part of every prison’<sup>39</sup> and ‘the main objective of a Prison Administration, after a prisoner is sentenced is rehabilitation, if and where it is practicable’. But in 1965, when other states employed psychologists to help facilitate rehabilitation, Kerr lamented that Queensland had failed to avail itself of these valuable programs.<sup>40</sup> Yet nothing appears to have been done.

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<sup>35</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1960*, Brisbane, p. 6.

<sup>36</sup> S Kerr, report to the Under Secretary, Department of Justice, ‘Hansard report 25<sup>th</sup> October, 1960. Rehabilitation of Prisoners’ 5 Jan. 1961, p. 1, QSA., item A20029.

<sup>37</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1963*, Brisbane.

<sup>38</sup> S Kerr, report to the Under Secretary, Department of Justice, ‘Hansard report 25<sup>th</sup> October, 1960. Rehabilitation of Prisoners’ 5 Jan. 1961, pp. 1 - 2, QSA., item A20029.

<sup>39</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1958*, Brisbane, p. 1.

<sup>40</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1965*, Brisbane, p. 2; Interventions were applied to those diagnosed with insanity. However, other prisoners who suffered from mental illnesses but were not deemed ‘insane’ continued to be incarcerated in general prisons and went undiagnosed and untreated. Professional assistance was limited due to the failure of the Prison

The *Prisons Act 1958* authorised the employment of these professions, but prison administrators seem to have adopted the ‘nothing works’<sup>41</sup> position described in Chapter 2.

Instead of professionally developed and tested treatment programs run by qualified professionals, Kerr considered experienced prison staff could provide counselling. In March 1965 he issued a General Instruction which stated that the various prisoner classification levels required different management mindsets by officers. Firm prison discipline was necessary, because it prepared the prisoner’s mind to conform to society’s rules on discharge, but the lower classifications required more latitude and trust. Kerr accepted that group and individual counselling played an important role,<sup>42</sup> and believed it should be provided by senior rather than junior officers, since ‘fraternisation is not counselling’.<sup>43</sup> He referred to the Gladstone Report of 1895 that stated that a discharged prisoner should be ‘better equipped to take his place in society than when he came to prison’. He concluded: ‘so must we, as an administration and prison officers, change our attitudes to conform to modern requirements of treatment of offenders and the particular institution and class of security or prisoner with which we deal’.<sup>44</sup> The 1967 annual report also noted that harsher penalties were not the solution for most offenders and overcrowded prisons tended to engender many problems by developing ‘criminal attitudes’. Kerr thought a successful prison system

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Department to employ full-time practitioners; instead they relied on resources from other departments.

<sup>41</sup> For further information on the ‘nothing-works’ position refer to: LW Fox, AM López-Rey & C Germain, *Studies in penology, dedicated to the memory of Sir Lionel Fox*, M Nijhoff, The Hague, 1964, pp.22-25; G Hughes, *the politics of crime and community*, Palgrave Macmillan, New York, 2007, p.41; DA Andrews & J Bonta, *The psychology of Criminal Conduct*, Anderson, Cincinnati, 2003.

<sup>42</sup> All staff members should ‘talk to prisoners and be actively encouraged to get to know their problems’ and to apply the ‘Norwich system, whereby officers are given certain responsibilities for groups of prisoners’ Council of Europe, *The Status, Selection and Training of Prison Staff*, 1963, the first report of Sub-committee VI of the European Committee on Crime Problems, Strasbourg, p.10

<sup>43</sup> S Kerr, ‘Security of prisons as applicable to Queensland’, 5 March 1965. General Instruction no 3/65, QCSA historical collection.

<sup>44</sup> *ibid.*

should provide role models and foster desired behaviours and attitudes,<sup>45</sup> but he does not appear to have grasped the complexities of rehabilitation. Kerr was attempting to deal with external environmental factors and not the internal cognitive processes that also required attention.

Yet in contrast with the platitudes about rehabilitation, counselling and appropriate role models, prison staff were led by men who manifested a deep faith in strict discipline enforced with zero tolerance for any opposition to authority. In 1958, during Kerr's initial period of tenure, Attorney General, William Power, instructed warders to 'burn down the door' to remove barricaded prisoners. Power's unsympathetic attitude is further illustrated by his instruction that 'if prisoners howl out they should be sent to a place where they can howl their heads off and not cause a disturbance to other people'.<sup>46</sup> This emphasised the hardline attitude that existed towards prisoners who disrupted prison routine. Yet Power also claimed a warder should possess the 'milk of human kindness and a desire to help in the rehabilitation of prisoners', many of whom he considered to be in prison due to medical [or mental health] problems.<sup>47</sup> It was recognised internationally that to maintain discipline in the prisons there was also a need for a well-trained disciplined staff, however, not all prison officers demonstrated this in their behaviour.

### ***Staff training***

A 1963 sub-committee of the European Committee on Crime Problems reported prison conditions should resemble, as much as possible, the conditions in the community.<sup>48</sup> They considered that all staff should 'talk to prisoners and be actively encouraged to get to know their problems' and to apply the 'Norwich system, whereby officers are given certain responsibilities

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<sup>45</sup> S. Kerr, *Annual report of the Comptroller-General of prisons for the year ended 30 June, 1967*, Brisbane, p. 5.

<sup>46</sup> Hansard 04/03/1958 – 3/12/1958, *Prisons Bill*, QSL., Brisbane, p. 1491.

<sup>47</sup> *ibid.*, p. 1492.

<sup>48</sup> 'Treatment in prisons is based on the notion of training by, and for, work in conditions that resemble' those in the community and, prisoners 'eat in association and spend part of their leisure together'. Council of Europe, *The Status, Selection and Training of Prison Staff*, 1963, the first report of Sub-committee VI of the European Committee on Crime Problems, Strasbourg, p. 4 - 23.

for groups of prisoners'.<sup>49</sup> This is in stark contrast to Kerr's comments on staff fraternisation, but it was recognised that training was required to develop prison staff capability. The United Kingdom had established an in-service training centre that ran a continuous series of courses. These included training and open consultation on new policies to help staff understand and improve them. It was found that recruitment of prison governors from staff who had progressed through the ranks was relatively rare except in the United Kingdom, and the committee believed potential Governors and Assistant Governors needed to pass personality tests as well as qualifying exams. The committee reported suitable selection, training and subsequent retraining of existing staff were important components of a progressive prison administration. In a paper entitled 'The Status, Selection and Training of Prison Staff', they said the treatment of offenders in penal institutions should aim to be more constructive and while specialist staff should be employed, staff at all levels should seek to positively influence the prisoners. This emphasis should commence by employing appropriate 'selection and training methods'. Some European countries recruited young former military personnel, while others provided on-site mentors and acknowledged in-service training as a powerful tool to assist staff to 'play some part in the readaptation of prisoners'.<sup>50</sup> The training for base level staff in the United Kingdom consisted of four weeks of on-the-job training, a suitability assessment by senior staff, followed by eight weeks of formal training that included officer duties, self-defense and first aid.<sup>51</sup> The inclusion of first aid and self-defense indicated the UK correctional administration accepted there was a duty of care to both prisoners and officers.

Kerr acknowledged the need for training, because the 'personality, attitude and efficiency of the individual officers was the basis of a good

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<sup>49</sup> Council of Europe, *The Status, Selection and Training of Prison Staff*, 1963, the first report of Sub-committee VI of the European Committee on Crime Problems, Strasbourg, p. 10;

<sup>50</sup> *ibid.*, p. 4 - 23.

<sup>51</sup> *ibid.*, p. 78 - 79.



administration'.<sup>52</sup> He stated in his Annual Report of 1964 that a specialised staff training area was required, since the present facilities were inadequate, and a staff training college at Wacol was approved for prison officers and public servants.<sup>53</sup> Between 1960 and 1966, HM Prison Brisbane's Deputy Superintendent, NR Williams delivered training in addition to his normal duties, and then in 1966 he relinquished his position on medical grounds to become the Staff Training Officer<sup>54</sup> providing training in South-east Queensland. Training at Townsville prison continued to be undertaken by the local Prison Superintendent<sup>55</sup> and this wasn't to change for many years.

In addition to developing the knowledge base and skill set of prison officers, training also instills professionalism. The problematic behaviour of some prison officers is revealed in memorandums issued by Brisbane Prison Superintendent, RF Smith. In 1960, he noted the resentment expressed by some staff when admonished by senior officers for walking across gardens and lawns, and he also complained about the overzealous use of a metal spike when searching garbage bins.<sup>56</sup> This resulted in the bottoms of bins and bin trolleys being punctured so that putrid waste water leaked in the gate area and the odour could permeate into the superintendents quarters attached to the gate. Each of these issues concerned straightforward tasks requiring little effort to achieve compliance. The resentment expressed when chastised and the damage of bins requiring a Superintendent's memorandum indicates a possible underlying resistance to direction and change.

To address some of the staff problems, in 1960 Kerr reported that prison officers were to be trained in various aspects of prison management. This was to include the duties and responsibilities of a prison officer, prison

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<sup>52</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1960*, Brisbane, p. 2; S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1963*, Brisbane, p. 1.

<sup>53</sup> S Kerr, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June, 1964*, Brisbane, 1964, p. 1.

<sup>54</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1966*, Brisbane, p. 2.

<sup>55</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1967*, Brisbane, p. 3.

<sup>56</sup> RF Smith, 'Memorandum to all prison officers', 6 May 1960. QSA., 198741/ 271617.

management and the requirements of the Prisons Act and Regulations. As an incentive to participate in the training any promotion through the ranks, as far as that of Chief Prison Officer, would be dependent on the successful completion of qualifying exams for each rank.<sup>57</sup> Kerr acknowledged that the community expected prison officers to both manage prisons and rehabilitate prisoners. He believed the assumption that staff inherently possessed or automatically acquired these skills was ill-founded, thereby causing ‘severe handicap in prison administration and a distinct disadvantage to the staff’.<sup>58</sup> Kerr stated that staff training was essential, calling it ‘a very high priority in modern prison administration’.<sup>59</sup> The lectures<sup>60</sup> provided for promotional exams were additional to the officers’ normal duties and the provision of training appeared to be irregular. In 1961 Kerr reported that limited staff training continued with some success and a staff training course (which did not exist at this time) needed to be established to develop ‘suitably knowledgeable staff’.<sup>61</sup> Then, the following year he acknowledged the modern world emphasised constructive rather than punitive treatment of prisoners, which required more capable and qualified staff to supervise them.<sup>62</sup>

A study by PK Mayhew found that prison reform was unlikely to succeed without prison administrators who had above-average tact, education and knowledge, and it would be exceptional to find this ability amongst those promoted from within the ranks.<sup>63</sup> The lack of depth in the talent pool was explored in the 1963 European Committee on Crime Problem’s report. It stated that, ‘the importance and prestige which the prison service has won in

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<sup>57</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1960*, Brisbane, p. 2.

<sup>58</sup> *ibid.*

<sup>59</sup> *ibid.*

<sup>60</sup> Senior prison administrators, including the Comptroller-General, prison Superintendents and Acting Deputy Superintendent, NR Williams, provided in-service training to assist officers pass promotional exams. NR Williams, ‘Memo to prison officers re. Examinations on the 6<sup>th</sup> and 7<sup>th</sup> September 1960’, 13 July 1960. QSA., A19874/ 271617; S Kerr, ‘Examination – Probationary Officers’, 11 July 1960. QSA., A19874/271617.

<sup>61</sup> S Kerr, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June, 1961*, Brisbane, 1961, p. 1.

<sup>62</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1962*, Brisbane, p. 4.

<sup>63</sup> PK Mayhew, *The Penal System of New Zealand 1840- 1924*, Department of Justice, Wellington, 1959, p. 132.

the eyes of the Government and of the general public of a particular country, clearly affects the salaries that can be offered and the kind of recruit the service is able to attract'.<sup>64</sup> The committee also noted 'recruitment (of senior staff) from amongst basic grade officers or other subordinate staff is relatively rare'.<sup>65</sup>

Kerr discovered these findings to be true when in 1963, in spite of the promotional training and exams, he could not identify suitable staff to take charge of Townsville prison and in later years, Brisbane Prison.<sup>66</sup> Despite this deficiency, he believed the examination system for recruitment and promotion had 'amply justified its implementation' and improved training and exams would enhance the 'psychological approach of others'.<sup>67</sup> During the Prisons Act Amendments Bill 1964 parliamentary debate, Noble noted that it was difficult to attract quality prison officers due to their poor wages. The situation

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<sup>64</sup> Council of Europe, *The Status, Selection and Training of Prison Staff*, The first report of Sub-committee VI of the European Committee on Crime Problems, Strasbourg, 1963, p. 3.

<sup>65</sup> *ibid.*, p. 14; The United Kingdom had established an in-service training centre that ran a continuous series of courses. These included training and open consultation on new policies to help staff understand and improve them (p. 11). It was found that recruitment of prison governors from staff who had progressed through the ranks was relatively rare except in the United Kingdom (p. 14) and the committee believed potential Governors and Assistant Governors needed to pass personality tests as well as qualifying exams (p. 23). The Committee reported suitable selection, training and subsequent retraining of existing staff were important components of a progressive prison administration. In a paper entitled 'The Status, Selection and Training of Prison Staff', they said the treatment of offenders in penal institutions should aim to be more constructive and while specialist staff should be employed, staff at all levels should seek to positively influence the prisoners. This emphasis should commence by employing appropriate 'selection and training methods' (p. 4). Some European countries recruited young former military personnel, while others provided on-site mentors (p. 9). Council of Europe, *The Status, Selection and Training of Prison Staff*, 1963, The first report of Sub-committee VI of the European Committee on Crime Problems, Strasbourg.

<sup>66</sup> 'Danger in Handling Prisoners', *The Courier Mail*, 17 Mar. 1963; This occurred again in 1964 when Deputy Comptroller-General, W Sochon, was recalled from annual leave to act in the Brisbane Prison Superintendents position. Sochon subsequently complained because he believed there were suitably qualified and capable officers who could have fulfilled the requirements of the relief without the necessity of his recall. WLP Sochon, 'Letter of protest about recall from leave', 20 Jan. 1964, QSA., item A22339; Sochon was again recalled from leave in November 1965 because Kerr considered 'there is no other suitable officer at Brisbane Prison whom I am prepared to recommend to act as Superintendent during Mr. Smith's absence'. S Kerr, Letter to Under Secretary regarding 'Absence of Superintendent, HM Prison Brisbane', 29 Nov. 1965, QSA., item A22339; S, Kerr, Letter to Under Secretary regarding 'Reliefs- Superintendents- HM Prisons, Brisbane and Wacol', 8 Jan. 1964, QSA., A22339.

<sup>67</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1964*, Brisbane, p. 1 - 2.

had however improved and the new training school at Wacol would provide for prison officers, public servants and prisoners.<sup>68</sup> He believed that improved training and testing would reduce high staff turnover.<sup>69</sup>

Kerr blamed the continuing high turnover on the ‘peculiar nature of prison work’<sup>70</sup> while the Queensland State Services Union (QSSU), who represented the prison officers, attributed low staff morale to poor pay and conditions.<sup>71</sup> It considered prisons were understaffed and new recruits were mainly migrants (see Chapter 1) who accepted the position while seeking more suitable work.<sup>72</sup> The QSSU took matters to the Industrial Commission, claiming 28% of staff at Brisbane and Wacol Prisons were temporary and only received seven days of training. The ‘better training’ Kerr claimed would help prepare staff<sup>73</sup> could not be applied because of high staff turnover which resulted in many temporary staff having less than six months experience.<sup>74</sup> Kerr then blamed the ‘buoyant economy and full employment’,<sup>75</sup> claiming all Australian jurisdictions were experiencing difficulties finding suitable staff.<sup>76</sup>

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<sup>68</sup> Parliamentary Debates, *Prisons Act Amendment Bill*, 12 March 1964, pp. 2471 - 2472, QCSA library.

<sup>69</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1964*, Brisbane, p. 2.

<sup>70</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1965*, Brisbane, p. 2; Unstated reasons could include the inability of new officers to adopt the staff subculture. As mentioned in Chapter 1, many staff had military or paramilitary backgrounds and supported the enforcement of discipline. Young new recruits may not have had the same exposure as they were too young for military service during WWII. Therefore, they may possess a different approach to the enforcement of discipline which would place them in conflict with the prison procedures and management expectations. ‘State prison security claimed as ‘weakened’’, *The Courier Mail*, 29 Apr. 1965.

<sup>71</sup> ‘Four Senior Jail Men Quit in Week’, *The Sunday Mail*, 28 Mar. 1965.

<sup>72</sup> *ibid.*

<sup>73</sup> This was to include orientation of the prison and the duties of various posts.

<sup>74</sup> ‘State prison security claimed as ‘weakened’’, *The Courier Mail*, 29 Apr. 1965; The lack of attention to basic duties made it necessary for Kerr to issue a General Instruction for officers to observe security in all areas by checking for contraband and ensuring the safe usage of equipment by prisoners. S Kerr, ‘Security measures’, General Instruction no 5/66, 21 July 1966. QCSA historical display.

<sup>75</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1966*, Brisbane, p. 2.

<sup>76</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1967*, Brisbane, p. 2.

In 1967, with the building program and prison accommodation expanding, Kerr put the emphasis on 'classification, segregation and better staffing, at the same time providing more efficient management and training'.<sup>77</sup> New recruits were receiving one month of instruction prior to commencing duties and 'where practicable' a refresher course was to occur before permanent appointment after their first year.<sup>78</sup> The following year Kerr was satisfied with recruit training and hoped to introduce training courses for senior staff.<sup>79</sup>

In that same year (1968), the QSSU submitted a proposal for executive positions<sup>80</sup> to be filled from within the ranks. This was rejected by Kerr who believed it would prevent 'non disciplinary'<sup>81</sup> officers from being promoted.<sup>82</sup> He stated that the previous Minister and the Public Services Commissioner both believed appointment should be based on suitability, irrespective of where he came from. Kerr considered business, management and leadership skills were critical for prison administrators, while security knowledge could be learnt, even though the rank and file of the union did not agree.<sup>83</sup> The initial training for new staff had consisted of observing an experienced officer for the first few shifts, without any provision for training in 'prison administration'. A course had then commenced for recruits, however the

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<sup>77</sup> *ibid.*, p. 1.

