

REPORT

OF THE ENQUIRY INTO

THE CAUSES OF THE RIOT,

FIRE AND HOSTAGE TAKING

AT FREMANTLE PRISON

ON THE 4TH AND 5TH OF JANUARY 1988

PREPARED FOR THE HON. J. M. BERINSON, M.L.C.,  
MINISTER FOR CORRECTIVE SERVICES,

17TH OF FEBRUARY, 1988

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FREMANTLE PRISON RIOT REP

STATEMENT TO MEDIA CONFERENCE

Cabinet has today released the McGivern Report on the Fremantle Prison Riot and the Government's response to Mr. McGivern's recommendations.

For purposes of distribution, the report has had certain passages deleted. All such deletions have been made for security reasons, and on the specific recommendation of Mr. McGivern.

I have two comments on the deletions:

- (1) I believe it is fair to say that they deal in the main with technical considerations and that they do not affect the general tenor of the report.
- (2) Cabinet has agreed that I should make the deleted passages available, in confidence, to the Leader of the Opposition and the Leader of the National Party.

This should make it clear that we have nothing to hide for political or any other non-security reasons.

Mr. McGivern has listed 60 recommendations.

As you will note from the Government's response, most have been accepted, some have been reserved for further consideration and a very small number have been rejected.

While the report indicates that it is not possible to identify any single cause of the riot, Mr. McGivern does

place great emphasis on the need for better communication and interaction between prisoners and prison management and staff. Certainly, this seems to be the issue most strongly emphasised by prisoners themselves.

The need to move in this direction is acknowledged and steps will be taken in Fremantle to ensure that this happens.

The pattern of this development has already been established in other prisons through programmes referred to by Mr. McGivern and these will be implemented in Fremantle as soon as possible.

Pending your questions, I restrict my further comments to four matters.

Firstly, all considerations affecting the facilities at Fremantle Prison must be taken in the context that the prison is scheduled to be closed in less than two years. Substantial new investment in buildings or facilities at Fremantle is therefore out of the question.

A second essential part of the context - referred to only briefly by Mr. McGivern - is the significance of the changing nature of prison populations generally.

These are becoming more sophisticated, more demanding, and in many cases more aggressive, violent, and disruptive.

It is not mere coincidence that the riot and fire at Fremantle Prison follows similar events in every one of the other mainland States.

Importantly, the prison system is having to cope with ever increasing numbers of prisoners serving extremely long sentences.

All these factors pose new and very great challenges, especially in the management of maximum security prisons like Fremantle.

Thirdly: at pages 33 and 34 of his report, Mr. McGivern comments on security classification policy.

I have to say bluntly that any proposal that would water down our escape prevention policies cannot be accepted.

The department has a responsibility to ensure the custody of prisoners. By taking a tough position in relation to prisoners with escape records and convictions for prison drug offences (the two matters which Mr. McGivern stresses) the department has achieved a significant reduction in the rate of escapes in the last two years. It would be unacceptable to put that process at risk.

The Metropolitan Security Unit. This is variously referred to in the report as an elite and para-military force. With due respect, while the M.S.U. officers are certainly highly trained, disciplined and well-equipped, those descriptions of them are excessively colourful.

The M.S.U. was formed out of necessity to assist in the prevention and management of prison emergencies. It serves as a last resort in the prevention and control of trouble, and events at Fremantle have demonstrated its worth.

Finally, could I say this: In a report of this nature, the emphasis is naturally on questions like what went wrong and why, and how to prevent a recurrence.

In that process it is all too easy to ignore the important and sometimes dangerous role of prison officers in ensuring the safety of the community.

In the January riot, prison officers were faced with unprecedented events in the course of which a number suffered serious injuries and severe trauma.

That no greater injury or damage occurred is a tribute to the professional and effective approach by officers to their duties.

To the extent that there are shortcomings in the system or in the response of particular officers at particular times, then those are matters to be properly addressed - and of course, they will be.

That, however, should not obscure the gratitude which the general body of the prison service is owed, both for its efforts to control the Fremantle riot and in its every day role.

\* \* \*

THE HONORABLE J.M. BERINSON, M.L.C.

MINISTER FOR CORRECTIVE SERVICES

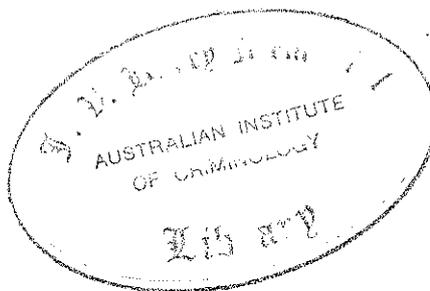
In response to your request that I conduct an enquiry into the riot/fire/hostage taking on the 4th and 5th of January 1988 I submit to you the report of the inquiry and its findings in accordance with your terms of reference.

Throughout the report I have refrained from naming staff so that should the report be made public there can be no accusations that anyone has been identified unfairly.

  
John Mc Givern

B.A., J.P.

17/2/88



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## 1. INTRODUCTION

### 1.1 APPOINTMENT AND TERMS OF REFERENCE

Following the riot, fire and hostage taking which occurred at Fremantle Prison on the 4th and 5th of January 1988 you requested that I undertake an inquiry into the causes of the events. The specific Terms of Reference for the inquiry were:-

1. What were the causes of the riot/hostage/fire incident at Fremantle Prison on 4/5 January 1988?
2. Could the incident have been prevented?
3. Did the Department deal effectively with the hostage situation?
4. Were departmental procedures and facilities adequate to deal with the incident?
5. Recommendations.

Your letter sent on the 12th of January containing suggestions for issues warranting further examination has been noted and those issues integrated into the body of the report, as indeed they would have been in any case.

The terms of reference would seem to limit me to examine only those matters relating to the "incident" itself; or to those occurrences prior to the event which contributed to it; or to the adequacy of existing procedures and facilities as they affected the incident and the Departments reaction.

However, I have looked beyond the immediate situation in proposing measures which could contribute to reducing the likelihood of future occurrences of a similar nature.