<sup>78</sup> *ibid.*, p. 2; It appears this training was for permanent officers only as opposed to the seven days 'orientation' for temporary staff.

<sup>79</sup> S. Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30 June, 1968*, Brisbane, p. 2; Possibly because management of the Security Patients Hospital was shared between the Health and Prisons Departments, the prison administrators accepted that officers required specialised skills and training to provide a 'therapeutic environment' to manage prisoner patients in the hospital in 1969. Training for these officers involved a twelve week course which included 'nursing, psychiatry, clinical psychology etc., in addition to their custodial duties'. These officers included four 'training officers' who were to be paid at a Senior Prison Officers rate and who were to provide treatment and care under medical supervision and 24 Prison Officers who were to perform hospital and custodial duties. The training officers were required to have a 'Mental Nursing Certificate and five years' experience in nursing mentally ill patients'. P Delamothe, 'Confidential submission for Cabinet: Prison service staffing – Security Patients Hospital, Wacol', 13 Dec. 1968, p. 2 & 3, QSA., SRS 6232/7/1005.

<sup>80</sup> Executive positions included Deputy Superintendents and above.

<sup>81</sup> Non disciplinary officers could include administration staff and those who were appointed to support positions not directly responsible for the management and discipline of prisoners, eg. stores officers.

<sup>82</sup> S Kerr, 'Staff and industrial position – Prisons Dept.', 7 Feb 1968, p. 6. QSA., item 1018708.

<sup>83</sup> *ibid.*

existing officers considered this program was deficient because the emphasis was on small arms training and did not include the specialised area of prison maths.<sup>84</sup> A 1968 investigation into prison recruitment and training by the General Secretary of the Queensland State Service Union, PJ Bredhauer, found staff training in Queensland's prison service was at 'a development stage' compared to that of Victoria and New South Wales.<sup>85</sup> He found that New South Wales recruits received two weeks' initial training, evaluation, on the job training, further evaluation and an additional two weeks' training; Victorian recruits received three weeks' initial training, six months' on the job training and an additional eight weeks training; while Queensland recruits received four weeks' training, six months' on the job training, followed by a further three weeks' training. It was also discovered that professional development of staff varied between states: in Victoria there was a qualifying course for those wanting to become Senior Prison Officers; New South Wales provided several courses for various levels and positions; while Queensland had lectures for staff wishing to qualify as Senior or Chief Prison Officers.<sup>86</sup> Bredhauer recommended recruit applicants undertake an exam equivalent to the Junior Public Service Examination. He believed this, in conjunction with scholarships in social studies, would allow staff to develop 'rehabilitative procedures and practices'<sup>87</sup> and recommended that an appropriately qualified person should plan and co-ordinate the training curricula. He also believed there was a need for a residential college to develop three to four week promotional training programs.<sup>88</sup> Bredhauer saw opportunity to improve the

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<sup>84</sup> Prison maths involved calculating prison sentences, including adding and subtracting various forms of remission which was not part of the duties of general duties officers. Prison maths was required by staff who worked in administration, specialist areas and, senior officers who were responsible for checking calculations, then discharging prisoners. The grievances were raised through the State Services Union with the Minister for Justice, Dr. P Delamothe during a meeting in response to a petition from the Brisbane and Wacol prison officers. Minutes of meeting between State Services Union and the Minister for Justice and Attorney-General Dr P Delamothe 6 March 1968, pp. 1-6 and attached petition, QSA., item 1018707.

<sup>85</sup> PJ Bredhauer, 'Report of an Investigation into Prisons Recruitment and Training', December 1968, pp. 10 - 15. QSA., item 1018707.

<sup>86</sup> *ibid.*

<sup>87</sup> *ibid.*, p. 16. QSA., item 1018707.

<sup>88</sup> Other recommendations included: changing titles to 'Governor and Deputy Governor' in line with other jurisdictions; requiring 'Superintendents and Deputy Superintendents to wear uniforms fulltime' and granting a 'meritorious service badge' for 15 years' service.

standard of recruits, the esprit de corp, decentralise control and to provide more training to senior staff. Importantly, he also recognised that his recommendations might change prisoner management techniques, which needed reappraisal because of ‘the more complex psychological problems posed in the human environment of this era, problems which are created by many factors not apparent as little as twenty years ago’.<sup>89</sup> This report will be discussed further in Chapter 7 when its findings were considered by the Minister and Comptroller-General during the following year. While it was acknowledged better staff training was needed to improve prison management, industrial tension between prison administrators and rank and file staff was to continue.

### ***Prison management issues***

In February 1968, Kerr described the ‘prison officer’s union as traditionally somewhat militant’ and while he had an open door policy for industrial relations he was surprised that the last union deputation he received was in September 1963. He said other deputations from the Queensland State Services Union (QSSU) had since gone directly to the Under Secretary or the Minister,<sup>90</sup> indicating the QSSU was unwilling to discuss matters with Kerr. When the union met with Minister for Justice and Attorney-General, Peter Roylance Delamothe, it advised him that ‘the greatest disability was the feeling by prison officers that they did not get a fair hearing. There is no confidence between them and Mr Kerr’.<sup>91</sup>

For many years, officers had performed their duties with little industrial unrest and then, by 1968, there was considerable dissatisfaction with conditions. Complaints included being placed at unnecessary risk when supervising

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PJ Bredhauer, ‘Report of an Investigation into Prisons Recruitment and Training’, December 1968, pp. 16-19. QSA., item 1018707.

<sup>89</sup> PJ Bredhauer, ‘Report of an Investigation into Prisons Recruitment and Training’, December 1968, p. 21. QSA., item 1018707.

<sup>90</sup> S Kerr, ‘Staff and industrial position – Prisons Dept.’, 7 Feb. 1968. p. 2. QSA., item 10187078.

<sup>91</sup> P Delamothe, ‘Deputation of representatives of the State Services Union, re: Petition from the Brisbane and Wacol Prison Officers’ Sections of the State Service Union of Queensland’, 6 March 1968. p. 5. QSA., item 1018708.

prisoners, that senior prison administrators ‘spied’ on union meetings and punished outspoken union members, the uniforms (see Chapter 5) were ill fitting, even after alterations, and prison officers were denied promotional opportunities because they could not appeal against successful external applicants.<sup>92</sup> Prison Officer, Tom King, met with Delamothe later in the year and questioned Superintendent Whitney’s ethical standards.<sup>93</sup> King claimed prisoners at Wacol prison, under direction, went to neighbouring government work sites (not under the control of the Prisons Department) to remove items for use inside the prison.<sup>94</sup> He also complained about management spying on staff and discriminating against those who spoke against Whitney or Kerr, or assisted others in these endeavours. Furthermore, staff dissenters were threatened with transfer or the withholding of promotional opportunities.<sup>95</sup> Earlier in the year, Kerr had reported to the Under Secretary that ‘the more reasonable members of the Union who attended these Union meetings sometimes, at our request, have informed us of the results of the majority of the points raised and the actions proposed’,<sup>96</sup> which confirmed King’s and the union’s claim of spying. Kerr also stated that he considered the Union ‘endeavoured to apply undue pressures to prevent transfers of officers, particularly classified officers for advanced training and experience in other prisons’. Kerr appeared to be annoyed by some senior staff who ‘flatly refuse promotion and transfer’ and believed that the Department should have the prerogative to transfer its staff based on the Department’s needs and to give the senior ranks broader experience.<sup>97</sup> This may have been a genuine professional development option or, if King’s claims were accurate, transfer was also being used as a punitive measure. Problems with staff was one prison management issue, another persistent problem was the inconsistent application of discipline.

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<sup>92</sup> Minutes of meeting between State Service Union and Minister for Justice and Attorney-General Dr. Delamothe, 6 March 1968. QSA., item 1018707.

<sup>93</sup> Whitney was to become the next Comptroller-General after Kerr.

<sup>94</sup> PR Delamothe, ‘Interview with Minister for Justice and Attorney-General by Mr. TD King and Mr. W Adermann, prison officers’, 5 Sept. 1968, p. 3. QSA., item 1018707.

<sup>95</sup> *ibid.*, pp. 3 - 6. QSA., item 1018707.

<sup>96</sup> S Kerr, ‘Staff and industrial position – Prisons Dept.’, 7 Feb. 1968. p. 5. QSA., item 10187078.

<sup>97</sup> *ibid.*, pp. 6 - 7.



In early 1968 a note had been found in Brisbane Prison that threatened a 'rally-up by inmates if a demand for additional smoking privileges and more television sets in the prison' was not met. Kerr said the author was discovered and it had been a practical joke; he claimed the note had not been taken seriously and consequently the author had not been punished.<sup>98</sup> The author may have been charged under the *Prisons Act 1958*, either section 33(f), which applies to anyone who writes any unauthorised document of any kind whatsoever, or (q) offends against good order and discipline of the prison. In light of the serious nature of the threat, it is difficult to understand why the prisoner was not charged, unless unofficial punishment had been applied, or to give the appearance that prison authorities were in control, despite reported lapses of security.

An example of this is the 1968 investigation that examined the smuggling of mail, whisky and tobacco into Boggo Road. Prison officers and various visiting groups accused each other and ex-prisoners from southern states of introducing the items.<sup>99</sup> The investigation, which was led by Kerr<sup>100</sup> and the Prison Superintendent R Smith, resulted in several 'sackings and resignations' which included a senior officer.<sup>101</sup> While management issues continued to confound Queensland's prison administration, the care and rehabilitation of prisoners was limited and provided mainly by community volunteer groups.

### ***Prisoner support in the prison***

Community involvement in prison activities was generally voluntary and restricted to sporting, leisure and some educational programs.<sup>102</sup> In 1963, the

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<sup>98</sup> 'S.P. betting ring found in jail', *The Sunday Mail*, 23 June 1968. QSA., item 1018708.

<sup>99</sup> 'Smokes, grog in Boggo Rd. smuggle claim', *The Courier Mail*, 4 Nov. 1968, p. 18; 'Full inquiry into prison smuggling', *The Sunday Mail*, 10 Nov. 1968, p. 12.

<sup>100</sup> Kerr had been in the Criminal Investigation Branch of the police service for fifteen years prior to joining the prisons.

<sup>101</sup> 'Warders sacked over smuggling', *The Sunday Mail*, 17 Nov. 1968.

<sup>102</sup> In 1963, a garden in Brisbane Prison and an area in Townsville Prison were converted into a sports area to permit 'selected prisoners' to participate in recreational activities and develop a 'better mental outlook'. S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1964*, Brisbane, p. 2; By 1965, Wacol prisoners were participating in sporting fixtures on their home ground and the Queensland Debating Union established teams in prisons. S Kerr, *Annual Report of the Comptroller-*

St. Leonards Society for the Rehabilitation of Discharged Prisoners<sup>103</sup> was formed in Queensland to assist discharged prisoners find employment. Kerr said that ‘society would not wait until the prisoner was released before his rehabilitation began’.<sup>104</sup> However, this pre-release rehabilitation was limited to the volunteers contacting the prisoners while in custody for the purpose of facilitating placement in employment after discharge. Then, as an acknowledgement of the Prisons Department’s responsibility for prisoner welfare, in 1965 welfare officers were appointed in both Brisbane and Townsville Prisons, to provide some support for prisoners whilst in custody.<sup>105</sup> To place their workload in perspective, during that year Brisbane and Townsville Prisons received 3365 and 1072 prisoners, respectively. The Annual Report does not specify whether the Brisbane welfare officer, G Webb, also supported the women’s division, which received an additional 347 prisoners. This meant both welfare officers had to manage an overwhelming number of receptions into the prisons. At best, the appointment of two welfare offices implies prison administrators recognised the need to provide funded support for prisoners; at worst, it was a token gesture to give the impression of responding to the emotional and welfare needs of prisoners, which had previously been provided solely by volunteer welfare organisations.<sup>106</sup> Within a short time the welfare officers’ workload included participating as members of the Classification Committees, Prisoner Aid Societies and also assisting prisoners gain employment on discharge.<sup>107</sup>

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*General of Prisons for the year ended 30<sup>th</sup> June, 1965*, Brisbane, p. 2; In 1967, Kerr adopted the slogan ‘training for leisure’ because he believed many people in the community and prisons did not know how to use their leisure time productively. He encouraged prisoners to participate in sporting and debating activities to assist them to ‘keep abreast of social requirements’ and to maximise the use of their leisure time until they were discharged. S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1967*, Brisbane, p. 2.

<sup>103</sup> The society was made up of ‘private citizens, clergymen and professional men’. S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1965*, Brisbane, p. 2.

<sup>104</sup> ‘New lives for old as prisoners go free?’ *The Courier Mail*, 21 Aug. 1963.

<sup>105</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1965*, Brisbane, p. 2.

<sup>106</sup> *ibid.*, p. 5.

<sup>107</sup> S. Kerr, *Annual report of the Comptroller-General of prisons for the year ended 30 June, 1967*, Brisbane, p. 2; An additional two positions were approved in 1969. S Kerr, *Annual report of the Comptroller-General of prisons for the year ended 30 June, 1968*, Brisbane, p. 2.

In 1967, research psychologist JC Winship, found that the members of the then prison classification committee were not satisfied with its functioning and he believed psychologists should be utilised more in the prisons.<sup>108</sup> Winship considered psychologists could be involved in ‘five main areas – diagnostic, classification, treatment, staff training and consultation, and research’.<sup>109</sup> He expanded on these in a report, stating ‘defects in social and personal development’ cause disordered behaviour and the problem of ‘contriving a remedy remains within the prison system’.<sup>110</sup> In addition, unless the underlying causes were resolved by services like counselling, then some offenders would not gain the full benefits that might be derived from other forms of rehabilitation.<sup>111</sup> Winship also believed that prison officers should be kept informed about the progress of individual counselling because they might need to be called upon for cooperation and assistance.<sup>112</sup>

Based on the reports by Winship, the Department of Psychiatric Service’s Director tabled recommendations to the Minister for Justice regarding psychiatric services in prisons. He estimated that approximately twenty percent of prisoners required treatment and recommended employing two psychiatrists for three three-hour sessions per week.<sup>113</sup> Winship also considered psychologists could be used by the Prisons Department to prepare reports for classification committees, assist in educational programs and determine vocational potential.<sup>114</sup> These assessments would determine intelligence, aptitude and education levels, and the subsequent report would recommend education programs, prison placement and ‘vocational

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<sup>108</sup>Winship stated that over 40 full-time psychologists and psychological testers were employed in prisons in Britain and ‘psychologists, social workers and education officers’ were used in New South Wales and Victoria’s prisons. Services provided by psychologists in New South Wales included an individual induction interview, psychological test for every prisoner and a psychologist was the secretary of the classification committee. JC Winship, ‘The work of Psychologists in Prison’, 11 Oct. 1967, pp. 1 - 2, QSA., item 1018707.

<sup>109</sup> *ibid.*

<sup>110</sup> *ibid.*, p. 2.

<sup>111</sup> *ibid.*

<sup>112</sup> *ibid.*, p. 4.

<sup>113</sup> Director of Psychiatric Service, Letter to the Minister for Justice regarding Psychological services both current and proposed to the Prisons, 18 April 1968, p. 1, QSA., item 1018707.

<sup>114</sup> *ibid.*, p. 3.

potentialities generally'.<sup>115</sup> Delamothe had several ideas for reforming the prison system and said many prisoners were illiterate, needed psychiatric attention and he intended to introduce 'schools and psychiatry into Queensland Prisons' to assist in dealing with these problems.<sup>116</sup> He also conceded that 'in rehabilitation [Queensland] was behind other states and countries'<sup>117</sup> and that in his medical opinion, crime was in 'most cases a sickness which often would respond to treatment'.<sup>118</sup> There was a deficiency in treatment available to prisoners because of the mental health professionals' heavy workload and lack of available time. The subsequent response to this problem will be discussed in Chapter 7. The two activities in prison that the Queensland prison authorities certainly did consider rehabilitative were education and work.

### ***Prisoner Education***

Education and work were viewed by the prison administration as the only forms of rehabilitation that should be made available while in prison. Consequently, a review of the prison industry was conducted with the aim of providing better prisoner training.<sup>119</sup> In 1960, only part-time teachers were employed in Brisbane and Townsville Prisons and there was inadequate classroom space to allow for classes of suitable sizes. Kerr acknowledged that prisoner education was desirable and recognised there were full-time teachers employed in the prisons of other states,<sup>120</sup> however, the fact that full time teachers and more class room space had not materialised in Queensland by 1965<sup>121</sup> indicates that while education was advocated, it did not receive the

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<sup>115</sup> G Shrqhart, 'Response provided to the Minister for Justice', 18 April 1968, p. 3. QSA., item 1018707.

<sup>116</sup> 'Jail school program is planned', *The Sunday Mail*, 16 June 1968.

<sup>117</sup> *ibid.*

<sup>118</sup> In 1971, Kerr stated 'new types of offences have emerged...and nothing but the sternest action will prevent the spread of this type of "cancer" in our community. The cry that they are all sick people is unrealistic and overdone and excuses are often too readily offered and accepted'. S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1971*, Brisbane, p. 5.

<sup>119</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1960*, Brisbane, p. 1.

<sup>120</sup> *ibid.*, p. 2.

<sup>121</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1965*, Brisbane, p. 2.

necessary support and funding. Instead, the prison education program continued to rely on the good will of members of the public. Kerr continued to lament the inadequacy of the prisoner education program in the departments' annual reports, but in 1968, education was still being provided by part-time teachers and volunteers.<sup>122</sup>

Bredhauer's 1968 investigation, which was introduced earlier in the chapter, also found overcrowding, short sentences and the youthfulness of many offenders, were ongoing problems. He recommended the employment of full-time teachers to assist in the development of educational and self-help programs.<sup>123</sup> A separate investigation by CL Searle & SE Riethmuller, into the educational facilities at Brisbane and Wacol prisons, found the facilities at Wacol could cater for up to 60 students with the existing equipment being equivalent to most country high schools; however, over the last three years only an average of fifteen inmates had been taking courses.<sup>124</sup> The investigation also found prisoners in Brisbane were offered two-hour courses once a week by Mrs. Valerie French who ran the 'Self Help' group and one-hour elementary mathematics classes twice a week under the supervision of a part-time teacher.<sup>125</sup> Superintendent, RF Smith, agreed with the investigators recommendation of two-hour tuition periods twice a week. He also encouraged young long-term offenders to participate in education courses by

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<sup>122</sup> S. Kerr, *Annual report of the Comptroller-General of prisons for the year ended 30 June, 1967*, Brisbane, p. 2.

<sup>123</sup> Bredhauer also recommended prisoners be involved in 'public projects such as reforestation'. PJ Bredhauer, 'Report of an Investigation into Prisons Recruitment and Training', December 1968, p. 5. QSA., item 1018707.

<sup>124</sup> Despite there being several workshops, only one prisoner was indentured as an apprentice while other prisoners gained skills in the available trades. CL Searle & SE Riethmuller, 'Investigation and report on provision of educational facilities at Wacol Prison', undated, p. 1. QSA., item 1018707.

<sup>125</sup> The students in the latter classes included those who received tuition for low literacy levels and were permitted to attend during working hours and still receive their work remuneration. CL Searle & SE Riethmuller, 'Investigation and report on provision of educational facilities at Boggo Road Prison', 1968, p. 1. QSA., item 1018707; However, the self-help classes were considered hobbies such as art, debating and French. These occurred during the prisoners' leisure time without remuneration. *ibid.*, p. 2; In 1966, Kerr had stated television, debating teams and discussion groups, for 'selected prisoners', assisted in discipline and rehabilitation. S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1966*, Brisbane, p. 3.

providing extra privileges and assisting their progression to the lower security Wacol Prison.<sup>126</sup>

In contrast, there were reports indicating operational hurdles that presented difficulties for those attempting to facilitate rehabilitation. The lack of cooperation between prison authorities and those seeking to rehabilitate prisoners was voiced in a QSSU petition which was presented to the Minister. The petition stated that ‘the administration’s attitude to organisations outside the prison service, interested in the rehabilitation of prisoners is one of discouragement and non-co-operation’.<sup>127</sup> A former prisoner made similar comments regarding the lack of support to participate in programs. He stated, ‘if you want to go to school you have to go through so many different things...the approvals held for so long that the prisoner gets the attitude... what am I doing...they disapprove and they withhold these approvals’.<sup>128</sup>

Molly Budtz-Olsen of the University of Queensland Women’s College provided some insightful comments to Delamothe following Bredhauer’s investigation into prison education facilities. She acknowledged many prisoners who committed offences suffered from mental illnesses, however, while the community viewed offending as ‘intentional badness’ she saw there was a need to educate the general public and the prison staff.<sup>129</sup> She recognised the prison system needed to be restructured to facilitate reform. This would allow prisoners to feel safe enough to modify their ‘value system’ as she believed the ‘efforts and active support of the custodial staff’ positively influenced the prisoners.<sup>130</sup> Other suggestions she made regarding the classification committee were years ahead of practice in the Queensland prison system, being equivalent to what is known today as ‘sentence

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<sup>126</sup> CL Searle & SE Riethmuller, ‘Investigation and report on provision of educational facilities at Boggo Road Prison’, 1968, p. 3. QSA., item 1018707.

<sup>127</sup> P Delamothe, ‘Deputation of representatives of the State Services Union, re: Petition from the Brisbane and Wacol Prison Officers’ Sections of the State Service Union of Queensland’, 6 March 1968, p. 5. QSA., item 1018708.

<sup>128</sup> QTQ Channel 9, transcript of television program ‘Close Up’, 26 June 1968. QSA., item 1018708.

<sup>129</sup> M Budtz-Olsen, ‘letter to Dr PR Delamothe Minister of Justice regarding psychiatric and educational investigations’, 2 July 1968. QSA., item 1018707.

<sup>130</sup> *ibid.*

management'. She suggested the committee should determine the 'type of custody...labour...and plan a program that will be directed towards his rehabilitation' and prisoners should be allowed to participate in some of the discussions.<sup>131</sup> Budtz-Olsen considered a 'careful choice of administrative personnel' was required, tactfully expressing doubt in the ability of the current administrative team to implement the suggested reforms.

While Budtz-Olsen advocated different rehabilitation options, Kerr's focus, since the early part of his tenure, remained on discipline and prison labour. This labour was in the form of training programs that provided employable skills, particularly for young prisoners.<sup>132</sup> Kerr stated 'the most important part of a prisoner's confinement is mental and manual training' and punitive measures were 'only part of a modern penal system'.<sup>133</sup> He considered that if prisoners could enter employment once released there was a reduced risk of reoffending, but for him the critical factor was the willingness of the community to provide ex-prisoners with opportunities.<sup>134</sup>

### ***Prison labour***

Few reforms were introduced in Queensland for the prisoners' benefit during the period under review. Several industries operated in the state's prisons to provide meaningful labour within the limitations identified earlier,<sup>135</sup> which affected the nature, size and success of prison industries. Even though the *Prisons Act 1958* provided for education and meaningful work, the appropriate use of prison labour continued to be a contentious issue. In 1963, the Minister for Health and Home Affairs, Dr. Noble, said that because of

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<sup>131</sup> *ibid.*

<sup>132</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1962*, Brisbane, p. 1.

<sup>133</sup> *ibid.*

<sup>134</sup> 'New lives for old as prisoners go free?' *The Courier Mail*, 21 Aug. 1963; Kerr claimed community involvement was important, as it permitted links to be developed between prisoners and the community that improved the probability of a successful transition on release. S Kerr, 'International Conference- Department of External Affairs, suggested notes for the Ministers opening address', 18 March 1969, p. 2, QSA., item 1018707.

<sup>135</sup> These included the availability of suitable space, equipment, technical expertise, supervision, industry competition and administrative priorities.

overcrowding ‘over the previous three years only 172 prisoners had the opportunity to do education and trade training courses’ in Brisbane Prison.<sup>136</sup>

Noble was in favour of prison labour and utilised it in the construction of Wacol prison hospital.<sup>137</sup> He considered this helped prepare prisoners for release by improving their ‘self-respect’ while providing ‘worthwhile employment, training and occupational therapy’.<sup>138</sup> The Australian Workers’ Union was not as sympathetic to the prisoners’ plight and opposed the use of prison labour in construction and prison laundries, at the cost of its members’ jobs. But as we saw earlier, Noble insisted that because there was full employment in the industry, union jobs were not at risk and he did not intend to review the situation. He further justified his decision by pointing out that prison labour had been used ‘extensively in New South Wales, New Zealand...Victoria, England and elsewhere’.<sup>139</sup>

Nevertheless, the use of prison labour continued to be a divisive political issue. John Melloy, ALP Member for Nudgee, argued in parliament that any work undertaken by prisoners should be done ‘purely in a training capacity’.<sup>140</sup> Fred Phillip Bromley, ALP Member for Norman, also considered that prisoners should be provided rehabilitation opportunities and it was the government’s responsibility to allocate appropriate funds.<sup>141</sup> It was never likely that there would be bipartisan support for the use of prison labour, but in 1965 Kerr thought that it was turning out to be ‘the most valuable

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<sup>136</sup> The newspaper article reported of crowded dormitories; three prisoners sharing the same cell and; classrooms being used as dormitories resulting in a loss of educational opportunities. ‘Brisbane Jail is too full’, *The Sunday Mail*, 10 Nov. 1963; During 1963 Brisbane prison, with a single cell capacity of 303, had an average population of 516. S Kerr, *Annual report of the General of Prisons for the year ending 30<sup>th</sup> June 1963*, Brisbane, 1963, p. 8.

<sup>137</sup> This was later named the Security Patients Hospital or SPH.

<sup>138</sup> ‘Convicts will build new jail extensions’, *The Sunday Mail*, 3 Nov. 1963.

<sup>139</sup> ‘Oppose use of jail laundry for hospital’ and ‘Govt. talks offer over prison labour’, *The Courier Mail*, 7 Nov. 1963; Govt. to go ahead with jail Labour’, *The Courier Mail*, 16 Nov. 1963.

<sup>140</sup> Parliamentary Debates, *Prisons Act Amendment Bill*, 12 March 1964 p. 2448, QCSA library.

<sup>141</sup> *ibid*, p. 2449.



introduction into our prison system of recent times'.<sup>142</sup> The media even reported that prisoners preferred hard manual labour, such as constructing a prison for high-security patients at Wacol, because it was more appealing than 'sitting in morale-destroying idleness in some compound, locked up in a jail'.<sup>143</sup> Furthermore, Kerr was also of the opinion that training prisoners in trades such as boot making, tailoring and the like was impracticable because on release<sup>144</sup> there were few employment opportunities, yet they continued on in Queensland prisons for many years more.

For several years, Kerr and the Prison Ministers had advocated prisoner employment as a form of rehabilitation, but Winship, a senior clinical psychologist, questioned this view:

...there has been a tendency to regard trade training as serving two ends; the first...a man previously without such training, is going to be better off with some experience; the second that, regardless of its content, vocational training and the disciplined work it entails will be beneficial for his character. Thence the somewhat naïve assumption that a man who seeks a trade course is ipso facto on the road to salvation.<sup>145</sup>

Based on comments by various Government ministers it is apparent they did not share Winship's view and instead agreed with Kerr that prison employment was an appropriate rehabilitative vehicle, however, it will be seen in the next chapter that this was to change. In due course the use of prison labour expanded and in 1967 Kerr stated the new industries would allow prisoners to work eight-hour days instead of the existing five to six hours per day,<sup>146</sup> to prepare them for the external work force.

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<sup>142</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1965*, Brisbane, p. 3.

<sup>143</sup> 'Prisoners ask for hard labour', *The Courier Mail*, 9 May 1965.

<sup>144</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1965*, Brisbane, p. 3.

<sup>145</sup> JC Winship 'The work of Psychologists in Prison', 29 March 1968, p. 3, QSA., item 1018707.

<sup>146</sup> S. Kerr, *Annual report of the Comptroller-General of prisons for the year ended 30 June, 1967*, Brisbane, p. 2.

This policy of utilising employment to facilitate rehabilitation had been in place for several years when Noble advocated a release-to-work program. The concept was that those incarcerated for failing to pay family maintenance would be required to work in the community during the day, return to prison at night and have maintenance and rent deducted from their pay. Noble believed other prisoners could also be included in the scheme.<sup>147</sup> While there were other priorities at the time<sup>148</sup> Kerr was convinced a release-to-work program would be implemented,<sup>149</sup> but implementation stalled due to a lack of suitable accommodation in the prison.<sup>150</sup> This program was to eventually be implemented and it will be discussed further in Chapter 7.

### ***Release programs***

What occurs after a prisoner's discharge has been recognised for many years as a barrier to successful community reintegration and contributes to their subsequent relapse into criminal activity. Patrick Colquhoun in the 18<sup>th</sup> Century said a convict, once known or suspected, cannot gain employment and even if inclined to honest labour was unable to do so.<sup>151</sup> Rehabilitation was stated as the purpose of Queensland prisons in the 1950s, yet the available work while in custody to allow up-skilling of the offender was selective and limited. Availability of parole to assist this process was restrictive and post sentence assistance was generally only supplied by charitable institutions and individuals.

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<sup>147</sup> The program was later expanded to allow reintegration opportunities for long-serving prisoners to gain employment and to become accustomed to the community prior to full-time release. J Delamothe & B Stevenson, *The Delamothe Story*, 1989, Boolarong, Brisbane, pp. 185 - 186.

<sup>148</sup> 'Work Day- then jail', *The Courier Mail*, 16 Mar. 1964.

<sup>149</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1964*, Brisbane, p. 2.

<sup>150</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1966*, Brisbane, p. 3.

<sup>151</sup> J Heath, *Eighteenth Century Penal Theory*, Oxford University Press, London, 1963, p. 282.

Kerr's 1964 comment regarding 'rehabilitation, if and where it is practicable'<sup>152</sup> indicates that while rehabilitation was part of an ultimate goal, it was secondary to operational priorities. However, he did support reducing the time spent in prison for some prisoners through the introduction of periodic detention and release to work.<sup>153</sup> In 1964 he recommended periodical detention, particularly for youthful offenders. This would provide a deterrent imprisonment experience while still allowing offenders to remain useful members of society through the retention of employment during the week. At the same time, Kerr recommended a release to work program<sup>154</sup> where as prisoners were reaching the end of their sentence they were able to find and commence employment to assist reintegration. Both options commenced during the Kerr era, and periodic detention or 'weekend detention' as it was sometimes called, continued until the early 1980s. However, it always was problematic in terms of offenders reporting, behaviour management, segregation and prison security. Conversely, the release to work option was less problematic and continued for many years.

While periodic detention reduced overcrowding and ultimately the cost of incarceration, both the release to work and weekend detention programs helped to perpetuated the premise that employment provided rehabilitation. While these periodic detention options remained under the Prisons Department's control, independent authorities, with input from prison administrators, managed the other community release option, parole.

### ***Parole for the few***

A Parole Board and additional parole staff were appointed<sup>155</sup> under the *Probation and Parole Act 1959* in anticipation of the large number of

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<sup>152</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1964*, Brisbane, p. 4.

<sup>153</sup> *ibid.*

<sup>154</sup> *ibid.*, p.4; S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1965*, Brisbane, p. 4.

<sup>155</sup> This included three permanent and 92 honorary positions.

offenders who would be granted these options.<sup>156</sup> The Prisons Department's 1960 Annual Report reveals that while parole applications increased to 93, only 27 of these were approved.<sup>157</sup> Table 6.1 contains some additional data to that in Table 5.3 and shows annual prisoner numbers immediately prior to and following the *Probation and Parole Act 1959*. Both of these tables indicate that very few parole requests were approved<sup>158</sup> until the mid-1970s.

Year	New prisoner receptions during the reporting year	New receptions serving six months or more	Total discharges	Total discharged by remission or expired sentence	Parole applications	Number released on parole
1959 <sup>159</sup>	3041	1279	3623	2135	54	6
1960	3244	1274	3627	2164	93	27
1961	3625	1261	4582	2466	103*	25*
1962	3489	1220	4505	2364	129*	29*
1963	3932	1253	3876	2701	106*	26*
1964	3951	1215	4053	2814	NA	40
1965	4216	1200	4036	2891	115*	36*
1966	4275	1357	4240	3059	99*	23*
1967	4933	1420	4886	3588	NA	43
1968	4645	1311	4712	3513	118*	30*
1969	4849	1350	4749	3270	111*	35*
1970	5174	1423	5101	3499	129*	39*
1971	5114	1607	5085	3396	NA	31
1972	5133	1815	4930	3200	NA	58
1973 <sup>160</sup>	6150	948	6015	2280	NA	135
1974	5035	734	5208	2206	NA	147
1975	5202	1048	5120	1984	NA	162

Table 6.1 Annual statistical data<sup>161</sup>

<sup>156</sup> 'Parole board of 6 named to aid offenders', *The Courier Mail*, 21 Aug. 1959; 'Probation and jail parole begin today', *The Courier Mail*, 14 Sept. 1959; '92 appointed parole officers', *The Courier Mail*, 2 Oct. 1959.

<sup>157</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1960*, Brisbane, 1960, p. 2.

<sup>158</sup> These statistics do not indicate the number of prisoners who qualified for parole but elected to complete their prison sentences and have a remitted discharge.

<sup>159</sup> Parole applications and releases for this reporting year were under the previous legislation.

<sup>160</sup> In the 1973 annual report there was a change in statistical reporting format.

<sup>161</sup> (NA = data not available; \* data from Parole Board annual reports)\* Entries made in the table relate to the relevant Parole Board annual report; S Kerr, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1959 – 1973, Brisbane; AJ Whitney, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June*, for the years 1974 – 1975, Brisbane; M Hanger, *Annual Report of the Parole Board for the year ended 30<sup>th</sup> June*, for the years 1961 - 1962, 1965 - 1966, Brisbane; MB Hoare, *Annual Report of the Parole Board for the year ended 30<sup>th</sup> June, 1968*,

Under the *Probation and Parole Act 1959*<sup>162</sup> prisoners serving sentences of over six months were eligible for parole unless the sentencing court stipulated otherwise. Table 6.1 shows approximately one third of new receptions were serving sentences of over six months; therefore, it would be reasonable to assume a similar proportion of those discharged had been eligible for parole.

While the legislation specified additional criteria for parole eligibility, the figures indicate many eligible prisoners did not apply. As discussed in Chapter 5, those who may have applied for parole encountered many barriers, including: the literacy level required to prepare the application, the requirement of consistently good behaviour during their sentence, the low number of parole approvals, and the reporting requirements if parole was approved. Alternatively, a prisoner released by remission<sup>163</sup> had no reporting conditions; therefore, it was more appealing to wait for the remitted release rather than attempt to overcome the difficulties of applying for parole and if successful, remain breach free. The failure of the Prisons Department to better utilise parole after the introduction of the new prisons and parole legislation suggests the rhetoric of using alternative forms of supervision to prison, to reduce overcrowding, achieve cost efficiencies and improve the prospects of rehabilitation, was selectively applied.