#### 1.2 CONDUCT OF THE INVESTIGATION

The terms of my appointment did not provide for the taking of evidence on oath. Instead, statements from staff to the prison Superintendent or others were considered and, where warranted, were discussed with the officers concerned. A number of prisoners were also interviewed as were members of the Programme Support Branches, Prison Administration, Medical Superintendent and Prison Chaplains. I also met with the present Acting Director of Prison Operations South (P.O.S.) and with the Acting Director (P.O.S.) at the time of the riot. Representatives of the Western Australian Prison Officers Union were also seen as were members of the Police Tactical Response Group. Notes of interviews, where recorded, were made available to the person concerned. Written submissions were also received from three prisoners outside Fremantle, one at Canning Vale Prison, one at Albany Prison and the other at Bunbury Prison.

Twelve prisoners held in the Special Handling Unit since the 13th of January were asked individually whether they wished to make any statement but declined, although one of them subsequently did meet me and make a statement. A request was made by a firm of solicitors to represent two of those in the Special Handling Unit, but given the non prosecutorial nature of the inquiry I declined this request.

In all a total of 14 officers, 16 prisoners, the Director Prison Operations South, the Superintendent, the Assistant Superintendent and 11 others were seen. Written submissions were received from a further 3 sources.

Because of the sensitivity of some of the material contained in them, the statement of interviews do not form part of this report but are forwarded separately.

## 2. FIRST TERM OF REFERENCE: CAUSES

### 2.1 NARRATIVE OF EVENTS ON THE DAY OF THE RIOT AT FREMANTLE PRISON ON THE 4TH OF JANUARY 1988.

At the first unlock (7 a.m.) in Main (or Number 3) Division of Fremantle prison on the 4th of January 1988, an incident occurred between a prisoner, Smith, and an Officer. The Incident Report indicates that the prisoner was tardy in getting out of his cell

and when directed to hurry up became abusive to the Officer. There was a scuffle and the prisoner was restrained by Officers. The prisoner was escorted to an Observation Cell in New Division and remained upset and hostile for a period. When the Senior Nursing Officer and Chief Officer visited him on the normal round he was abusive to them.

Later that morning the Chief Officer in charge of the Prison discussed Smith with the Senior Officer in New Division who advised that he considered Smith was ready for movement out of observation. The Chief Officer then decided to return Smith to the Main Division yard. By the time Smith was returned to the yard the prisoners in Main Division had returned to the yard from the workshops. Following the return of Smith to the yard the prisoners in Main Division held a meeting in which reference was made to the incident which they considered to be a "bashing". A number of sources including the medical staff confirm that marks were visible on Smith's neck and face. Most prisoners spoken to considered these marks to be evidence of an assault. However, as the Medical Superintendent explained there is no means to determine if the marks were caused by an actual assault or reasonable restraint. It has been reported by prisoners that another reason they suspected Smith had been bashed was because the incident occurred with an Officer whom they considered to be prone to "bashing". Another contributing factor was that the incident occurred after the other prisoners had vacated the division for the yard and Smith was alone with this Officer.

Following the initial meeting the prisoners made a number of demands to the Officer-in-Charge of Main Division. Firstly they wanted to speak to the Superintendent. This request was denied. (It was in any case a Public Service holiday). They persisted in their demands which moderated to having Smith examined by the hospital staff and photographs taken. Eventually the Chief Officer<sup>1</sup> conceded to this demand. As part of this demand the prisoners wanted Smith to be accompanied to the prison hospital by prisoner Keating as a surety that he would be properly examined. This was also agreed to.

A decision was taken by the Chief Officer not to send the prisoners to work on the afternoon on the basis that this would help settle the growing tension that was now evident to many prisoners and officers.

During the afternoon the prisoners in Main Division held a series of meetings. Prisoners in Two Division also held meetings and it is clear that tension and resentment were building amongst the prisoner body. In addition there was contention amongst the officers on duty regarding developing events and the best way to respond to them. For example, an altercation developed earlier in the Information Office between the Prosecutions Officer and Chief Officer with the Prosecutions Officer suggesting that Smith should not have been placed back into the yard. An approach was also made from the Western Australian Prison Officers Union

representative that the Metropolitan Security Unit (M.S.U.) be mobilized as a precautionary measure. This approach was dismissed by the Chief Officer.

However, certain consultations with the authorities were undertaken. Firstly, the Chief Officer phoned the acting Superintendent regarding developments. The Acting Superintendent essentially endorsed the actions taken and it was suggested that a phone call be made to the, Acting Director, Prison Operations (South). The Acting Director requested the Chief Officer to call him again once the lock up had been completed.

The Chief Officer reports that instructions were given by him to let the Divisions in one at a time, and for only 10 - 12 prisoners to be let through at any one time. However, the Senior Officer in charge of Two Division reports that he decided to hold back the Two Division lock-up as a precaution because he had heard from a prisoner that there would be trouble, possibly involving the lighting of fires. Conflict exists between the Chief Officer's statement and that of the Officer on duty on the No. 3 Division grill gate who stated that the number to be allowed in at a time was 15 to 20. The Senior Officer in charge of Main Division states that he received no instruction on limiting the numbers of prisoners entering the Division. The Chief Officer in charge of the afternoon shift stated that he was not briefed on the numbers of prisoners to be allowed in but normally restricted it to 10 prisoners, although there was no

procedure laid down. Another statement indicates that the number to be allowed in was not varied from the normal and it is clear that confusion existed in this matter.

Information from prisoners suggests that at the time that prisoners from Three Division were allowed in to offload excess gear (about 3.40 p.m.) they assessed their strategy and counted the number of officers in the division. On the return to the yard the prisoners finalized their plan to riot, burn the prison and take hostages. Efforts to communicate between the yards to organize a concerted assault are known to have occurred.

The Main Division yard can be broken down into three groups of prisoners: the ringleaders; then those prisoners who were informed of the plan and involved in its execution; others, perhaps the majority, were not informed of the plan, although many of these may have been aware of something developing. Once a certain number of prisoners were permitted into the Division (on the call for meals) a group of rioters rushed the grill gate and stormed the Division attacking officers with any item which came to hand, hot water, plates, foodstuffs, buckets and makeshift weapons. In all 15 officers were injured. The two worst injuries sustained were:- (1) One Officer received severe burns to 45% of his body which required 24 days of hospital treatment and continues to be treated at home. (2) Another Officer received an eye injury, which is also still under treatment.