### ***Community involvement***

It has been discussed how custodial rehabilitation programs were restricted to limited education and work opportunities and it appears that rehabilitation was expected to occur after discharge with the assistance of charitable groups and individuals. Some members of these charitable organisations also attempted to assist in the rehabilitative process while the prisoner was still incarcerated. The normalisation of a prisoner's leisure activities, to resemble those in the wider community, resulted in sporting facilities being regarded as desirable to

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Brisbane, 1968; BJ Jeffriess, *Annual Report of the Parole Board for the year ended 30<sup>th</sup> June, 1963*, Brisbane, 1963.

<sup>162</sup> Queensland Government, '*Offenders Probation and Parole Act 1959*', s. 32, Brisbane, 1959.

<sup>163</sup> Remission is a form of early release. *The Prisons Act 1958*, regulations 383 – 417.

provide a 'better mental outlook'. Consequently, some unspecified space was made available in Brisbane and Townsville prisons for 'selected' prisoners.<sup>164</sup>

In 1967 Kerr wrote:

Prisoner training is a wide field and involves educational and sporting activities and interest and participation from outside groups with the objective of changing attitudes of the prisoners and keeping them abreast of social requirements. Debating clubs and sporting competitions have widened prisoners' horizons.<sup>165</sup>

In addition, 'the public must be fully aware' and 'a well-informed community on prison programs can assist greatly'.<sup>166</sup> These statements contradict previous and subsequent comments, as well as Kerr's actions in relation to community involvement and transparency, indicating that while he acknowledged the role of community involvement in the operation of prisons, he had no faith in it.

It has been discussed that prison managed rehabilitation, whilst in custody, was limited to education and work, with remission and parole used as positive reinforcement for good behaviour. Other rehabilitative options were provided by volunteer organisations, such as Self Help, that did not always follow departmental guidelines. Kerr had stated that a successful prison system 'must be objective and of which the public must be fully aware'.<sup>167</sup> Yet, it will be seen that only limited community involvement and awareness was actually sought and any criticism was viewed as confrontation rather than as presenting opportunities to improve.

For example, in 1968 a story appeared in the newspapers about volunteers being given flowers from Brisbane Prison. This was a detail that had been censored out of 'Kalori' the departmentally approved newsletter.<sup>168</sup> RF Smith,

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<sup>164</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1963*, Brisbane, p. 2.

<sup>165</sup> S. Kerr, *Annual report of the Comptroller-General of prisons for the year ended 30 June, 1967*, Brisbane, p. 2.

<sup>166</sup> *ibid.*, p. 5.

<sup>167</sup> *ibid.*, p. 5.

<sup>168</sup> Prisoners were told that in future no flowers would be presented. 'No more prison flowers', *The Sunday Mail*, 17 March 1968. QSA., item 1018708.

the Superintendent of Brisbane Prison, informed Kerr that he had discovered that an unofficial newsletter call 'Kalori Outside' existed and that it had been passed to the press, not long after a February deputation led by Mrs. Valerie French<sup>169</sup> from Self Help met with the Prisons Minister, Peter Delamothe, regarding prison visitors.<sup>170</sup> Within a month, Kerr presented Delamothe with several documents to demonstrate that French was undermining the prison administration. The Superintendent of Brisbane Prison, RF Smith had stated that there was 'no room whatsoever in a prison for disloyal staff, or welfare workers' and recommended 'Kalori' be discontinued.<sup>171</sup> Kerr also asked the Under Secretary, Department of Justice, to ban French from visiting the prisons.<sup>172</sup> To solidify his position, Kerr referred to a statement made by a prisoner that French had repeated comments that had passed between herself and Kerr and had asked the prisoner if he would be willing to speak to 'parliamentarians...on the goings on at the gaol'.<sup>173</sup>

After French's deputation, Delamothe issued instructions regarding prisoners' visits, the interpretation of which on the prison floor resulted in the unintended (on Delamothe's part) restriction of prison visits to family members. Prison officers directed the consequent visitors' anger towards French.<sup>174</sup> In April, French complained to Delamothe that girlfriends of prisoners were not permitted to write to or visit the prisoners, even at the same

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<sup>169</sup> P Delamothe, 'Deputation to the Hon. P.R. Delamothe, O.B.E. M.L.A., Minister for Justice and Attorney-General, by V. French, N. Wilson and W. Hewitt M.L.A.' 15 Feb. 1968. QSA., item 1018708.

<sup>170</sup> These instructions included: various groups and individuals would be permitted entry to the prisons; family members of first time offenders in Wacol would be permitted to visit weekly or fortnightly and; friends would be able to visit monthly. P Delamothe, untitled letter to V. French following deputation on 15 Feb. 1968, dated 20 Feb. 1968. QSA., item 1018708.

<sup>171</sup> RF Smith, report regarding 'Article- no more prison flowers- Sunday Mail- 17<sup>th</sup> Mar. 1968', 20 March 1968. QSA., item 1018708.

<sup>172</sup> S Kerr, 'Activities of Mrs. V. French', 25 March 1968. QSA., item 1018708.

<sup>173</sup> The statement signed by the prisoner was witnessed by Smith, so while the comments may be factual, there is also the possibility they were extracted under real or implied coercion, because the Superintendent was taking the statement from a prisoner who was hoping to be released before the end of that year. PTC Dwyer, 'Statement', 25 March 1968. QSA., item 1018708.

<sup>174</sup> V French, 'Letter to P. Delamothe, Minister for Justice', 8 April 1968. QSA., item 1018708.

time as the prisoners' families, which had been the established practice.<sup>175</sup> When questioned by Delamothe, Kerr attacked French, but at the same time his response indicated that the complaints had foundation. Kerr stated 'Mrs French is, as usual, not accurate nor is she consistent with facts'. Then he continued by explaining some staff had 'misinterpreted the regulations' and were not allowing friends and relatives to visit together, however the regulations had now been clarified. He also stated the quantity of mail sent to prisoners by girlfriends had necessitated asking some prisoners to 'inform their girlfriends not to write every night...as this means much additional work by way of censorship'. Nevertheless, overall the regulations concerning inward letters had been relaxed 'in the interests of home and family relationships'. Kerr concluded by describing French as a 'pest' and a 'nuisance' and informed Delamothe that some of French's letters revealed 'more than a casual interest' in some prisoners.<sup>176</sup>

Kerr reporting his concerns about French could be interpreted as an attempt to deflect any questioning of prison management. At about the same time, N Wilson, a member of the Liberal Party executive, expressed misgivings about the lack of prison transparency. He told the television program 'Close Up' that:

...what the administration seems to fear is that the light of public opinion will be turned onto them. We're told that security is uppermost ... but I sometimes wonder if the security is to keep the prisoners in or to keep the public opinion out...This attitude of don't talk, don't disclose, don't bring before the public something because if you do, it may reflect on us.<sup>177</sup>

Soon after this TV interview the Brisbane press reported that prison authorities had suggested that French's Self Help group should amalgamate

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<sup>175</sup> *ibid.*

<sup>176</sup> S Kerr, 'Letter from Mrs Valerie French – complaint re visits to prisons', 18 April 1968. QSA., item 1018708.

<sup>177</sup> QTQ Channel 9, transcript of television program 'Close Up', p. 6, 26 June 1968. QSA., item 1018708.



with the Prisoners Aid Society.<sup>178</sup> Self Help was prepared to enter into a loose arrangement but Prisoners Aid was not open to the idea.<sup>179</sup> Based on the timing, it appears the amalgamation proposal was a surreptitious attempt to influence the composition and activities of Self Help which had proved to be more intrusive than the prison administrators were comfortable with.<sup>180</sup>

French continued to challenge the decisions of the prison administration when they appeared unfair or unreasonable. She complained to Delamothe about Kerr delaying a debate, because he claimed ‘the mentality of prisoners is such that they cannot understand the debates at the level of outsiders’. French then stated ‘it is difficult to reconcile the policy of encouragement as expressed by you [Delamothe], with the constant refusals and contempt for the already proved ability of the prisoners, as expressed recently to different members of our [debating] union by the Comptroller-General’.<sup>181</sup> Kerr’s actions were in contrast with his own comments in Departmental annual reports, where for several years he had given special thanks to the members of the Queensland Debating Union for their contributions to the rehabilitation, welfare and education of prisoners.<sup>182</sup>

## ***Conclusion***

It has been shown in this chapter that after the passing of Queensland’s *Prisons Act 1958* reform occurred where it enhanced security, whereas

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<sup>178</sup> Mrs V French had previously stated during an interview in 1967 that ‘Prisoners Aid is an extension of the Prisons Department as many of its office holders are departmental officials’. Unknown author, ‘File Note, Interview – Mrs French’, 28 Nov. 1967. QSA., item 1018708.

<sup>179</sup> ‘Woman angry at stories, threat to Minister’, *Truth*, 7 July 1968.

<sup>180</sup> V French, ‘Untitled letter to Dr Delamothe, the Minister for Justice’, 1 Dec. 1968. QSA., item 1018708.

<sup>181</sup> *ibid.*

<sup>182</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ending 30<sup>th</sup> June 1965*. Queensland Government Printer, Brisbane; S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ending 30<sup>th</sup> June 1966*. Queensland Government Printer, Brisbane; S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ending 30<sup>th</sup> June 1967*. Queensland Government Printer, Brisbane; S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ending 30<sup>th</sup> June 1968*. Queensland Government Printer, Brisbane; S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ending 30<sup>th</sup> June 1969*. Queensland Government Printer, Brisbane.

rehabilitation options were limited to inadequate education programs, and a reliance on prison employment and post-imprisonment programs. While there were opportunities to embed modern penological and criminological methodologies in policy, infrastructure and practice, it was only the expansion of infrastructure and the maintenance of a strict disciplinary regime that were readily supported. Where individuals or groups, including the union, challenged the administration they were treated with suspicion or disdain and where possible they were dissuaded from their quest. If they persisted, attempts were then made to discredit them. Community members, staff and prisoners became frustrated and utilised various means that were available to them in their attempts to facilitate change, these options included bypassing the chain of command or 'official' channels by direct approaches to the Minister.

The next chapter will show this escalated to include industrial action and prison disturbances. It will be seen that the lack of adequate reform culminated in 1973 when several incidents occurred that resulted in the Bredhauer inquiry which was to make several significant findings with ramifications for the Prisons Department and its administrators.

## Chapter 7 Change is in the air, but is it in the prison.

This chapter considers Queensland's contemporary prison practices between 1968 and 1974.<sup>1</sup> After a decade operating under the *Prisons Act 1958*, significant rehabilitative reforms should have been apparent, but instead the problems associated with the management of prisons seemed to escalate and Kerr's stance on prison discipline came to be at odds with the Government. The involvement and direction of the different Ministers for the prison portfolio, for example Power in the previous chapter and Delamothe in this one, warrant a detailed examination. However, because the ministerial position changed as the portfolio was moved between different departments, this examination will be left for future researchers to undertake. Examining the challenges faced by prison management during this period and the outcomes of the landmark 1974 Bredhauer report show that sixteen years after the *Prisons Act 1958* significant rehabilitative reforms had failed to materialise. When the shortcomings of the system identified in this and the preceding chapters are taken into account they confirm that the Queensland *Prisons Act 1958* was in fact a missed opportunity in prison reform.

### ***The 1969 Amendment Bill***

In 1969 the 1958 legislation was again considered inadequate in some areas and in need of further renewal. As a result the Prisons Act Amendments Bill was introduced to parliament to improve the standard of prison staff, employ programs staff to assist prisoners, control external groups entering the prisons to assist prisoners and allow flexibility with the release of prisoners to

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<sup>1</sup> The Prisons Department was controlled by the following ministerial positions: Minister for Justice and Attorney General, 14 Nov 1957 - 25 Oct 1962; Minister for Health and Home Affairs, 25 Oct 1962 - 26 Sep 1963; Minister for Health, 26 Sep 1963 - 17 Jan 1968; Minister for Justice and Attorney General, 17 Jan 1968 - 20 Dec 1971; Minister for Justice, 20 Dec 1971 - 20 Jun 1972; Minister for Tourism, Sport and Welfare Services, 20 Jun 1972 - 23 Dec 1974; Minister for Community and Welfare Services, 23 Dec 1974 - 16 Dec 1977. Queensland State Archives, list of the Portfolio Controlling Queensland's Prisons Department, viewed 28 July 2014, <<http://www.archivessearch.qld.gov.au/Search/AgencyDetails.aspx?AgencyId=933>>.

participate in external activities. When the bill was debated,<sup>2</sup> Thomas Aikens, the North Queensland Party Member for Townsville South restated his 1964 comments about ‘jelly-bellied do-gooders’ and considered the previous Comptroller-General, William Rutherford, who had retired twelve years earlier,<sup>3</sup> had been too ‘warm-hearted and compassionate’ in allowing the ‘hard-nuts in the gaol to take advantage of him’. In contrast, Aikens believed the current Comptroller-General, Kerr, was a man of a different stamp who had ‘the ability to pick the sheep from the goats’.<sup>4</sup> While Aikens did not advocate sadism by prison officers, and was willing to concede that in the past imprisonment had included meaningless labour and ‘bashings’ in the middle of the night, he believed more ‘toughness’ was needed.<sup>5</sup> Aikens stated that ‘we have tried all the psychological flip-flap...and do-gooder nonsense...let us turn the clock back... particularly for those who bash and mutilate women. Let us bring the lash back for them... castrate those who offend sexually against little children’.<sup>6</sup> Charles Robert Porter, Liberal Member for Toowong, responded that while not going so far as Aikens, ‘who speaks with all the primitive ferocity and inherent cruelty of somebody who is emerging for the first time from the recesses of some dark jungle... in our retreat from the harshness associated with prison systems ...are we in danger of going too far and too fast?... when does humane treatment become indulgence?’<sup>7</sup> Minister for Justice and Attorney-General, Peter Delamothe, replied by saying that the strongest deterrent was the loss of liberty and free will; this included the control over their daily routine. He presumed that ‘when a court sentences a

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<sup>2</sup> These amendments introduced legislation to allow: s (6) (viii) establishing a standard of education for recruits and promotional exams; a cadet scheme; allowing prisoners to participate in ‘sporting, cultural and leisure activities’ and be released from custody to participate; ‘regulating and controlling the admission to a prison of welfare workers and entertainment parties’; s 6 appoint various professional staff including psychologists and education officers; providing ‘as far as practicable ...in every prison’ s 13 (iv) ‘Facilities for education, training, leisure and cultural activities’; s 15 leave of absence for prisoners for various reasons including release to work and associated administrative requirements. Queensland Government, *Prisons Act Amendment Act of 1969 No 24*, Brisbane, 1969.

<sup>3</sup> Rutherford had retired in 1957.

<sup>4</sup> Parliamentary Debates, *Prisons Act Amendment Bill*, 9 December 1969, p. 2235, QCSA library.

<sup>5</sup> *ibid.*

<sup>6</sup> *ibid.*, pp. 2234 - 2237.

<sup>7</sup> *ibid.*, pp. 2240 - 2241.

person to imprisonment, it takes into consideration, ... all the factors associated with the need to punish him and rehabilitate him and also the time it will take him to settle down in prison before he begins the reparative process...<sup>8</sup> until he goes before a board and is released on parole.

Prison accountability was also raised during the parliamentary debate and Delamothe revealed that, despite its recorded deficiencies, he considered prison management was sufficiently monitored by various officials and visitors. These included the Government Medical Officer, Visiting Justice, Comptroller-General, as well as the press, radio and television, sporting groups and other interested parties who attended prisons on a regular basis.<sup>9</sup> Two years previously, the same monitoring was considered adequate when there were claims of homosexual assault while in custody.<sup>10</sup> The previous Minister, Sir Seymour Douglas Tooth, had dismissed these claims because they were based on 'prison gossip and hearsay'<sup>11</sup> and thought that if the complaints had been based in fact, they would have been received through official channels.<sup>12</sup> These are the same official channels that Delamothe believed would ensure accountability, however, this dismissiveness in the absence of verifiable evidence, in an environment that is not conducive to the preservation or willing surrender of evidence, demonstrated a flaw in the accountability system. Offenders generally and prisoners more so are hesitant to provide evidence due to fear of retribution or being labelled an informer. This difficult environment made it easy for administrators to justify applying a strict disciplinary approach to prison management as an excuse to maintain security and ultimately community safety.

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<sup>8</sup> *ibid.*, pp. 2249 - 2250.

<sup>9</sup> *ibid.*, p. 2211.

<sup>10</sup> Two university lecturers who went to prison for non-payment of fines, incurred for participating in a civil liberties march, claimed sexual assaults occurred in prison.

<sup>11</sup> 'Sex claim in report', *The Courier Mail*, 25 Oct. 1967.

<sup>12</sup> The lecturers later circulated a report that claimed the prison was overcrowded, buckets were used as toilets, there was a lack of meaningful activity and homosexual attacks occurred. 'Report blasts Boggo Rd. Jail as Shameful', *Truth*, 3 Dec. 1967.

### ***The Comptroller-General's stance hardens***

Kerr's conservative disciplinarian approach to prison management was manifesting itself in 1968 when he reported to the Under Secretary and Minister regarding a planned prison for juveniles. He stated 'an entirely open project with a very soft programme of treatment in Victoria...has left me...with a firm belief that nothing but the strictest discipline and an extensive physical training programme is suitable for this exuberant irresponsible age group'.<sup>13</sup> Kerr was to make further statements in the coming years which continued to clarify his position regarding prison management and rehabilitation. In a series of lectures, he spoke of the processes involved in the admission, classification and employment of prisoners. He said that the basic principle is to rehabilitate a prisoner prior to his return to the community, but realised that there were many problems and 'failures are expected and accepted'.<sup>14</sup> These comments indicate Kerr did not entertain high expectations for rehabilitation's successful realisation. His continued disdain for leniency was evident in his annual reports when he stated many prisoners considered leniency a weakness and 'we must never lose sight of the value and necessity of penalty and the deterrent effect of it'.<sup>15</sup> In the case of young offenders, he believed parents were too often paying the fines so that the youth were failing to appreciate the gravity of their offences, and along with new forms of offences, there was a 'spread of this type of cancer' that required the 'sternest of action'.<sup>16</sup>

Then the following year he stated that too many offenders were receiving lenient punishments that were not working. Prisoners were making excuses for their behaviour and showing no remorse; therefore in the more serious

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<sup>13</sup> S Kerr, 'untitled report to the Under Secretary Department of Justice of the present prison set up and activities', 6 Feb. 1968, p. 14. QSA., item 1018708.