When the prisoners were in the Division a number of the committed group began to light fires in cells. Prison Officers were assaulted and keys taken. A number of prisoners were attempting to control the excesses of the young and violent prisoners. Prison Officers were in various states of control, retreat, and dialogue with prisoners. Once fires started spreading many prisoners came into the division to rescue their valued items from their cells.

At the time of the riot several prisoners were already locked in cells and several officers were then pushed into cells by prisoners. Thankfully, all individuals were released from the cells before the fire got out of control.

The Superintendent is of the opinion that the taking of hostages into the yard was not planned but that the incident was part of an aborted escape attempt. A number of other Department staff including the Superintendent in charge of the M.S.U. also subscribe to the belief that the whole incident on the 4th of January was a bungled escape attempt. I believe there was a plan to take hostages into the yard although no evidence to suggest that certain officers were targeted is available and it appears that any officer was grabbed. The most common reason given by prisoners for taking hostages was as protection against the Metropolitan Security Unit. The Police Consorting Squad and my own enquiries have not been able to uncover any evidence to support the escape attempt theory. This theory and the problems associated with it will be discussed further in Section 2.2.4.

This theory and the problems associated with it will be discussed further in Section 2.2.4.

If taking hostages was not intended then the prisoners would have left the officers in the Division when they returned to the yard. If a genuine escape plan was being mounted then I would have expected the ringleaders to have made an immediate rush for the gate or wall and not to have remained directing matters in the Division, as the first few minutes would have been vital.

It is clear that a group of prisoners in No. 2 yard planned a similar assault. Had that been successful then I feel certain that No.2 Division would have sustained fire damage also and more hostages would have been taken. The fortunate decision by the Senior Officer in charge of the Division to hold back the lock-up prevented the Two Division riot eventuating.

As the prisoners from Main Division retreated to the yard the riot leaders assumed command of the hostages and the rioters. There does not appear to have been any purpose to the riot or fire apart from drawing attention to grievances and causing maximum damage and disruption to the institution. There is no evidence that there were any serious demands formulated for which the hostages would be bargained. The only negotiations were for media attention; a meeting with the Executive Director; and an assurance that there would be no physical reprisals and, later, food (one hostage was released in exchange for baked beans; another for cigarettes).

## 2.2 CAUSES MOST COMMONLY PROPOSED

Possible causes of the riot can be classified into a number of discrete categories which are described below.

### 2.2.1 Physical Conditions

This possible "cause" has attracted much attention in the media and the public imagination. The physical conditions at Fremantle prison are undoubtedly sub-standard and could best be described as early Victorian. Prisoners are required to spend approximately 14 hours per day in a small cell with a bucket for a toilet (and often with another prisoner for company). The prisoners are thus compelled to eat, sleep and defecate in the one small and confined space. One of the most common complaints by prisoners is of the cockroaches that infest the prison, along with a plague of mice. However, most prisoners state that the physical conditions, although unpleasant, are not a major concern for them and certainly not enough to riot over. No prisoners claimed the heat was "unbearable" or a particular cause of the riot. As some prisoners pointed out, the availability of fans helps reduce the heat in the cells on a hot night.

Overcrowding places a strain on prisoners, the administration, and general facilities. The muster at Fremantle always seems to creep up over the established ceilings. Being the State's major maximum security prison bed space is at a premium. Numerous

attempts have been made to keep minimum security prisoners out of Fremantle, not only to relieve overcrowding but also because it is quite inappropriate that these prisoners should be mixed in with the State's most hardened prisoners. On the 4/1/88 there were 27 prisoners in Fremantle serving sentences of less than six months. Altogether 14 prisoners in Fremantle on the 31/12/87 were classified as minimum security and a further 40 prisoners were classified as medium security. Therefore there were at least 54 prisoners who could have been placed elsewhere. The unnecessary overcrowding is perhaps the only physical condition that can be addressed by the Department in the short term without considerable financial expenditure. This issue is discussed further in section 3.6 of this report.

To sum up, the physical inadequacies of Fremantle prison are well known and serve to provide a caricature of prison existence. Many of the long term prisoners look forward to the improvements in living conditions which will occur in the new maximum security prison. However prisoners generally themselves do not view their physical conditions as an important source of grievance and tend to adopt a philosophical stance on the matter.

#### 2.2.2 The Human Environment

The most commonly expressed grievance of prisoners pertains to the human environment. The concern usually includes the selective and punitive attitudes and actions of a few prison officers. With regard to the recent riot many prisoners referred to an alleged

bashing of a prisoner by a prison officer. The feeling of resentment certainly was one of the factors that was present, and used, on the afternoon of the 4th of January to instigate the riot.

While the punitive actions and attitudes of a small number of prison officers give cause for concern, there are also a number of other factors related to the human environment mentioned by prisoners which contributes to a picture of an uncaring and unsympathetic system at Fremantle Prison. Some of the particular complaints are:- the lack of concern by prison officers; the insensitivity of the system; poor visiting facilities; the lack of work; limited educational and recreational facilities and the censoring of mail.

For example, visits are an extremely important facet of prison life particularly in security prisons. While visiting conditions at Fremantle Prison have improved over the years, they are still poor when compared to other prisons. At Canning Vale Medium Security Prison prisoners are allowed a minimum of two one hour "contact" visits per week and the "contact" visiting area can cope with approximately 50 prisoners plus visitors at any one time. At Fremantle prison only six "contact" visits can occur at the same time and prisoners receive one 40 minute "contact" visit and one "ordinary" visit per week. Further, for some time now prisoners at Fremantle have been routinely strip searched before and after both "contact" visits and ordinary visits. In

"ordinary" visits a physical barrier separates the prisoner from the visitors. At other secure prisons prisoners entering ordinary visits would not be strip searched and prisoners entering a "contact" visit would only be searched if they were suspected of carrying something or on the basis of a random selection.