<sup>14</sup> S Kerr, 'Lecture 3, Employment of prisoners' delivered to the International Training Course in Prison Administration, 1969, Department of External Affairs, Commonwealth of Australia, p. 2, QCSA historical collection.

<sup>15</sup> S. Kerr, *Annual report of the Comptroller-General of prisons for the year ended 30 June, 1969*, Brisbane, p. 5.

<sup>16</sup> *ibid.*

cases their penalties should be increased.<sup>17</sup> Kerr believed that in the justice system the pendulum was swinging too far towards leniency and permissiveness.<sup>18</sup> He thought that the public supported his views and that there was a hardening of opinion against leniency. In the 1971 annual report he stated, that many people were becoming ‘dissatisfied with undue leniency and permissiveness... I feel that the weight of public opinion cannot, and will not, be ignored indefinitely to the appeasement of those who favour undue or irrational leniency’.<sup>19</sup> In the same year, however, the Brisbane press reported that a conference on crime prevention had called for a more scientific and lenient approach to the management of prisoners. Apparently some prison administrators had admitted that 50 to 70% of inmates should not be in prison at all and that a balance had to be found between ‘toughness and leniency’.<sup>20</sup> In the next year’s annual report, Kerr clarified his position on violent crime by saying it ‘must be tackled sternly and relentlessly by severe sentences’.<sup>21</sup> He considered leniency to be a sign of weakness and drew on conservative public opinion to support this position. Kerr’s final annual report in 1973 stated, the prison ‘programme must be rigid though sympathetic and create the realisation in the mind of the prisoner that he should make time serve him and help himself’.<sup>22</sup>

### ***Prisoner’s Self Help group***

The relationship between Mrs Valerie French, from the Self Help group, and Comptroller-General Kerr continued to deteriorate. In an interview with Delamothe, French claimed Kerr had said ‘no one gets paroled unless he [Kerr] wants them to...Whitney [Superintendent of Wacol Prison] told the prisoners that once they put in an application for parole and it was knocked

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<sup>17</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1970*, Brisbane, p. 4.

<sup>18</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1971*, Brisbane, pp. 2, 5.

<sup>19</sup> *ibid.*

<sup>20</sup> ‘The problem of running prisons’, *The Sunday Mail*, 22 Aug. 1971.

<sup>21</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1972*, Brisbane, p. 4.

<sup>22</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1973*, Brisbane, p. 6.

back, this was a permanent refusal'. Delamothe replied to French that Kerr's opinion only constituted a small part of the parole process and prisoners could apply every month after they had served 50% of their sentence.<sup>23</sup> French did not say how she became aware of Kerr and Whitney's statements, however, if they are accurate, either Kerr exaggerated his influence on parole decisions or Delamothe was unaware of the influence that Kerr, as head of the Department and a Parole Board member, had on other members of the Board.<sup>24</sup>

French was also critical of the efforts to provide rehabilitation and claimed 'prison reform plans in Queensland were election gimmicks' whose 'only purpose was to serve as an introduction to rehabilitation, not rehabilitation itself'. She noted fewer prisoners were released on parole than in other states.<sup>25</sup> The next year, Kerr publically voiced the view that some people became too emotionally committed to the welfare of prisoners and their activities needed to be closely regulated.<sup>26</sup> He accepted that volunteer organisations had a role to play, but that acceptance was conditional on them conforming to the expectations of prison management, and for him their regulation included such things as attempting to amalgamate the Self Help group with the Prisoners Aid Society and trying to stop French from entering the prisons.

### ***Classification, parole and staff for prisoner programs***

In spite of the construction program, departmental annual reports reveal prison overcrowding continued and prisoners slept three to a cell and in places not intended for accommodation. The newly constructed facilities contained small

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<sup>23</sup> Delamothe, P, 'Interview with the Hon. P.R. Delamothe, O.B.E. Minister for Justice and Attorney General by Mrs V. French and Mr W. Hewitt M.L.A', 19 July 1968. QSA., item 1018708.

<sup>24</sup> Members of the Parole Board were: The Hon. Mr Justice MB Hoar C.M.G. (Chairman); LE Skinner, Solicitor, Under Secretary, Dept. of Justice; SGE Kerr Comptroller-General of Prisons; Dr. LJJ Nye; Dr. RA Miller, Brigadier H Hosier M.B.E.; Brigadier TE Maxwell; Mrs WA Freeman; Secretary to the Board LH Robinson. MB Hoare, *Annual Report of the Parole Board for the year ended 30<sup>th</sup> June 1970*, Brisbane, 1970.

<sup>25</sup> 'Prison reform plans 'A gimmick'', *The Australian*, 5 Apr. 1969; For a comparison of parole numbers 1970 – 1974 across Australian jurisdictions refer to D Biles, *Crime and Justice in Australia*, 1977, Australian Institute of Criminology, p. 129.

<sup>26</sup> S Kerr, 'Lecture 12, Other Activities such as Leisure' delivered to the International Training Course in Prison Administration, 1969, p. 3, Department of External Affairs, Commonwealth of Australia, QCSA historical collection.



accommodation blocks that were considered a modern approach to offender management.<sup>27</sup> This was because they permitted better classification, segregation and staffing.<sup>28</sup> It was not until 1969 that Kerr was finally ready to acknowledge that the shortage of accommodation reflected many years of inactivity and a lack of forward planning.<sup>29</sup> The improvement in structure of the new facilities provided opportunities for better utilisation of the classification committee.

The Director of Psychiatric Services, G Uhrquhart, considered clinical assessments by psychologists from the Department of Psychiatric Services would be useful to assist decision-making by the classification committee.<sup>30</sup> Then, during 1969, the committee membership changed and included the Deputy Comptroller-General as Chairman, the Chief Parole Officer and if they are available a psychiatrist and a psychologist, with the visiting medical officer as consultant, and the prison welfare officer as the secretary.<sup>31</sup>

In 1969, Kerr cited the earlier reports by Winship and the Director of Psychiatric Services (see Chapter 6) as evidence for his claim that the Department of Psychiatric Services (DPS) had been providing prisons with psychological and psychiatric support for twelve months until it was withdrawn due to the DPS's competing priorities. Kerr claimed that subsequent attempts to employ a permanent prison psychologist were

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<sup>27</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1969*, Brisbane, pp.1-3; Each new cell was equipped with a toilet, hand basin and had windows that allowed prisoners either to look into the prison or outside through a wire perimeter fence, which replaced the high Victorian walls that were part of previous designs from the 19<sup>th</sup> Century. 'Work starts on new jail', *The Sunday Mail*, 30 July 1961; 'Motel cells for prisoners', *The Sunday Mail*, 30 June 1968; 'New world at jail in 10 yrs', *The Sunday Mail*, 6 Oct. 1968; 'Space shortage in Qld. Prisons', *The Courier Mail*, 24 Oct. 1968.

<sup>28</sup> S. Kerr, *Annual report of the Comptroller-General of prisons for the year ended 30 June, 1967*, Brisbane, p. 1; This was realised by using the hollow square design, described in chapter 2, in the new prison buildings at Wacol, the Security Patients Hospital and the redeveloped Boggo Road.

<sup>29</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1969*, Brisbane, pp.1 - 3; 'Work starts on new jail', *The Sunday Mail*, 30 July 1961; 'Motel cells for prisoners', *The Sunday Mail*, 30 June 1968; 'New world at jail in 10 yrs', *The Sunday Mail*, 6 Oct. 1968; 'Space shortage in Qld. Prisons', *The Courier Mail*, 24 Oct. 1968.

<sup>30</sup> G Shrhquhart, 'Response provided to the Minister for Justice', 18 April 1968, pp. 1 - 2. QSA., item 1018707.

<sup>31</sup> Parliamentary Debates, *Prisons Act Amendment Bill*, 5 December 1969, p. 2208, QCSA library.

unsuccessful, despite international advertising.<sup>32</sup> Consequently, visiting specialists had to be used to review mental health cases<sup>33</sup> which due to the heavy volume needed to be ranked. The remainder of Kerr's report implied current psychiatric and psychological services to the State's prisons were adequate and did not require expansion.

During the parliamentary debate of the Prisons Act Amendment Bill, Keith Webb Wright, ALP Member for Rockhampton South, remarked that the classification system needed improvement to include ongoing behavioural notes rather than just a ten minute assessment and it was important to go beyond theory and have practical solutions.<sup>34</sup> Wright's comments indicate that these rehabilitative reforms had not received significant practical application in the prisons, regardless of the abundance of talk by the Government and prison administrators.

Classification decisions also had an influence on a prisoner's parole application because their classification and placement indicated the level of perceived risk to the community. To further confound the prisoner's successful application, they were unable to present their case personally before the Parole Board. In addition, they were unable to have representation on their behalf to 'refute or comment on any reports which were considered by the Board in relation to their applications'.<sup>35</sup> A senior psychiatrist, Dr. AT Edwards, commented that it was impossible for psychiatrists or psychologists to interview prisoners properly in ten minutes.<sup>36</sup> He was critical of the lack of initial assessment and ongoing records of prisoners' attitudes and behavior

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<sup>32</sup> S Kerr, report regarding 'Psychologist and Psychiatrists in Brisbane Prison', 27 Nov. 1969, p. 1. QSA., item 1018707.

<sup>33</sup> Parliamentary Debates, *Prisons Act Amendment Bill*, 9 December 1969, p. 2227, QCSA library; Parliamentary Debates, *Prisons Act Amendment Bill*, 9 December 1969, p. 2221, QCSA library.

<sup>34</sup> Parliamentary Debates, *Prisons Act Amendment Bill*, 9 December 1969, p. 2227, QCSA library; Parliamentary Debates, *Prisons Act Amendment Bill*, 9 December 1969, p. 2221, QCSA library; In 1993, Wright was sentenced to eight years imprisonment for rape and indecently dealing with girls under 16 years of age. Queensland Parliamentary past members biographical details, 'Mr Keith Webb Wright', viewed 8 Nov. 2014, [http://www.parliament.qld.gov.au/apps/formermembers/memberBio1.aspx?m\\_id=484](http://www.parliament.qld.gov.au/apps/formermembers/memberBio1.aspx?m_id=484).

<sup>35</sup> 'Remote control parole', *Truth*, 7 July 1968.

<sup>36</sup> 'Parole system is "not fair" records are needed', *Truth*, 14 July 1968.

while in custody. He believed that without all possible information, there was potential for the ‘wrong’ prisoners to be granted parole and conversely for the ‘wrong’ prisoners to be refused parole.<sup>37</sup> Given the small number of prisoners granted parole (refer to Table 6.1) it would be fair to say it was unlikely that many ‘wrong’ prisoners were granted parole.

The Queensland Parole Board, chaired by Justice M Hoare with Comptroller-General Kerr as a board member,<sup>38</sup> believed its role was to act in the best interests of the community. This was achieved by re-integrating as many prisoners as possible as useful participants in the community, but in some instances the community interests outweighed that of the individual.<sup>39</sup> The Queensland Bar Association and Australian and New Zealand College of Psychiatrists advocated the use of preventative detention for those with mental illness who committed criminal offences and posed a risk to the community. This certainly was Kerr’s view. He believed that if there was any possibility of danger to the public, the benefit of the doubt should be in the community’s favour, and there were sufficient mechanisms in place to provide preventative detention through the *Prisons Act 1958 and Regulations* and the *Offenders’ Probation and Parole Act*.<sup>40</sup> On one occasion, two academics claimed a security patient, whom a doctor and two psychiatrists had recommended for release on trial, was refused parole by Kerr. They claimed that Kerr had not seen the man for fourteen years and simply presumed that he could not have

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<sup>37</sup> *ibid.*

<sup>38</sup> Members of the Parole Board were the Hon. Mr Justice MB Hoare (Chairman), LE Skinner (Under Secretary, Dept. of Justice), S Kerr (Comptroller-General of Prisons), Dr. LJ Nye, Dr. RA Miller, Brigadier H Hosier, Brigadier TE Maxwell, Mrs. WA Freman and LH Robison (Secretary to the Board). MB Hoare, *Annual Report of the Parole Board for the year ended 30<sup>th</sup> June, 1969*, Brisbane, p. 2.

<sup>39</sup> MB Hoare, *Annual Report of the Parole Board for the year ended 30<sup>th</sup> June, 1969*, Brisbane, p. 1.

<sup>40</sup> Unsigned letter from the President of The Queensland Bar Association and Australian and New Zealand College of Psychiatrists ‘Submission to the Honourable, The Attorney General Minister for Justice and to The Honourable Minister Delamothe by the Queensland Bar Association and the Australian and New Zealand College of Psychiatrists (Queensland Branch), undated and from M. Delamothe attached letter asking for a reply to the submission from S Kerr, 10 Feb. 1971. QSA., item 293198; S Kerr, ‘Submission by the Queensland Bar Association and Australian and New Zealand College of Psychiatrists’, 2 March 1971. QSA., item 293198.

changed in that time.<sup>41</sup> Kerr determined that he would permit the release only if the patient was not suffering mental illness and did not pose a danger to himself or the community.<sup>42</sup> They referred to another case in which a patient could receive better therapeutic treatment if he was detained under a different section of the *Prisons Act 1958* that would allow him to be kept in the Security Patients Hospital.<sup>43</sup> While there are no details for either case regarding the degree of risk posed by the patients, medical staff had recommended a level of trust, whereas Kerr adopted a more conservative approach. Criminally insane prisoners were assessed before the end of their sentence. If they were considered to still require treatment, they were detained under section 27A of the *Prisons Act* and were not released until they posed no further risk to the community.<sup>44</sup>

In the light of these comments it can be seen why parole approvals were given sparingly. This continued until the composition of the Parole Board changed in 1970 to consist of: a 'Prison Administrator, Psychologist, Psychiatrist and Welfare Officer'.<sup>45</sup> Table 6.1 shows that while the new membership did not result in immediate change, when this was combined with the change of Comptroller-General approvals doubled within two years and subsequently continued to increase.<sup>46</sup>

### ***Periodic detention programs***

On 10 March 1969, what was claimed to be the first release to work program of its kind in Australia, commenced in Brisbane and Townsville prisons with

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<sup>41</sup> 'Report is critical of jail system', *The Courier Mail*, 25 March 1972.

<sup>42</sup> *ibid.*

<sup>43</sup> *ibid.*

<sup>44</sup> 'Social worker campaigns against Prisons Act', *The Sunday Mail*, 11 May 1972.

<sup>45</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1970*, Brisbane, p. 2

<sup>46</sup> Changes to community release occurred in the decade following the Kerr era of prison administration. The *Offenders Probation and Parole Act* changed in 1980 and again in 1988 when the Probation and Parole Service combined with the Prisons Department and was renamed Queensland Corrective Services. By that time, the use of probation and parole had increased to 4460 probation orders, 591 parole orders and 2629 community service orders supervised by 149 staff during the year. JJ Perkins, *Twenty-ninth Annual Report of the Queensland Probation and Parole Service for the Period 1<sup>st</sup> July 1987 to 30<sup>th</sup> June 1988*, pp. 2 - 3.

up to thirteen offenders released per day.<sup>47</sup> One prisoner commented in the internal newsletter 'The Outlet' the 'enormous trust placed in the inmates under these circumstances should not be underestimated. To leave prison and mix with free society and as an equal is a great morale booster which must do much towards one's rehabilitation'.<sup>48</sup> Once the program commenced low-risk offenders such as drunk drivers and 'wife-starvers' participated and from their income \$14 was paid as rent to the Prison Department and maintenance went to deserted wives.<sup>49</sup> Some release to work prisoners considered the rent they paid was very low, because it included cooked meals.<sup>50</sup> In spite of the opportunities release to work offered, not all prisoners were in favour of the scheme as some preferred to remain in prison than work and pay rent.<sup>51</sup> Regardless of the negative few, Delamothe expanded the release to work program to include authority for prisoners to attend tertiary education institutions so that they could improve their knowledge or skills.<sup>52</sup> The Police Union expressed concerns that police resources would be stretched when offenders who failed the program had to be rearrested. It also suggested that the Parole Board risked 'contempt of court' for releasing prisoners before the imposed sentences ended.<sup>53</sup> Delamothe was unsympathetic to the Union's complaints and rejected its demands for a review of the release to work program.<sup>54</sup>

Delamothe also advocated periodic detention and the *Weekend Detention Act* was passed in 1970.<sup>55</sup> Kerr considered that although some prisoners failed to

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<sup>47</sup> Thirteen was the maximum number of prisoners released on any day. This does not relate to any known limit on approvals. S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1969*, Brisbane, pp. 1 - 3; In Brisbane these prisoners were housed in the newly completed remand section. S. Kerr, *Annual report of the Comptroller-General of prisons for the year ended 30 June, 1969*, Brisbane, p. 1.

<sup>48</sup> Wacol prisoner newsletter editorial, 'The Outlet', 6 March 1969, QSA., A/19957.

<sup>49</sup> JC Maddison, 'Minutes of the meeting of Ministers of the Crown concerned with penal administration', 27 March 1969, p. 16, QSA., item 1018707.

<sup>50</sup> 'They're tax payers again', *The Courier Mail*, 13 July 1969.