The visiting areas in Fremantle are cramped and ugly. The "contact" visiting area should be expanded sufficiently to offer facilities comparable to Canning Vale Prison. One suggestion is to erect a prefabricated structure on the area of garden immediately inside the main gate in front of the existing contact visiting area and Superintendent's office. A sally port from the existing contact visiting room would allow visitors to enter from the gate and pass into the new area. No security hazard should be caused if this plan is implemented, as prisoners will be inside the security area of the prison at all times.

### 2.2.3 The Administrative System

The second most common concern voiced by prisoners refers to the administrative system in the prison. This factor was also mentioned by some staff, but usually in a different context. This complaint usually refers to the perceived insensitivity and inflexibility of the administration of the prison and the frustration in dealing with them. Complaints list instances of unfair dismissal from the school or workplace; procedures such as restricting the availability of towels in the gymnasium (resulting in prisoners feeling uncomfortable, unclean and smelly) and the inability to have requests and complaints heard.

An example of the inefficiency referred to above concerns the treatment of prisoner St. John on the 31/12/87. This prisoner objected to his transfer to Albany, slashed himself and was eventually kept at Fremantle. Information available to the inquiry confirms that St. John had approached a Welfare Officer and expressed a desire to appeal against his pending transfer to Albany and postpone the transfer for as long as possible. However, no appeal was lodged and follow up action was not possible because the Welfare Officer was off sick for the next two days. St. John approached another Welfare Officer on the day before his planned transfer. This officer contacted the Information Officer but as there was no record of the appeal was told that the prisoner would be transferred.

The problem in this case stems from the system being unable to hear, document and process the prisoner's request to appeal against the decision to transfer him to Albany. The Assistant Superintendent Prisoner Management had the authority to proceed with the transfer pending the outcome of the appeal (this is covered in Director's Rule 6.7.6). However, the inquiry was told by the Chairman of the Case Conference (A/Assistant Superintendent Prisoner Management) that it was unlikely that the transfer to Albany would have gone ahead had the appeal been lodged.

The administrative problem illustrated by the St. John incident could have been avoided at a number of points had the system been concerned with the fair treatment of prisoners. Given a conflict of information it may be more judicious to give the aggrieved party, the prisoner, the benefit of the doubt until the matter can be fully resolved. The risk otherwise is that the administration acts unfairly towards prisoners. Given that prison is a total institution with no recourse for the prisoner to alternative actions such unfairness should be avoided as the victims are likely to become rebellious. The St. John affair can be seen as one of the incidents leading to the riot on the 4th of January.

Another complaint in this category refers to inconsistent treatment and the lack of confidence that the commands of the Administration will be followed out by middle management staff and officers. There is also the feeling that prisoners are not kept informed with regards to changes in procedures etc. and that more information should flow down to them.

An additional problem is related to the increasing numbers of prisoners serving long sentences. The "maximum security life imprisonment" category must lead to greater and greater numbers of these prisoners in the system as the years pass, compounding the situation. Added to this is the trend towards longer sentences for robberies, sex and drug offences. In terms of prison management, the future assumes nightmare proportions in terms of handling these prisoners humanely in secure conditions.

The failure of the system to address the special needs and problems of long term prisoners is in need of urgent review. As the most dangerous long term prisoners are all held at Fremantle prison the Department should have given special attention to the management of this group.

The issue is not new. In 1985 following the escape of three long term prisoners over the east wall of the prison, a number of long term prisoners were kept for extended periods of time in separate confinement ("Section 43"). As a result of this crisis a report was completed for the Deputy Director, Prisoner Services Division, into the needs of such prisoners. This report described the dilemma facing the Department and described programmes which have been developed elsewhere to cope with the problem. It is possible that no action was taken on the report because of the approaching closure of Fremantle. However, it is (and has been) dangerous to simply leave the needs unattended until the closure of Fremantle. With approximately two years still to operate it would be foolhardy to continue to ignore the problem.

There are a number of programmes for long term prisoners which can enhance security and also facilitate their rehabilitation. Palmer (1984)<sup>2</sup> reports on a programme for long term prisoners that has been operating in Canada since 1976. The concepts of "sentence planning" and "co-operative management" are incorporated in the programme. Palmer argues that "a process

oriented approach to selected long term inmates can provide appropriate security, is more humane, and costs substantially less than does the security oriented alternative" (p456).

To sum up this section; the needs of long term prisoners must be considered and the Department's strategy regarding programming in this area re-thought. It seems that much could be done to enhance the security and humanity of the prisons and that rather than being in conflict, these goals are mutually facilitating. Although recognition of this is contained in various Departmental policy documents including the Corporate Plan, more needs to be done to actualize these ideas. A reorganization of priorities, an ability to overcome obstacles, a commitment and a willingness at all levels of the organization is needed.

#### 2.2.4 Prisoner Conspiracy/Escape.

Although there have been some references to a national movement by the prisoners Action Group inciting prison unrest or proposing a Bi-Centennial "burn", these reports have been rather vague and weak. At most it seems that this group may have had an encouraging influence on one of the prisoners, seen as a main instigator of the riot.

Given the lack of evidence for an escape theory I am concerned that a widespread belief has developed at all levels of the Department that this was, in fact, the main reason for the riot on the 4th of January. The reasons why this explanation would be

on the 4th of January. The reasons why this explanation would be attractive to the Department are fairly obvious but are unacceptable.

### 2.3 ANALYSIS OF PRECIPITATING EVENTS

While all of the above factors have been cited as causes of prisoners' discontent, they have existed for some time. The question naturally emerges "What happened on the 4th of January 1988 to result in a riot?". The heat on the day, although mentioned in the media, has been dismissed by most prisoners and staff as a minor factor. The key is probably found in an unfortunate sequence of events which added to the already existing discontent to make the riot almost inevitable at the time of its occurrence.

Certainly the perception that a prisoner had been bashed allowed the ringleaders to build up a general mood of aggression and desire for retaliation. The Smith incident of the 4th of January 1988 and the St. John incident of the previous Thursday (31/12/87) were used to support a belief of harassment by staff.

The release of Smith from observation back into the yard, although reports from the Senior Officer in New Division indicate

he appeared normal, can now be seen as inflammatory, and inconsistent with the traditional use of observation, which encouraged placement in observation less frequently and movement out of observation more cautiously. Following placement back in the yard, Smith was handed a charge sheet through the grill by the Prosecutions Officer and proceeded to tear it up and make a spectacle encouraging the derision of the prisoners.

The demand by the prisoners for prisoner Keating to accompany Smith up to the hospital and for Smith to be examined was met. This may well have resulted in a feeling of power amongst the ringleaders in Main Division.

It has been suggested by a prisoner that had the prisoners been returned to work on the afternoon of the 4/1/88 the feeling of tension, anger and solidarity might have dissipated. Certainly keeping the prisoners in the yard throughout the afternoon did little to ease the situation and gave the ringleaders further opportunities to sow discontent. The hostility displayed by prisoners which resulted in the cancellation of the work parades should have been sufficient warning that further disruption was likely.

When the Main Division prisoners were allowed to bring their excess gear into their cells they were able to assess the situation, with regards to staff readiness, and finalise their plans.

It is clear now that the additional officers held back at 3 p.m. and 4 p.m. should have been deployed to Main Division instead of being held between gates although my feeling is that while this could have postponed the riot, prisoners had become so resentful and frustrated over time that some other "incident" would have provoked the event.

It should be noted at this point while analysing the unfolding of events at the time of the riot that many individual officers acted with commendable initiative in difficult conditions. The initiative shown by these officers helped minimise the damage and quickly contain the situation.

#### 2.4 CONCLUSION

I believe that a group of prisoners had planned to cause damage and disruption to the prison and were merely awaiting the right occasion. The afternoon in the yard gave them the opportunity to build up a desire for retaliation following the alleged "bashing" of prisoner Smith. Hostages were taken to insure against intervention by the M.S.U. There has been no evidence to support the claim that an escape or escapes were planned and outside influence (if any) was not known to the prisoners generally.

While I have considered this and all other matters which have been suggested as possible causes, it must be emphasised, that there were no circumstances which could justify the taking of hostages, the attacks on prison staff, or the wilful destruction of prison property.

### 3. SECOND TERM OF REFERENCE: PREVENTION

#### 3.1 INTRODUCTION

Factors which can be identified to help prevent riots similar to that which occurred at Fremantle on the 4th of January follow on directly from the causes which have been identified in the previous section. To allow for a reasoned consideration of actions which could be taken to lessen the likelihood of a riot I have listed the factors beginning with the most specific (mainly related to actions which were taken or not on the 4th of January) followed by a discussion of more general procedures, policies or strategies which could be adopted to reduce the likelihood of another violent out-burst occurring.

#### 3.2 INTELLIGENCE GATHERING

One of the most obvious and distressing outcomes of the inquiry was the emergence of a picture of a serious and dangerous building up of tension in the prison prior to 4p.m. on the 4/1/88 which should have signalled the need for earlier intervention or extra precautions. The Department of Corrective Services must institute a systematic way of documenting and gauging developments in prisons, especially maximum security prisons. This information should be gathered, considered, collated, processed and coded to determine a state of readiness.

There is a need for an intelligence officer or unit that can perform these functions and provide competent advice to the Directors and Executive Director. This intelligence system should be independent of existing operational structures as these structures may not facilitate the free flow of information and may tend to see information within a framework related to a particular point of view. It may be of considerable value to develop a computer based programme established and maintained by the intelligence unit. This would allow local administrators to feed in events that have occurred such as a "sit out" or a disturbance and receive feed back on its relative importance. Such a system would, of course, have been invaluable on the 4th of January.

In hindsight, the information coming in on the 4th of January should have been enough to move Fremantle Prison security from "yellow" alert (based on previous events) to "red" alert, indicating the need for immediate intervention to prevent trouble. More importantly, an escalating level of tension detected by an efficient intelligence gathering unit would lead to earlier intervention, so that steps could be taken to prevent or limit the likelihood of violent confrontation.

### 3.3 OBSERVANCE OF EXISTING POLICIES AND PROCEDURES.

The incident regarding prisoner St. John has already been described. In that case the prisoner had attempted to appeal

against a decision but because of the inability of the prison system to co-ordinate information regarding the lodging of appeals the prisoner was denied the rights set out in Directors Rule 6.7.

Another factor requiring attention is an examination of how and why laid down policies and procedures were not followed on the 4th of January. The most notable deviations were:-

3.3.1 Movement of prisoner out of observation.

In view of Smith's behaviour on arrival at the observation cell his return to the yard was unusual. Normal practice is to keep the prisoner in observation until he is quite settled. Frequently the prisoner remains in observation overnight.

3.3.2 Conceding to Prisoners' Demands.

Conceding to prisoners' demands that prisoner Keating accompany Smith to the hospital to ensure proper treatment could be considered a serious error of judgement. This action may have reinforced prisoners belief that they had power and control.

3.3.3 Failure to Document and Review Events Occurring.

The inquiry revealed there was no documentation of the sit out in Two Division on the 31st of December 1987, following the St. John incident. Nor were there documents related to the Smith incident and the negotiations with prisoners.

### 3.4 DEVELOPMENT OF DISTURBANCE CONTROL STRATEGIES

As mentioned previously, the riot on the 4th of January could probably have been avoided at 3.45 p.m. on the day, notwithstanding all the other events, had a system of intelligence gathering been developed and observed. A contingent of Metropolitan Security Unit officers could have been sufficient to bolster security at the lock up. Sufficient information was available to signal the likelihood of a major disturbance. The problem was that this information was not being co-ordinated, passed on, analysed or documented.

A matter worth mentioning at this point is the overall management of crisis situations. There is a lack of direction in terms of providing a constructive return to the stabilizing effect of prison routine. Fremantle prison has continued to operate on a crisis footing for 6 weeks after the riot, which appears to have fuelled antagonisms within the prison rather than settled them. Perhaps one of the essential needs in this area is to establish clearly that the goals of prison administration should be to maintain an orderly and peaceful routine rather than to assert authority for its own sake or to exact retribution on prisoners. This issue will be discussed further in section 3.8.

### 3.5 STAFF SELECTION AND TRAINING

#### 3.5.1 Staff Review

Without commenting on specific allegations of assault etc., the presence of certain officers does detract from a positive management environment. It is important that officers who appear to be creating problems are identified, counselled, helped, and if necessary, transferred or dismissed should their behaviour prove intractable. This should be the task of the Department of Corrective Services Staff Training Branch and it would be in the interests of the Department, the officers, and the Prison Officers Union.