<sup>51</sup> 'Prisoners refuse to work free', *The Sunday Mail*, 26 Jan. 1969.

<sup>52</sup> 'New study plans for prisoners', *The Sunday Mail*, 17 May 1970.

<sup>53</sup> 'Police seek review of 'Trusty' scheme', *The Australian*, 9 Apr. 1970.

<sup>54</sup> Delamothe stated that of the 122 prisoners released on the program since March 1969, only five had failed to return. 'Are their gaol reforms a joke?' *The Australian*, 21 Apr. 1970.

<sup>55</sup> This Act permitted offenders to report to prison on Friday where they remained until Sunday for the number of weekends specified in their sentence. This legislation provided

report on Fridays, it was a useful sentencing option because offenders could work during the week.<sup>56</sup> Within two years problems were reported which included detainees returning drunk, passing messages, smuggling cash and drugs<sup>57</sup> and failing to report at all.<sup>58</sup> Kerr believed these problems originated because magistrates were imposing weekend detention on ‘unsuitable types’. This resulted in drunkenness by the argumentative and uncooperative detainees who were ‘unable to work over the weekend while they dried out’, therefore providing ‘little value in correcting their attitude to breaking the law’.<sup>59</sup> This is another example of work being misrepresented as a tool to facilitate rehabilitation.

### ***Staff training***

Rehabilitation should commence while a prisoner is in custody. However, prison officers believed they were understaffed and existing resources were stretched just to ensure prisoners were ‘contained’.<sup>60</sup> Consequently, fourteen years after the *Prisons Act 1958*, rehabilitation continued to be viewed by the operational staff as an optional extra instead of an integral part of incarceration.

Other jurisdictions had recognised this and emphasised staff knowledge and training, including some requiring qualifications at university level<sup>61</sup> to improve prison management. According to the 1969 Annual Report, results in efficiency were becoming ‘evident’ from the training provided; as a result

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a reduction of prison overcrowding during weekdays and permitting offenders to retain normal employment. J Delamothe & B Stevenson, *The Delamothe Story*, Boolarong, Brisbane, 1989, p. 184.

<sup>56</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1971*, Brisbane, p. 2.

<sup>57</sup> This is the first mention of drugs in prison in an Annual Report. S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1973*, Brisbane, p. 2; One proposed solution to some of these problems was to house the weekend detainees outside the prison, however, this option was not implemented.

<sup>58</sup> The failure to report resulted in the offender being deemed an escapee.

<sup>59</sup> ‘Gaol is a rest area for prisoners’, *The Australian*, 7 Sept. 1972; ‘Warders support anti-drunk stand’, *Truth*, 8 Sept. 1972; ‘Weekenders too drunk to work’, *Southern Star*, 10 Sept. 1972;

<sup>60</sup> ‘Jail staff, cells, facilities inadequate’, *The Courier Mail*, 18 June 1972.

<sup>61</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1960*, Brisbane, p. 6; S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1965*, Brisbane, p. 2.

Kerr was considering increasing the education entry level and introducing psychological testing.<sup>62</sup> Despite this positive comment, as mentioned in earlier chapters the lack of suitably skilled and qualified prison administrators had been noted on several occasions during the period being examined.

To facilitate change in the prisons Delamothe maintained that staff needed to do courses such as 'sociology, criminology and psychology'.<sup>63</sup> Following Bredhauer and Delamothe's comments, Kerr once again stated that the educational standard for prison officer recruits would be raised and psychological testing introduced.<sup>64</sup> Furthermore, professional development had been introduced and officers were undertaking promotional assessment with the 'ultimate objective of raising the standard of efficiency'.<sup>65</sup> During the parliamentary debate of the *Prisons Act Amendments Act of 1969*, Delamothe said that prison officers who had ability and aspired to senior positions would be provided with opportunities to undertake appropriate university studies.<sup>66</sup> This Bill contained provisions to support:

a satisfactory entrance examination or alternatively qualifications of an acceptable standard...proper selection procedures...to gauge the motivation of candidates for entry...assess personality factors, in particular their capacity for successful interpersonal relations and their adaptability to change necessitated by progressive, treatment-oriented correctional policy.<sup>67</sup>

Senior administrators would require a 'higher standard of qualification and education' and to assist meeting these requirements, a cadet program would commence in which officers would receive university education, and along

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<sup>62</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1969*, Brisbane, p. 2.

<sup>63</sup> JC Maddison, 'Minutes of the meeting of Ministers of the Crown concerned with penal administration', 27 March 1969, p. 36, QSA., item 1018707.

<sup>64</sup> S Kerr, *Annual Report of the Comptroller-General of prisons for the year ended 30<sup>th</sup> June, 1969*, Brisbane, 1969, p. 2.

<sup>65</sup> *ibid.*

<sup>66</sup> Parliamentary Debates, *Prisons Act Amendment Bill*, 5 December 1969 p. 2207, QCSA library.

<sup>67</sup> *ibid.*

with prison work experience, this would make them ‘conversant with all facets of prison administration’.<sup>68</sup>

While the Government and Prisons Department attempted to improve the standard of prison officer, the officers’ reputation was eroded in the *Truth* newspaper by scathing comments from a Labor Party subcommittee. The *Truth* reported on some of the subcommittee’s findings, claiming prisoners had been punished for doing push-ups in the morning, that it was an offence for the weekly issued shirt to be washed, and underclothing, dentures and reading glasses were not provided. The report claimed that the system needed to examine, ‘diagnose and treat’ each prisoner as an individual. Until then ‘our prisons will remain behind in 20<sup>th</sup> Century knowledge...the psychiatrist on the assessment board is only “window-dressing” and the classification committee should consist of ‘psychiatrists, psychologists, social workers, education officers and senior prison officers’.<sup>69</sup> The subcommittee claimed the ‘present educational standard of prison officers was appallingly low’ and ‘many officers...seek prestige from a uniform that they cannot get outside of it...sometimes they are sadistic- especially mentally sadistic. Many are ignorant of the real nature of their work’.<sup>70</sup> When this newspaper report was raised in the Parliamentary debate regarding the Prisons Act Amendment Bill, Delamothe defended prison officers by saying he had spoken to many prisoners and they had not raised similar complaints.<sup>71</sup> While there is no reason to question Delamothe’s assertion, it is possible that the findings of the sub-committee may have had substance. The sub-committee report mentioned in the newspaper article has not been located and it was not mentioned again in Parliament, which is unfortunate because it might have provided further insight into the investigation. Regardless of the report, the Opposition did not pursue the matter and the Government implemented the Amendments Bill.

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<sup>68</sup> *ibid.*

<sup>69</sup> Comments reported in the *Truth* newspaper were later read in parliament during the Amendments Bill debate. ‘Changes are needed in penal law’, *Truth*, 9 Nov. 1969.

<sup>70</sup> ‘Lash, death penalty call by M.L.A.s’, *The Courier Mail*, 10 Dec.1969; Official record of the Debates of the Legislative Assembly (Hansard) 1969-70, *Prisons Act Amendment Bill*, 9 December 1969 p. 2231, Government Printer, Brisbane.

<sup>71</sup> Official record of the Debates of the Legislative Assembly (Hansard) 1969-70, *Prisons Act Amendment Bill*, 9 December 1969 p. 2247, Government Printer, Brisbane.



Recruit training was reviewed in 1970 and it was intended that a qualified and well-trained officer would be placed in charge of it.<sup>72</sup> Delamothe had spoken several times about enhancing the recruitment and professional development of prison officers. He considered that they should be more than 'mere custodians' and instead should become 're-education supervisors'.<sup>73</sup> To facilitate this, he said a better educated officer recruit was required who could pass a special aptitude test and the equivalent to the junior public examination.<sup>74</sup> By this time in-service training had been reduced to after-hours instruction provided by the Prison Superintendent,<sup>75</sup> then in 1971 a new position of Deputy Comptroller-General Training and Personnel was created and Alan Whitney was the first appointment to this position<sup>76</sup> Under the Government's direction in 1973, Bredhauer was to conduct another investigation (to be discussed later in this chapter) where he found that, despite the recognised skill gap, there was still no succession training for future prison managers.<sup>77</sup> With higher entry education and gradual improvements to officer training<sup>78</sup> it could be expected there would be better staff morale, but this was not the case. Strained industrial relations were to hamper reform efforts.

Several incidents suggest reform was slow as staff confidence in the prison administration and industrial relations deteriorated. When three officers were suspended in 1970, for neglect of duty following two separate escapes, Brisbane Prison officers threatened to withdraw labour unless a committee was formed to investigate security, management and morale issues at the

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<sup>72</sup> Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1970*, Brisbane, p. 2.

<sup>73</sup> 'Scientific sentencing for State's law-breakers', *The Courier Mail*, 1 Apr. 1970.

<sup>74</sup> 'Change forecast in prisons system', *The Courier Mail*, 3 Nov. 1970.

<sup>75</sup> 'Jail staff, cells, facilities inadequate', *The Courier Mail*, 18 June 1972.

<sup>76</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1971*, Brisbane, p. 2; S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1972*, Brisbane, p. 2.

<sup>77</sup> PJ Bredhauer, 'Report to the Premier regarding Investigation into The Administration and Security of HM Prison Brisbane', 2 July 1973, p. 7, QSA., SRS6232/7/199.

<sup>78</sup> By 1974, training of new prison officers was one month in duration and the course for hospital officers who were to be employed in the Security Patients Hospital lasted for three months AJ Whitney, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1974*, Brisbane, p. 4.

prison.<sup>79</sup> Then in 1971, prison officers opposed the promotion of a clerical person to relieve a senior uniform position in Townsville.<sup>80</sup> They viewed this appointment as an example of the continued lack of faith in the capabilities of uniformed prison officers. Thus far it has been discussed that since the *Prisons Act 1958*, legislative amendments provided further assistance for the administration of the prisons, but staff training capable of developing future prison managers continued to be considered inadequate and the Department's industrial relations were troubled. While these problems concerned the administrative and staffing aspects of managing prisons in this period, others were attempting to reform prison conditions.

### ***Prison labour***

In 1969, Kerr believed a compromise with the unions was possible over the use of prison labour in prison industries. Prison labour should not compete with private enterprise,<sup>81</sup> but he thought that prisoners sentenced to 'hard labour' forfeited their efforts to the Crown, so the Crown was entitled to use this for its own benefit.<sup>82</sup> Therefore, to create meaningful work prison labour should be employed to manufacture items for use in government institutions.<sup>83</sup>

While there were several modern industries in Queensland's prisons, Kerr had identified some (i.e. clothing and boot-making shops) that provided employment to prisoners simply to satisfy the hard labor component of their sentence, without enhancing their employable skills on discharge.<sup>84</sup> There were also many prisoners whom he considered were incapable of acquiring

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<sup>79</sup> 'Officers at jail may stop', *The Courier Mail*, 3 Apr. 1970.

<sup>80</sup> They pursued their action within the arbitration framework. 'Jail officers decide on political action over job', *The Courier Mail*, 29 Oct. 1971.

<sup>81</sup> S Kerr, 'Paper presented to International Group Course in Prison Administration regarding employment of prisoners', 1969, pp. 1, 7; Trade unions opposed prisoners being indentured as apprentices because they created employment competition with union members.

<sup>82</sup> *ibid.*

<sup>83</sup> *ibid.* p. 3.

<sup>84</sup> S Kerr, 'Lecture 3, Employment of prisoners' delivered to the International Training Course in Prison Administration, 1969, Department of External Affairs, Commonwealth of Australia, p. 3, QCSA historical collection.

new skills, and he regarded routine tasks such as sweeping and cleaning as suitable for them.<sup>85</sup>

At a meeting of Prison Ministers, Delamothe stated that the Queensland prison industries had been operating ‘in the past’ and needed to be brought into the present by providing new equipment and training in skills which were in demand.<sup>86</sup> At the end of the meeting there was discussion regarding the appropriate terminology to be used for prisoner work. As an interesting departure from the previously stated principle of work (and education) providing rehabilitation they agreed work should now be considered part of treatment not rehabilitation, which also indicates that prison management was moving into the prison treatment approach discussed in Chapter 2. They subsequently issued the statement: ‘Ministers agree that an adequate and useful diversified work programme was essential as part of prison treatment’.<sup>87</sup>

### ***Prison upheaval***

While some members of the community advocated and attempted to achieve reform in the prisoner’s favour, the prisoners also made it apparent there was need for review. Tony Woodyatt, a former Coordinator of the Prisoners Legal Service, made the point that ‘Queensland prisons were often brutal and repressive; regulations covering every aspect of life were enforced arbitrarily and capriciously’.<sup>88</sup> In 1971, a leading criminologist, Paul Wilson, said ‘harsh prison methods did nothing to reduce crime’ and thought more prisoners should be placed on probation or parole where staff were more qualified in the area of rehabilitation. He believed toughening Queensland prison conditions could result in an ‘Attica type situation’.<sup>89</sup> When Kerr was asked to respond to

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<sup>85</sup> *ibid.*

<sup>86</sup> JC Maddison, ‘Minutes of the meeting of Ministers of the Crown concerned with penal administration’, 27 March 1969, p. 33, QSA., item 1018707.

<sup>87</sup> *ibid.*, p. 62.

<sup>88</sup> C McCartney, R Lincoln & P Wilson, *Justice in the Deep North*, Bond University Press, Gold Coast, 2003, p. 132.

<sup>89</sup> ‘Tough line on jails is “a riot risk”’, *The Sunday Mail*, 28 Nov. 1971; In Attica prison New York 43 prisoners and hostages were killed during rioting and the subsequent struggle to

Wilson he said he 'did not want to be bothered',<sup>90</sup> indicating disdain for the observations.

During the 1970s, community unrest over Australia's involvement in the Vietnam War<sup>91</sup> and the Government's social justice policies<sup>92</sup> had a flow-on effect in the prisons that when compounded by overcrowding, ignited prison disturbances and riots.<sup>93</sup> While disturbances in the community were in the public view, those in prisons were not as visible and therefore the methods used to resolve them lacked the same level of accountability. Disturbances were generally subdued in the quickest possible manner, by inadequately trained staff, with insufficient suitable equipment. In the media, officers 'emphasised the need for sufficient riot equipment, personal protective clothing (Figure 7.1) and fire control equipment'.<sup>94</sup> An example of the standard of equipment provided was the adapted riot helmets, which were an open face motor bike helmet with a piece of flexible perspex bolted across the face with wing nuts. These helmets were to remain operational until the late 1980s and were used during several major disturbances.

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regain control of the prison. *This day in History*, 'Riot at Attica Prison', viewed 29 Oct. 2012, <http://www.history.com/this-day-in-history/riot-at-attica-prison>.

<sup>90</sup> 'Tough line on jails is "a riot risk"', *The Sunday Mail*, 28 Nov. 1971.

<sup>91</sup> 'Call to churches to lead protests on Vietnam', *The Canberra Times*, 11 May 1965 p. 8; 'Protests called by Communists', *The Canberra Times*, 25 Oct. 1965, p. 1; 'Mob violence', *The Canberra Times*, 16 May 1972, p. 2.

<sup>92</sup> The social justice issues that were protested against included migrant groups demanding equal opportunities, indigenous Australians wanting land rights, better education, housing and educational opportunities and an end to institutional racism. Australian government, 'Australian stories, The changing face of modern Australia – 1950s to 1970s', viewed 8 Nov. 2014, <http://australia.gov.au/about-australia/australian-story/changing-face-of-modern-australia-1950s-to-1970s>.

<sup>93</sup> P Lynn and G Armsrstrong, *From Pentonville to Pentridge, A history of prisons in Victoria*, Jenkin Buxton, Melbourne, 1996, p. 157; J Ramsland, *With just but relentless discipline, a social history of Corrective Services in New South Wales*, Kangaroo Press, Kenthurst, NSW, 1996, p. 315.

<sup>94</sup> 'Prison officers fear more riots', *The Courier Mail*, 12 Feb. 1971.



Figure 7.1 Brisbane Prison Riot Helmet c1970s – late 1980s<sup>95</sup>

The press did not report the methods used to resolve the disturbances, however, the readers could surmise that generally rioting prisoners would not surrender peacefully and prison staff would use force as required. Examples of incidents include: prisoners in Brisbane prison refusing to return to their cells because they had not been granted special remission for a royal visit;<sup>96</sup> a disturbance blamed on overcrowding in a Brisbane Prison dormitory that resulted in minor damage;<sup>97</sup> and another Brisbane prison riot quelled by police, which prisoners blamed on poor food and bad conditions. The Minister trivialised the complaints when he quipped that the prisoners wanted ‘sheets on their beds, sweets and fresh fruit every day and more visitors’.<sup>98</sup> Judging by his comments, Delamothe had little sympathy for those involved. It was reported that he said many of them ‘had never had food and meals as good as they receive in the jail’, and Kerr thought their claims did not make much sense because there had not been any complaints or approach made to himself or any of the prison management.<sup>99</sup> The ramifications that a prisoner faced if he was to make any form of complaint have been discussed earlier in Chapter 5, therefore making it evident that a complaint through the official channels

<sup>95</sup> Helmet held in the QCSA historical display.

<sup>96</sup> This incident involved 60 prisoners. ‘Near mutiny by prisoners’, *The Courier Mail*, 3 Apr. 1970; Prisoners had previously been granted varying periods of remission whenever a monarch had visited Brisbane; however, Delamothe did not approve this privilege in 1970. ‘Officers at jail may stop’, *The Courier Mail*, 3Apr. 1970.

<sup>97</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1971*, Brisbane, p. 2.

<sup>98</sup> ‘Tear gas used to stop Boggo Road jail riot’, *The Courier Mail*, 8 Feb. 1971.

<sup>99</sup> *ibid.*

was unlikely to receive a favorable hearing and more likely to result in some form of retribution.