#### 3.5.2 Staff Selection

More emphasis needs to be given to staff selection. A system of probation for officers in their first 12 months of duty during which they would be under contract, would facilitate the identification and removal of the small number of officers who are likely to present future problems.

#### 3.5.3 Giving back Responsibility to Prison Officers

Some of the longer serving prison officers have reflected on the deteriorating relationships between prison officers and staff. If indeed staff attitudes are less "responsible" today it may be because of the boredom of the prison officer. In days past, prison officers assumed greater responsibilities and assumed authority over large groups of prisoners. This was possible

because officers were sensitive to prisoners issues and were careful to be fair and non provocative. An example was given by one of the older Officers of an incident in the 1950's, where a joke was made by an officer at the expense of a group of aboriginal prisoners (The officer had said "here comes the black watch") the prisoners demanded and got an apology within a few hours. In contrast, it was pointed out that today prisoners are routinely referred to as "crims" and many officers take a complacent attitude to prisoners needs.

The intended direction of the Department regarding expanding the role of the prison officer is commendable. It is regrettable, however, that these intentions have not been implemented in Fremantle Prison. Care needs to be taken to ensure that the negative attitudes referred to in the previous paragraph do not flow over into the expanded functions.

Overall there appears to be a fundamental problem with the management of staff at Fremantle Prison so that negative attitudes and boredom become a regular feature of the prison officer's working environment. This needs to be addressed. I will recommend action that could be taken which may benefit all parties (section 6.7 of this report).

### 3.6 MANAGEMENT OF DISRUPTIVE PRISONERS

One of the contributing causes of the riot was the collusion of high risk prisoners in fermenting disruption amongst the prisoners in Three Division. Information obtained by the inquiry suggests that a similar power clique also existed in Two Division.

Isolation of high risk prisoners can be achieved through dispersal or isolation. Dispersal is the less restrictive option and should be pursued in the first instance. For those who continue to pose a risk, isolation either in "section 43" or a segregation unit remains the final option. Existing Departmental policy supports the notion of dispersal throughout the system as much as possible. This policy seems not to have been followed through and too many dangerous prisoners were grouped together in the Main Division of Fremantle Prison. As an example, the Assistant Investigations officer drew attention (in June, 1987) to the risk of holding two particular prisoners in the same yard, yet both were in 3 Division on the 4/1/88. New secure accommodation becoming available at Albany should encourage the dispersal of certain security prisoners.

In the 1972 Royal Commission Report <sup>3</sup> Judge Jones said on page 170:-

"There can I think be no doubt that prison authorities have the power in their discretion to segregate particular prisoners for long periods if that course is considered essential to safeguard the general welfare of other inmates of a prison"

This statement is equally valid today and I will make a recommendation in this regard.

### 3.7 PRISONER TRANSFERS

One of the factors which tends to hold up the movement of a number of prisoners through the system to lower security institutions is the lack of a facility in the metropolitan area for the placement of prisoners classified as "low-medium" security. This results in a bottle neck in the system at Canning Vale, the medium security institution, which holds up the movement of prisoners out of maximum security. This problem is likely to be further exacerbated in the future as prisoner populations swell and the bottle neck remains at Canning Vale.

Another factor which holds up the movement of prisoners out of Canning Vale to lower security is Directors Rule 6. In most cases the provisions of the Rule are quite justifiable and have

resulted in a satisfactory reduction in the escape rate, although sections of the rule do not seem to serve that purpose. For example, Part 4.7.3.2 of Rule 6 allows a reduction in security rating for prisoners who have had only one prior escape on a previous sentence, but disallows this if a minor offence was committed whilst the prisoner was at large within the past five years. The committing of a minor offence would not necessarily increase the likelihood of future escape nor the danger posed to the public. It is difficult to see the merit in this provision and in fact it serves to reduce the movement of prisoners from Canning Vale and consequently the movement of prisoners from Fremantle to Canning Vale. The need to consider the behaviour of the offender whilst at large and to take into account the seriousness of offences committed at large is adequately covered elsewhere (part 4.2.1 of Rule 6) to make the intention of part 4.7.3.2 redundant.

Another section of Rule 6 which might also be considered is part 4.9 concerning prisoners convicted of minor or aggravated prison offences involving drugs. Part 4.9.1. states that a prisoner on low medium or higher security who is convicted of drug offences in prison will not be considered for minimum security placement for 6 months after the date of the commission of the offence. Again, there does not appear to be any value from a security point of view in formulating this rule. If the offence has aspects that could be seen to involve security concerns this could readily and properly be addressed in the Assessment and

Orientation report. Given that this procedure exists in the Department, part 4.9 of the rule can be seen to offer nothing further in terms of security and may even be a form of de-facto punishment.

Parts 4.9 and 4.7.3.2 of Rule 6 are illustrations of policies that need to be revised to hasten the movement of prisoners through the system and reduce the pressure on Fremantle prison.

### 3.8 GENERAL PRISON MANAGEMENT

One of the most onerous and thankless tasks in the prison service is the management of a maximum security prison. The management of such a prison is considerably more taxing than the management of a less secure prison. Not only are the most dangerous and inalcitrant prisoners housed there but in the case of Fremantle it also serves as the States only institution for psychiatrically disturbed prisoners and is the receival prison for the Fremantle Court taking in persons serving very short sentences, many of them young men facing their first term of imprisonment. The competing demands of such a prison and the overall need for security often means that important factors, such as the needs and sensitivities of long term prisoners, are not attended to.

The present prison management has been described as presenting problems relating mainly to a style which has been described as inflexible, confrontationist and inaccessible rather than being

visible and approachable thereby averting the building up of tensions and pressures. An approachable administration could also discourage a belief developing amongst prisoners that they need to resort to desperate means to be heard. On the other hand, the administration has also been described by some staff as operating a policy of appeasement and continually giving in to prisoners while others see it as "less soft" than the previous administration.

It is inappropriate for the present inquiry to examine in too great a detail the arguments for and against various prison management styles, although it is recommended that the Department of Corrective Services seriously consider the issue and formulate policy and training programmes which could produce consistency in this area.

A further concern is the emergence of an elite force of officers - the Metropolitan Security Unit. It has been argued that this force is necessary to reinforce security in prisons. However, there have been a number of suggestions that the Metropolitan Security Unit increases tensions and has the effect of alienating prisoners and officers.

Good prison management is largely a matter of identifying problem areas and responding to them in such a way as to prevent trouble developing. A security unit should be seen as a force of last resort whose presence indicates that preventative measures have

either failed or more often, unfortunately, not been utilized. The increasing para-military role of the MSU may encourage or foster a belief that preventative measures are no longer necessary.

There is also the effect the Metropolitan Security Unit has on the general body of prison officers. If the Unit is portrayed as the principal vehicle for security, the traditional security role of the ordinary prison officer will be forfeited. The specialization of the security role of the M.S.U. may not be in the interests of prison management and operation.

Providing continuous training in preparation for "trouble" may in fact foster conditions for such events to occur. There is an argument to de-emphasise the aggressive para-military role of the prison officer and instead encourage positive custody with an emphasis on man management and non aggressive solutions to problems.

Any attempt to expand the role of the M.S.U. or increase its involvement in day to day prison management should be rejected. Adequately trained and supervised prison officers are capable of handling the majority of problems and only in the rarest cases should the M.S.U. be required.

## 5. DEPARTMENTAL PROCEDURES AND FACILITIES

### 5.1 INTRODUCTION

The review of The Department of Corrective Services procedures and facilities will be limited to those that relate to the development and occurrence of the riot. The inquiry touched upon many aspects of Departmental procedures, these can be considered to be subsumed under the more general points already made.

## 5. DEPARTMENTAL PROCEDURES AND FACILITIES

### 5.1 INTRODUCTION

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#### 5.3.1 Chain of Command.

As described in section 4.1, at the time immediately following the riot and for a period of some hours following the taking of hostages there was an inadequate and/or unofficial chain of command. Officers were not being directed to perform certain duties, some responsibilities were not assumed and those actions which did occur often took place on the basis of the individual officer's initiative.

## 5.4 GENERAL DEFECIENCIES

### 5.4.1. Dealing with Prisoner Grievances.

Many prisoners, both long and short term, constantly produce a stream of grievances and complaints, many real many imagined. These grievances are not only related to problems within the prison, but also to problems on the outside. Avenues exist to handle many of these matters, including the Office of the State Ombudsman. However, in spite of the available avenues many complaints remain unresolved. In addition there are often general and personal requests for changes in conditions, routine, recreation, visits etc. which are best handled at the prison management level, but unless a formal channel exists to have these matters aired, they tend to grow in importance in the minds of those concerned and become quite significant problems. While prisoners may submit written requests to the Superintendent for consideration there is, at the present time, little opportunity for general requests to be aired with the administration. I believe this needs to be changed.

### 5.4.2. The Use of "Observation".

5.4.2.1 **Observation.** Directors Rule 43 "Charges of Prison Offences" (5) provides that a prisoner should not be placed in separate confinement "....unless the good government, good order,

or security of the prison requires such action....". I believe this Rule should be amended to list specific offences for which confinement is an option. I am of the opinion that separate confinement is resorted to all too readily. An example will suffice, a few days ago a prisoner disobeyed an order to pick up two sausages from the floor. He was handcuffed and placed in confinement for two days. There was no suggestion of threats to security or staff and, in fact, no charge was laid. The prisoner subsequently alleged assault and has referred the matter to a solicitor.

In addition, it is clear that records pertaining to prisoners held in observation are not always accurately maintained. The inquiry had some difficulty obtaining documents and records related to the movement of prisoners and certain incidents being investigated. There is clearly a need to ensure that all records and reports of movements within the prison and incidents occurring are properly maintained. Whether this is achieved through a revitalized administrative structure, regular inspections or a system of management auditing is not as important as ensuring that it is achieved.

5.4.2.2. Restraints. Directors Rule 29 (3) states that "Mechanical restraints may be used only in circumstances provided for in section 42 of the Prisons Act 1981". Section 42 of the Prisons Act reads "...such restraint is necessary - (a) to prevent a prisoner injuring himself or any other person,....". I

believe this section has been interpreted very loosely and handcuffs are being applied on occasions when the circumstances do not warrant it.

5.4.2.3. **Allegations of Assault.** It is in the use of observation following misconduct that a serious problem has arisen involving claims by prisoners that they have been "bashed". Allegations of assaults are easily made and very difficult to refute. Similarly, should an assault actually occur it is no easy task for the complainant to substantiate the charge.

It is important for the Department to develop procedures which effectively limit both the false allegations of assaults and the possibility of an assault actually occurring. Fremantle Standing Order No. 18 "Internal Transfers of prisoners after Lock-Up" should be extended to cover all internal transfers to observation. Other strategies I would propose include:-

- (a) under no circumstances should the officer involved in the initial confrontation form part of the group transferring a prisoner to Observation.
- (b) On arrival in the Observation cells the prisoner should be photographed and any injuries noted. This should be carried out in the presence of a Hospital Officer and a Chief Officer.

(c) Before being released from the Observation cells, or within 24 hours, whichever occurs sooner, the prisoner should be examined by a Medical Officer in that officer's surgery (not the cell area) and any apparent injuries recorded. If warranted further photographs should be taken.

(d) Where the prisoner refuses to be seen by a Hospital Officer in the first instance or the Medical Officer subsequently he should be seen by an officer of Assistant Superintendent rank who will record such a refusal and any reasons given by the prisoner.

Staff should be made fully aware of the problem of false allegations and instructed to act strictly in accordance with the Prisons Act, Directors Rules etc. when restraining prisoners.

## **6. RECOMMENDATIONS**

### **6.1 EXPLANATION REGARDING RECOMMENDATIONS**

Recommendations have been made in all areas identified by the inquiry as presenting problems in terms of the recent disturbance or in the hope of limiting the outbreak of further trouble.

It needs to be said that to introduce more coercive or retributive conditions in the wake of a disturbance (other than for the immediate period necessary to gain control and establish

normal conditions) is counter-productive and can only sow the seeds of future outbreaks of trouble. Once control has been established normality should be restored. Steps should then be taken to identify and correct problems which may have caused the confrontation.