The ongoing prison disharmony and Kerr's term in office was to culminate in an investigation in June 1973 when there were several disruptions in the prison system due to low staff morale, industrial disputes and prisoner discontent. On one night alone, a prisoner attempted to flood his cell in what was reported as an attempt to drown himself,<sup>100</sup> another prisoner damaged his cell and set fire to the mattress, prisoners in three wings rallied up<sup>101</sup> and prisoners Bateman and Russell escaped.<sup>102</sup> These incidents resulted in Bredhauer being appointed to investigate the circumstances surrounding the escape, the general security during the current reconstruction of Brisbane Prison, and a 'general examination of the administration of the Prisons Department and HM Prisons'.<sup>103</sup>

### ***The Bredhauer inquiry***

In 'The Report on the Queensland Prison System' in 1974, Commissioner PJ Bredhauer<sup>104</sup> said it was 'difficult to see in the present prison service future prison superintendents, senior officers and supervisory custodial staff'.<sup>105</sup> This indicates that management skills in the prison service were lacking from the grass-roots to some higher levels of prison administration, suggesting innovative ideas or reforms would be difficult to implement because the system did not have the capacity to manage change. Bredhauer's comment also implied that current staff lacked these management skills, fifteen years after the implementation of the *Prisons Act 1958* and the *Prisons Act*

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<sup>100</sup> Attempting to drown himself is the reported reason but this is an unusual method to self-harm and could be questioned as the cells were not water tight. It is more likely that this was another case of cell damage as part of the unrest evident on that night.

<sup>101</sup> A 'rally up' means creating a loud volume of noise inside a building by banging in cells and kicking doors.

<sup>102</sup> G Chalk, 'Investigation into administration and security of HM Prison, Brisbane', 21 June 1973. QSA., Role no. Z 7724.

<sup>103</sup> *ibid.*

<sup>104</sup> Bredhauer had been the General Secretary of the Public Services Union and conducted the 1968 investigation into prison recruitment and training (see Chapter 6). He was later appointed to the Public Services Board before conducting this investigation.

<sup>105</sup> P J Bredhauer, 'Report on the Queensland Prison Service', 1974, p. 23.

*Amendments Act of 1969*, both of which had specific sections intended to encourage training and reform.

During the investigation Bredhauer discovered there was an approximately 30% resignation rate (over an unspecified period),<sup>106</sup> morale was low, junior staff were confused by conflicting instructions and were afraid of being ‘bawled out’ by senior officers if they used their initiative. Other problems included the low standard of recruit, recruits not being assessed for their suitability to work in either medium or high security prisons that resulted in those unable to ‘adjust falling out’, the prisons were understaffed,<sup>107</sup> there was a lack of leadership training or development for future Superintendents,<sup>108</sup> the wages of prison officers were below those of interstate counterparts, and some staff were involved in trafficking. To address some of these problems Bredhauer recommended: a ‘hand-picked security squad’ search the prison and review all security arrangements, duties performed by prisoner clerks needed review to determine suitability and if they should instead be performed by Public Servants or Prison Officer Clerks,<sup>109</sup> and that the position of Comptroller-General be advertised ‘immediately’.<sup>110</sup> The Comptroller General, Stewart Kerr, had held the position since 21 November 1957 and had overseen the implementation of the *Prisons Act 1958* and the subsequent amendments of 1964 and 1969. While Bredhauer’s report did not record any negative findings against Kerr, for the suggested reforms to be enthusiastically

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<sup>106</sup> PJ Bredhauer, ‘Report to the Premier regarding Investigation into The Administration and Security of HM Prison Brisbane’, 2 July 1973, p. 6, QSA., SRS6232/7/199.

<sup>107</sup> A high staff turnover continued to adversely affect the prisons. In 1973, many prison staff were attracted by the wages offered by mining companies and Townsville prison administrators were finding it difficult to recruit new prison staff or to persuade staff at the southern prisons to relocate to the north. Kerr blamed this reluctance on the high cost of living and low availability of accommodation. S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1973*, Brisbane, p. 4; When commenting about understaffing during the investigation, Kerr suspected officers were intentionally exacerbating the problem by filling a vacant post on overtime and then reporting sick for their rostered post, thereby generating overtime for another officer to fill. C Johnson, ‘Prisons investigation – Cabinet decision No 20637’, p. 18. 1 July 1974. QSA., Role no. Z 7732. This inflated the officer’s wages, but also contributed to fatigue and indicates a negative culture of roting the system by creating unnecessary overtime.

<sup>108</sup> PJ Bredhauer, ‘Report to the Premier regarding Investigation into The Administration and Security of HM Prison Brisbane’, 2 July 1973, p. 8, QSA., SRS 6232/7/199.

<sup>109</sup> *ibid.*

<sup>110</sup> *ibid.*, p. 7.

implemented a new administrator was required. He therefore recommended against Kerr's contract being renewed.<sup>111</sup>

This arose for several reasons, which included that while Kerr had identified that there were gaps in executive succession, professional development had been neglected. Instead, the failure to train staff in contemporary penology ensured prison officers continued out-dated practices. The rehabilitative reform that might have been provided by psychologists, psychiatrists, education officers, welfare officers or volunteer groups, was stifled by inadequate resources and restrictive procedures. Furthermore, prison labour that was actively promoted under the thinly guised veneer of rehabilitation was, for the most part, a budgetary-driven measure. Kerr's distrust of his staff and concerned members of the community, along with his remarks about discipline, showed that he held disdain for prison management methods that he considered lenient. This was in conflict with the views of his Ministers and hence Government policy, therefore his demise as prisons Comptroller-General appears to have been inevitable.

In his final report, Bredhauer made a number of recommendations,<sup>112</sup> most notably to combine related agencies and functions (i.e., Juvenile Detention and the Probation and Parole service) under a new Department of Corrective Services.<sup>113</sup> More specifically he recommended the provision of staff

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<sup>111</sup> PJ Bredhauer, 'Report to the Premier regarding Investigation into The Administration and Security of HM Prison Brisbane, Summary of report, observations and recommendations', 2 July 1973, p. 8, QSA., SRS 6232/7/199; Bredhauer had previously conducted an investigation into Prison Recruitment and Training in 1968 and had been involved in union negotiations with the Prisons Department, therefore, was familiar with Kerr, his beliefs and unwillingness to adopt alternative practices.

<sup>112</sup> When Bredhauer submitted a progress report, he identified that since the investigation had begun there were substantial security enhancements implemented around the construction area of Brisbane Prison. This was achieved through the provision of additional staff patrols, manning the boom gate and forming a security squad. The industrial situation had eased after some initial 'sabre rattling', followed by a vote of confidence in the investigation. The Prison Officers Section stated it 'believes that the present enquiry by Commissioner Bredhauer is the most honest and thorough investigation ever undertaken and will have far reaching effects on the future of the Prison Service'. PJ Bredhauer, 'Further progress report by Mr P.J. Bredhauer on investigations at HM Prison Brisbane', 10 August 1973, p. 2. QSA., Role Z 7725.

<sup>113</sup> The amalgamation was not supported by the Under Secretary, C Johnson, or the Minister, J Herbert, who believed while there was a need for coordination it could be achieved by



development and succession planning, a prison Advisory Committee,<sup>114</sup> worthwhile work for prisoners, education and remedial education, the abolition of the weekend detention scheme and the introduction of a Periodic Detention Scheme.<sup>115</sup> Bredhauer believed ‘an immediate attempt must be made to first identify and develop future senior staff’, but he also recognised the industrial difficulties that might ensue from trying to displace seniority as the main determining factor of progression to senior ranks.<sup>116</sup> A Program of Implementation<sup>117</sup> recommended establishing a working party to review the *Prisons Act 1958*, implement the Periodic Detention Scheme and change the name of the State’s corrective institutions.<sup>118</sup> This document also suggested an investigation of contemporary penology developments overseas to incorporate appropriate features in the Queensland’s prisons.<sup>119</sup>

In his response to Bredhauer’s report, Under Secretary Cedric Johnson, agreed to consider an Advisory Committee as a ‘sounding board’, but he envisaged difficulties in obtaining ‘suitable members’ due to a lack of expertise in the community.<sup>120</sup> Following Johnson’s lead, the Minister, John Desmond Herbert, was not in favour. Instead, he supported a legislation working party as suggested in the Program of Implementation document, but without a union representative.<sup>121</sup>

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reallocations within ministerial portfolios. C Johnson, ‘Prisons investigation – Cabinet decision No 20637’, p. 3. 1 July 1974. QSA., Role no. Z 7732; J Herbert, ‘For Cabinet, Prisons Investigation’, 11 July 1974. Cabinet Minute, Decision no. 20863. QSA., Role Z 7732.

<sup>114</sup> The intent for establishing an Advisory Committee was to provide an avenue for community and academic involvement in prisoner rehabilitation and prison policy by providing the Minister with contemporary criminological and penological research. PJ Bredhauer, ‘Report on the Queensland Prison System,’ May 1974. pp. 9 - 10. State Library of Queensland.

<sup>115</sup> PJ Bredhauer, ‘Report on the Queensland Prison System,’ May 1974. State Library of Queensland.

<sup>116</sup> *ibid.*, p. 23.

<sup>117</sup> Document was unsigned but may have been produced by C Johnson for Cabinet.

<sup>118</sup> Cabinet Minute, Decision no. 20863, ‘Annexure I, Programme of implementation’, p. 1. 16 July 1974. QSA., Role no. Z 7732.

<sup>119</sup> *ibid.*, p. 3.

<sup>120</sup> C Johnson, ‘Prisons investigation – Cabinet decision No 20637’, p. 5. 1 July 1974. QSA., Role no. Z 7732.

<sup>121</sup> J Herbert, ‘For Cabinet, Prisons Investigation’, 11 July 1974. p. 2. Cabinet Minute, Decision no. 20863. QSA., Role Z 7732.

Johnson was in favour of the professional development of future senior officers, but due to the lack of success in New South Wales he recommended a ‘careful examination’ of the methodology used.<sup>122</sup> He also noted that many of those with leadership potential lacked seniority but he thought ‘the stage could be reached when it may be necessary to disregard seniority considerations’.<sup>123</sup> Herbert agreed and supported the establishment of a well-equipped training section and prioritising the development of training programs.<sup>124</sup>

Johnson was cautious about changes to prisoner education because he thought that prisoners resisted undertaking studies. Yet he believed that the educational assessment of prisoners would be useful.<sup>125</sup> He suggested the appointment of a ‘psychologist and ancillary staff’ to conduct the assessments and provide non-compulsory studies for those with learning difficulties.<sup>126</sup> Herbert hesitated. Although he agreed with the idea of educational assessments, he preferred to wait and then review the available facilities once construction had been completed.<sup>127</sup>

Kerr’s successor as Comptroller-General, AJ Whitney, had been Kerr’s Deputy Comptroller-General Training and Personnel (refer to Chapter 5 p. 147 and 230). In 1974, Whitney acknowledged that high staff turnover (approximately 30%) and loss of experienced staff were concerns<sup>128</sup> and implemented a restructure of the Prisons Department. To assist its implementation, the lack of managerial potential in junior staff needed to be overcome. Whitney intended to fill new positions gradually, ‘having regard to availability of suitable applicants from within the Prison Service’. The

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<sup>122</sup> C Johnson, ‘Prisons investigation – Cabinet decision No 20637’, p. 13. 1 July 1974. QSA., Role no. Z 7732.

<sup>123</sup> *ibid.*, p. 20.

<sup>124</sup> J Herbert, ‘For Cabinet, Prisons Investigation’, 11 July 1974. p. 3. Cabinet Minute, Decision no. 20863. QSA., Role Z 7732.

<sup>125</sup> C Johnson, ‘Prisons investigation – Cabinet decision No 20637’, p. 15. 1 July 1974. QSA., Role no. Z 7732.

<sup>126</sup> *ibid.*, p. 16.

<sup>127</sup> J Herbert, ‘For Cabinet, Prisons Investigation’, 11 July 1974. p. 4. Cabinet Minute, Decision no. 20863. QSA., Role Z 7732.

<sup>128</sup> AJ Whitney, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1974*, Brisbane, p. 1.

professional development of management had previously been neglected, but this was to be remedied to include modern management techniques.<sup>129</sup> Whitney also described the *Prisons Act 1958* as ‘restrictive’ in many parts and reported a ‘complete review...has commenced...to produce a modern, serviceable and practical exercise in legislation to benefit the Department, employees and inmates’.<sup>130</sup>

## **Conclusion**

This chapter has shown that further changes needed to be legislated through the 1969 amendments, with prison labour, appropriate levels of discipline and staff training continuing to be issues for debate. The granting of parole continued to be limited and change did not occur until towards the end of the period under review. Use of psychological, counselling and education staff was restricted, with a great deal of rhetoric but few practical initiatives to increase the rehabilitative programs available to prisoners. Prison officers received a level of initial training and professional development that permitted them to function in their routine duties. However, both Kerr and Bredhauer reached the same conclusion that this training failed to provide adequate development to allow staff to progress to the upper levels of management. The Comptroller-General’s position on the application of leniency and discipline also had become more clearly articulated. Ongoing problems on several fronts in the Queensland Prisons Department culminated in several serious incidents and the Bredhauer inquiry. Then, following this investigation, Kerr’s contract was not renewed which eventually lead to his replacement.

Bredhauer found that rehabilitative reform was required and both he and the new Comptroller-General, Alan Whitney, considered the *Prisons Act 1958* inadequate to provide this change, thereby supporting the hypothesis that Queensland’s *Prisons Act 1958* was a missed opportunity in prison reform.

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<sup>129</sup> AJ Whitney, *Annual Report of the Comptroller-General of Prisons for the Year ended 30<sup>th</sup> June, 1975*, Brisbane, p. 1.

<sup>130</sup> *ibid.*



## Conclusion

Was the *Prison Act 1958* Queensland's missed opportunity in prison reform? It has been argued here that this was in fact the case. The thesis has explored Queensland's prison history and how it developed from a penal settlement for the worst offenders who had reoffended after being transported for crimes committed in England. The historic forms of meaningless labour, along with the use of the silent and separate systems applied with strict discipline had influential advocates in England and they shaped Queensland's early prison management practices. These practices, applied in many forms by prison administrators, were the very foundation of Queensland's prison system, which was grounded in the idea that imprisonment was meant to be a deterrent and conditions whilst in custody should contribute to this.

It has been seen that Queensland prison management operated in what Lopez-Rey (refer to Chapter 2 p. 43) called administrative penology and it had developed from the 'sediment' of successive administrative policies until it became a 'deep rooted, powerful, demanding and occasionally untouchable' system.<sup>1</sup> Several inquiries, discussed in Chapters 2 and 3, were undertaken into the administration of the State's prisons following incidents which included escapes and unlawful entries into the prisons. These found that there were numerous lapses of security which were attributed to the failings of staff at various levels of the management structure, however, prison conditions were not criticised in the inquiries or the press. This focus on the performance of prison staff partly explains the staff related reforms in the *Prisons Act 1958* and the desire to implement training programs. It was also seen in Chapter 3 that complaints by prisoners generally were considered to have little credibility, while interpretations of events that confirmed the view that prisoners were dangerous and untrustworthy usually were considered valid. When the press reported prison incidents its focus was on these aspects and it rarely delved into underlying causes, thereby reinforcing the perception that

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<sup>1</sup> LW Fox, AM López-Rey & C Germain, *Studies in penology, dedicated to the memory of Sir Lionel Fox*, M Nijhoff, The Hague, 1964, p. 139.

prison legislation should be directed towards enhancing security and discipline.

Prison infrastructure in Queensland went from Victorian era buildings, which supported the separate and silent systems of prison management, to the hollow square designs. The new design was more conducive to communication and interaction between prisoners and also between prisoners and staff. While the new buildings were modern in design their construction was not instigated by the *Prisons Act 1958* and neither did the Act require the replacement of archaic buildings. One result of this was the inconsistent application of the Act and its regulations. This was exacerbated by a significant number of sections of the *Prisons Act 1958* being extracted directly from its predecessor *The Prisons Act 1890*. Some regulations were better suited to the old infrastructure, for example those restricting communication. Chapter 4 discussed the similarities between these two pieces of legislation and with other jurisdictions. It was identified that of 172 subsections in the *Prisons Act 1958* there were 78 subsections similar to or expanded upon from the 1890 Act. A further 34 subsections were similar to other jurisdictions and generally were either administrative in nature or increased discipline or security within the prisons.

The new administrative clauses in the 1958 Act related to authorising direct payment to wives under the *Maintenance Act*;<sup>2</sup> legislating the appointment of a chaplain (although chaplains already were operating in the prisons);<sup>3</sup> release and possession of prisoner's property;<sup>4</sup> suspending the sentence while a prisoner was on appeal or not in custody;<sup>5</sup> and the disposal of the body after a prisoner's death in custody.<sup>6</sup> These sections assisted in the administration of the prisons but did not contribute to rehabilitative reform.

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<sup>2</sup> Queensland Government, *Prison Act 1958*, section 7 (1) (1), Brisbane.

<sup>3</sup> Queensland Government, *Prison Act 1958*, section 13, Brisbane.

<sup>4</sup> Queensland Government, *Prison Act 1958*, section 23 (2) - (4), Brisbane.

<sup>5</sup> Queensland Government, *Prison Act 1958*, section 26, Brisbane.

<sup>6</sup> Queensland Government, *Prison Act 1958*, section 28 (2) - (4), Brisbane.

The new sections of the legislation that were security related included the ability of the Superintendent to refer minor offences to the Visiting Justice;<sup>7</sup> determinations by the Superintendent or Visiting Justice pertaining to minor offences to have no right of appeal;<sup>8</sup> a definition of the half rations dietary punishment was created;<sup>9</sup> prisoners who organised disturbances or continued to make noise were to be punished as major offences;<sup>10</sup> and court hearings for major offences were closed to the public.<sup>11</sup> The application of punishments was discussed in Chapter 5 where it was seen that the discretionary referral of offences, and the absence of appeal mechanisms, allowed inconsistent punishments to be applied. When these convictions were considered in conjunction with the secondary punishments it was seen that even a caution could result in significant loss of remission and in effect ‘additional’ prison time. Defining what constituted half rations might be considered progress; however, it was still administered by base grade staff who were not held accountable for the quantity of food delivered to the prisoner on punishment. Transparency was also discussed where prison court hearings commenced as open courts then were moved inside the prison, thereby excluding the media and the public. It would be difficult to regard any of these new sections as examples of reforms that would further support rehabilitation.

Several initiatives were legislated in the new Act with the potential to promote positive prison management, improve prison conditions and prisoner rehabilitation. These included prisoners being entitled to receive visits<sup>12</sup> and being permitted to spend their prison earnings which had previously all been withheld until discharge.<sup>13</sup> If a prisoner did not have earnings or savings they were to be provided for immediately after discharge.<sup>14</sup> The prisons department was required to provide medical, dental and optical treatment to all prisoners<sup>15</sup>

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<sup>7</sup> Queensland Government, *Prison Act 1958*, section 32 (4), Brisbane.

<sup>8</sup> Queensland Government, *Prison Act 1958*, section 32 (10), Brisbane.

<sup>9</sup> Queensland Government, *Prison Act 1958*, section 32 (11), Brisbane.

<sup>10</sup> Queensland Government, *Prison Act 1958*, section 33 (1) (g) & (h), Brisbane.

<sup>11</sup> Queensland Government, *Prison Act 1958*, section 33 (8), Brisbane.

<sup>12</sup> Queensland Government, *Prison Act 1958*, section 7 (1) (f), Brisbane.

<sup>13</sup> Queensland Government, *Prison Act 1958*, section 7 (1) (g), Brisbane.

<sup>14</sup> Queensland Government, *Prison Act 1958*, section 27 (4) & section 42, Brisbane.

<sup>15</sup> Queensland Government, *Prison Act 1958*, section 7 (1) (h), Brisbane.

and supply a suitable diet based on the prisoner's food entitlement within the rations scale.<sup>16</sup> Even those prisoners' on dietary restrictions as punishment were to be visited by a medical officer<sup>17</sup> to check their wellbeing and prisoners injured while performing work were to be considered for some form of compensation.<sup>18</sup> The Act required that all prisoners be classified, young offenders were to be separated from mainstream offenders,<sup>19</sup> while habitual criminals and those detained for indeterminate sentences could have regulations specifically designed to manage their treatment and employment.<sup>20</sup> In an effort to improve the management of prisons prison officers were required to pass recruitment and promotional exams<sup>21</sup> and the Act also authorised the appointment of professional staff qualified in various fields.<sup>22</sup>

This thesis has considered the application of the above sections following the *Prisons Act 1958* and it was seen that they contributed to an improvement in prison conditions but did not directly contribute to rehabilitation. While prisoner visits were permitted<sup>23</sup> visiting approvals could be manipulated to exclude some visitors. The spending of prison earnings<sup>24</sup> allowed prisoners to purchase some luxuries sold through the prison canteen. This permitted the prisoner to retain a small level of independence and control, even though these earnings were always managed through an account system so that the prisoner never handled cash. Both the separation of young offenders from mainstream prisoners and the classification of all prisoners were positive reforms when combined with other prison management techniques.<sup>25</sup> Yet frequently, insufficient rigor was applied to maximise the classification process through appropriate reporting and management of things such as the prisoner's employment and education. The separation of youthful offenders was only applied to seventeen year olds, while segregating eighteen to twenty-five year

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<sup>16</sup> Queensland Government, *Prison Act 1958*, section 7 (1) (j), Brisbane.

<sup>17</sup> Queensland Government, *Prison Act 1958*, section 32 (9) & section 33 (7), Brisbane.

<sup>18</sup> Queensland Government, *Prison Act 1958*, section 43, Brisbane.

<sup>19</sup> Queensland Government, *Prison Act 1958*, section 18 (1) (d), (e), (h) – (j), Brisbane.

<sup>20</sup> Queensland Government, *Prison Act 1958*, section 7 (1) (k), Brisbane.

<sup>21</sup> Queensland Government, *Prison Act 1958*, section 9 (2), Brisbane.

<sup>22</sup> Queensland Government, *Prison Act 1958*, section 11, Brisbane.

<sup>23</sup> Queensland Government, *Prison Act 1958*, section 7 (1) (f), Brisbane.

<sup>24</sup> Queensland Government, *Prison Act 1958*, section 7 (1) (g), Brisbane.

<sup>25</sup> Queensland Government, *Prison Act 1958*, section 18 (1) (d), (e), (h) – (j), Brisbane.



old prisoners was considered it was not implemented until after the period under review, making this another missed opportunity.

It was legislated in the Prisons Act that prisoners were to receive medical, dental and optical treatment<sup>26</sup> and a suitable diet would be provided within the rations scale.<sup>27</sup> While medical treatment was already provided within the prison, this made these medical services an entitlement that must be provided. The rations scale and diet ensured a minimum standard was established for a balanced diet and the quantity of food. In those instances where prisoners were on dietary punishment visits by medical officers<sup>28</sup> ensured a minimum level of health and wellbeing was maintained. The sections that allowed a prisoner to be considered for compensation if injured at work<sup>29</sup> and to provide for a prisoner immediately after discharge<sup>30</sup> are humanitarian in nature, even though the assistance was very limited. Each of these sections can be considered as positive reforms in prison conditions but it cannot be said that they contributed to a prisoner's rehabilitation as all prisoners could receive these, regardless of their behaviour while in prison.

The provision of psychiatric and psychological treatment and employment for habitual criminals and indeterminate sentence prisoners<sup>31</sup> meant they were grouped together in the Act because of their types of sentences. Yet, while employment could be provided for habitual offenders, subsequent legislation and amendments make it apparent that mental health treatment was only for those who were 'criminally insane' and later detained in the Security Patients Hospital. While there was also a new section in the *Prisons Act 1958* that allowed for the appointment of professional staff qualified in various fields,<sup>32</sup> the previous chapters have shown that psychiatric and psychological services were mainly limited to the development of reports for the parole board. The

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<sup>26</sup> Queensland Government, *Prison Act 1958*, section 7 (1) (h), Brisbane.

<sup>27</sup> Queensland Government, *Prison Act 1958*, section 7 (1) (j), Brisbane.

<sup>28</sup> Queensland Government, *Prison Act 1958*, section 32 (9) & section 33 (7), Brisbane.

<sup>29</sup> Queensland Government, *Prison Act 1958*, section 43, Brisbane.

<sup>30</sup> Queensland Government, *Prison Act 1958*, section 27 (4) & section 42, Brisbane.

<sup>31</sup> Queensland Government, *Prison Act 1958*, section 7 (1) (k), Brisbane.

<sup>32</sup> Queensland Government, *Prison Act 1958*, section 11, Brisbane.

employment of staff to deliver therapeutic programs in the main stream prisons did not occur during the period reviewed in this thesis, which indicates that while the legislation for it was in place this was another missed opportunity.

The employment of prison officers was discussed in Chapter 1 and it was seen that recruitment was from an unskilled, lowly educated pool that included many post war migrants. During the 1950s, prison administrators in Europe, England and Australia recognised prison staff needed training to facilitate appropriate prison management. JS Lobenthal had stated that it was rare to find recruits with the knowledge required to ‘contribute to the ultimate penological aims of their administration’.<sup>33</sup> He is assuming that the administration’s aims were congruent with contemporary penological theories. Furthermore, additional skills were required by the administrators themselves and it was thought that these skills could not always be found amongst the rank and file. The Queensland Prisons Department wanted to improve the quality of recruits and existing staff and therefore commenced a training program for recruits, as well as promotional examinations for existing staff. Yet regardless of this training, over the years Comptroller-General Kerr and Public Services Commissioner Bredhauer, considered that there was a lack of ability among the rank and file to fill senior management positions. This indicated that while the intention under section 9 of the *Prison Act 1958* was to improve the overall standard of prison staff at all levels, this had failed to be realised. It is acknowledged that training would provide some level of improvement; however, based on Bredhauer’s 1974 findings the opportunity to achieve adequate reform in this area had been missed.

When the chief executive of an organisation, in this case the Comptroller-General, considered that ‘the main objective of a Prison Administration, after a prisoner is sentenced is rehabilitation,’ then limits this comment with ‘if and

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<sup>33</sup> JS Lobenthal, ‘Proposals for Correctional Education and Training’, *The Prison Journal*, vol. 40, no. 1, 1960, p. 3.

where it is practicable<sup>34</sup> there is little hope for rehabilitative reform when there are other priorities in prison management. It has been shown that between 1958 and 1974 rehabilitative programs outside of what the administration considered in the form of prison labour and education, were not provided. Despite Kerr's 1965 lament that Queensland did not have the staff to avail itself of the programs provided in other states (refer to Chapter 6 p. 186) and the unsuccessful international advertising for a prison psychologist,<sup>35</sup> the employment of staff with these specialist skills and full time education officers who could assist in rehabilitation was delayed and set aside. Staff capable of facilitating these programs were not employed, and prison officers of the various ranks were not professionally developed to the calibre that would facilitate rehabilitative reforms. These compounded the missed opportunities and the need for change was identified in Bredhauer's investigation.

The 1974 inquiry by Bredhauer made it profoundly clear that there were many problems needing attention in the management of Queensland's prisons. He identified that there were security lapses in the prisons; modern penology needed to be considered in the management of prisons and consultation with the wider community was required. The report identified that prison officers were in need of professional development to teach them modern prison management principles and there was an existing skill shortage amongst the lower ranks who might eventually fill the senior management positions. Furthermore, to facilitate these changes Bredhauer made his lack of faith in the incumbent Comptroller-General, S Kerr, evident when he recommended Kerr's contract not be renewed and that instead a replacement be appointed.

Following the *Prisons Act 1958* it has been found that there was a lack of rehabilitative opportunities for prisoners. The necessary staff required to facilitate the programs were not employed and there was an inability in the

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<sup>34</sup> S Kerr, *Annual Report of the Comptroller-General of Prisons for the year ended 30<sup>th</sup> June, 1964*, Brisbane, p. 4.

<sup>35</sup> S Kerr, report regarding 'Psychologist and Psychiatrists in Brisbane Prison', 27 Nov. 1969, p. 1. QSA., item 1018707.

existing system to develop the current and new staff in contemporary prison management principles. This leads to the inescapable conclusion that the *Prisons Act 1958* was indeed Queensland's missed opportunity in reform.

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## Annex A

### *Legislation comparative table*

Summary of Queensland's *Prisons Act 1958* (QPA 1958) identifying legislation from other jurisdictions that contain related items.

<b>S = Similar</b> <b>I = Identical</b> <b>E = Extended</b>	<i>The Prisons Act 1890 QLD.</i>	<i>Prisons Act 1952 NSW</i>	<i>Gaols Act 1958 Victoria</i>	<i>Penal Institutions Act 1954 NZ</i>	<i>Prisons Act 1952 U.K.</i>
QPA 1958 S5:1a		S			
QPA 1958 S5:1b		S			
QPA 1958 S5:1E			S		
QPA 1958 S6 (a)	S				
QPA 1958 S6 (b)					
QPA 1958 S6 (c)					
QPA 1958 S7 :1a	I		S	S	
QPA 1958 S7 :1b	E		S	S	
QPA 1958 S7 :1c	I				
QPA 1958 S7 :1d	I				
QPA 1958 S7 :1e	S		S		
QPA 1958 S7 :1f					
QPA 1958 S7 :1g					
QPA 1958 S7 :1h					
QPA 1958 S7 :1i			S		
QPA 1958 S7 :1j					
QPA 1958 S7 :1k					
QPA 1958 S7 :1l					
QPA 1958 S7 :1m					
QPA 1958 S7 :1n					
QPA 1958 S7 :1o	E				
QPA 1958 S7 :1p	S		S	S	
QPA 1958 S7:2					
QPA 1958 S8	S	S	S		
QPA 1958 S9:1	E				
QPA 1958 S9:2					
QPA 1958 S9:3					



QPA 1958 S10		S			
QPA 1958 S11:1					
QPA 1958 S11:2					
QPA 1958 S11:3					
QPA 1958 S12:1	E	S	S		S
QPA 1958 S12:2					
QPA 1958 S13					
QPA 1958 S14					
QPA 1958 S15		S			
QPA 1958 S15:a	E		S		
QPA 1958 S15:b	E				
QPA 1958 S15:c	E		S		
QPA 1958 S16 : 1I			E	S	
QPA 1958 S16: 1II	E	S		S	
QPA 1958 S 16: 1III	E	S			
QPA 1958 S16: 1 IV	E	S			
QPA 1958 S16: 1 V		S			
QPA 1958 S16: 1Vi					
QPA 1958 S1: 1ii					
QPA 1958 S16: 2					
QPA 1958 S16: 3					
QPA 1958 S 16: 4	S				
QPA 1958 S17:1					
QPA 1958 S17:2					
QPA 1958 S18:1a	E				
QPA 1958 S18:1b	E				
QPA 1958 S18:1c	E				
QPA 1958 S18:1d					
QPA 1958 S18:1e					
QPA 1958 S18:1f		S			
QPA 1958 S18:1g		S			
QPA 1958 S18:1h					
QPA 1958 S18:1i					
QPA 1958 S18:1j					
QPA 1958 S18:2	S				
QPA 1958 S19:1	S			S	
QPA 1958 s19:2	S				
QPA 1958 S19:3	I				
QPA 1958 S20:1a	I			S	
QPA 1958 S20:1b	S			S	
QPA 1958 S20:1c	S			S	
QPA 1958 S20:2	E				

QPA 1958 S21:1	S			S	
QPA 1958 S21:2	E				
QPA 1958 S22:1	E (Regs)	S			
QPA 1958 S22:2		S		S	S
QPA 1958 S23:1		S			
QPA 1958 S23:2					
QPA 1958 S23:3					
QPA 1958 S23:4					
QPA 1958 S24	S	S	S		
QPA 1958 S25	E				
QPA 1958 S26					
QPA 1958 S27:1	I			S	
QPA 1958 S27:2	I		S		
QPA 1958 S27:3		S			
QPA 1958 S27:4					
QPA 1958 S28:1	S	S			
QPA 1958 S28:2					
QPA 1958 S28:3					
QPA 1958 S28:4					
QPA 1958 S29	S				
QPA 1958 S30:1	S				
QPA 1958 S30:2		S	S	S	
QPA 1958 S31	I				
QPA 1958 S32 1:a	S		S	S	
QPA 1958 S32 1:b	E		S	I	
QPA 1958 S32 1:c	S		S	S	
QPA 1958 S32 1:d	E			S	
QPA 1958 S32 1:e	I				
QPA 1958 S32 1:f	I				
QPA 1958 S32 1:g				S	
QPA 1958 S32 1:h				S	
QPA 1958 S32 1:i	S			S	
QPA 1958 S32 1:j	S				
QPA 1958 S32 1:k	S			S	
QPA 1958 S32 1:l	S		S	S	
QPA 1958 S32 1:m	S				
QPA 1958 S32 1:n	I				
QPA 1958 S32 1:o	E				
QPA 1958 S32 1:p	S			S	
QPA 1958 S32 1:q					
QPA 1958 S32 1:r	E			S	
QPA 1958 S32 1:s				S	

QPA 1958 S32:2					
QPA 1958 S32:3	E (Regs)				
QPA 1958 S32:4a					
QPA 1958 S32:4b					
QPA 1958 S32:5				S	
QPA 1958 S32:6				S	
QPA 1958 S32:7:a	I			S	
QPA 1958 S32:7:b	S				
QPA 1958 S32:7:c				S	
QPA 1958 S32:8	S				
QPA 1958 S32:9					
QPA 1958 S32:10					
QPA 1958 S32:11					
QPA 1958 S33:1a	S		S	S	
QPA 1958 S33:1b	S				
QPA 1958 S33:1c	S		S	S	
QPA 1958 S33:1d	E				
QPA 1958 S33:1e	E		S		
QPA 1958 S33:1f	I		S	S	
QPA 1958 S33:1g					
QPA 1958 S33:1h					
QPA 1958 S33:1i	I		S	S	
QPA 1958 S33:2				S	
QPA 1958 S33:3	E				
QPA 1958 S33:4					
QPA 1958 S33:5a	E				
QPA 1958 S33:5b	E				
QPA 1958 S33:6	E				
QPA 1958 S33:7					
QPA 1958 S33:8					
QPA 1958 S33:9					
QPA 1958 S34	S		S		
QPA 1958 S35	S				
QPA 1958 S36:1	E				
QPA 1958 S36:2					
QPA 1958 S37:1			S		
QPA 1958 S37:2	E		S		
QPA 1958 S37:3	I		S		
QPA 1958 S38:1a	E	S	S	S	S
QPA 1958 S38:1b		S	S	S	S
QPA 1958 S38:1c		S		S	S
QPA 1958 S38:1d		S	S	S	

QPA 1958 S38:1e				S	
QPA 1958 S38:2a		S	S		S
QPA 1958 S38:2b		S			S
QPA 1958 S38:2c		S	S		
QPA 1958 S38:3a	S	S			
QPA 1958 S38:3b	S	S	S	S	
QPA 1958 S38:4				S	
QPA 1958 S38:5	S				
QPA 1958 S38:6		S	S	S	
QPA 1958 S38:7				S	
QPA 1958 S38:8					S
QPA 1958 S38:9					
QPA 1958 S39					
QPA 1958 S40	E				
QPA 1958 S41					
QPA 1958 S42					
QPA 1958 S43					
QPA 1958 S44					
<b>total similar entries</b>	<b>78</b>	<b>29</b>	<b>34</b>	<b>43</b>	<b>8</b>
n=172					