## 6.2 INTERIM RECOMMENDATIONS SUBMITTED DURING THE COURSE OF THE INQUIRY TO THE EXECUTIVE DIRECTOR.

- 6.2.1. Immediate provision of suitable access for fire fighting units. This would entail the provision of a new security gate on the south wall of the prison overlooking Fothergill St. I understand this has previously been suggested and perhaps is already in the pipeline. In any case, immediate action should be taken to proceed with this work. (11/1/88)
- 6.2.2. Endeavour to reduce the high level of tension which exists in the prison. The scaling down of the visibility of the M.S.U. officers is desirable. I would not suggest reducing the number of officers on duty at this time but merely returning the officers concerned to normal uniform and dress. (11/1/88)
- 6.2.3. The identifying of those prisoners not involved in the riot situation, or likely to have been a party to it who can be returned to workshop situation. Even if only a few

prisoners are returned to each workshop, I think the overall effect would be to indicate to the prisoner body that normality is on the way to being restored. (11/1/88)

- 6.2.4. The use of yards should be considered on the same basis as the return to the workshops so that more prisoners can spend a longer period in the prison yards. (11/1/88)
- 6.2.5. The Prisoner Services officers such as Psychologist and Social Workers, should be given wider access to the prisoner population. It is well known that these officers are able to talk through many problems with prisoners and reduce tension. Except in the cases of those prisoners classed as high-risk security prisoners or who were actively involved in the riot recently, it would be preferable if other prisoners desirous of seeing prisoner services could have their interviews carried out in the offices previously used or at least in the offices available at the old canteen area. (11/1/88)
- 6.2.6. Provision should be made to provide support services staff on a daily basis for these prisoners now housed in the Special Handling Unit in New Division to remove any suggestion that these prisoners are undergoing some form of punishment. (14/1/88)

6.2.7. Reconstruction of No. 3 Division should include the provision of sewerred toilets to the cells even if some accommodation is lost in the process. (3/2/88)

6.2.8. The withdrawal of privileges (e.g. contact visits) from the prisoners charged by Police in connection with the recent riot is unwarranted and constitutes unfair treatment in my opinion. It is also, I believe, contrary to Directors Rule No. 30 (4). I recommend that the status quo in regard to privileges be restored. (3/2/88).

### 6.3. SECURITY AND SAFETY

6.3.1 The rush of prisoners into the Division could have been prevented had a turnstile entry gate, with a controlled rate of entry, been in operation. This should be provided.

6.3.2 The installation of a sprinkler system in the living area should be considered as a matter of priority.

6.3.3 One or two sets of breathing apparatus should be held in each division for emergency purposes and sufficient staff trained in its use, so that someone is always on duty.

6.3.4 Cell fittings and furnishings should be treated with a fire retardant chemical.

- 6.3.1 An intelligence gathering unit, forming part of the present Directorate Support Branch, should be established to collect, analyse and code information from all sources. This unit should have the ability to produce daily estimates of likely problems developing within institutions and to forecast the level of intervention required to deal with them.
- 6.3.6 Proper contingency plans need to be developed to handle hostage/riot/fire emergencies in different areas of the prison with staff trained in their implementation.
- 6.3.7 Additional security accommodation becoming available within the prison system (e.g. Albany) should allow for maximum dispersal of long term security prisoners and reduce the likelihood of cliques and factions forming. To be effective, dispersal must be monitored and placement of such prisoners periodically reviewed.
- 6.3.8 A Special Handling Unit must be retained to isolate those prisoners who pose a problem in prison management because of the disruptive nature of their behaviour. Under no circumstances should such a Unit lead to greater "discipline" for the prisoners therein and living, recreational, occupational, and visiting opportunities should be comparable with those within the prison

generally. A review of the position of those prisoners in the Special Handling Unit on a regular basis is essential.

6.3.9 Metropolitan Security Unit involvement in day-to-day prison management should be rejected. A highly trained mobile unit to deal with serious disturbances, or incidents, is essential, but the danger exists that its use becomes commonplace and that other effective alternative strategies are ignored.

6.3.10 Specific staff increases were proposed by the Superintendent, and WAPOU also saw the need for additional staff. The opening of Canning Vale Prison led to a reduction in staff at Fremantle in anticipation of lowered musters. Because of changes at Fremantle (for example, the establishment of the Special Handling Unit) and continuing muster problems, I recommend that the staffing position be reviewed.

#### 6.4 HOSTAGE SITUATIONS

## 6.5 LIVING CONDITIONS

- 6.5.1 Policies and facilities for long term prisoners, as outlined in Section 2.2.3 of this report, must be implemented as soon as practicable and without waiting for the opening of the new Maximum Security Prison. Such improvements could do much to reduce the level of hopelessness and frustration felt by many of the prisoners.
- 6.5.2 Additional contact visiting facilities are recommended as a matter of priority. I have suggested in Section 2.2.2 how these could be achieved.
- 6.5.3 I recommend a later-lock up during the height of summer, possibly 8.00 p.m. to allow cells to cool, to some degree, before lock-up. Only those prisoners electing to participate should be involved.

- 6.5.4 Efforts should be made to eradicate the plague of cockroaches and insects which infest the divisions. The issue of non-inflammable, non-toxic-to-humans cockroach bait, or spray, and mouse traps is recommended.
- 6.5.5 A system of forced air, or other form of ventilation to the cells should be considered.
- 6.5.6 I recommend that Director's Rule 35 (1) be amended to provide all prisoners with 2 free local telephone calls per week, to relatives, or friends, without the prisoner being required to justify the purpose of the call.

The balance of Rule 35 to be amended, if necessary, to give effect to the above proviso.

- 6.5.7 Prisoners should not be required to wear communal underwear. Unless a system can be devised to permit the laundering of underwear and its return to the same prisoner, then prisoners should be issued with underwear and provided with facilities to launder it.

## 6.6 MANAGEMENT OF PRISONERS

- 6.6.1 The Department's Corporate Plan properly establishes that "the management and routine of a person committed to

prison should be just and humane in keeping with prevailing community standards". It is important that the officers receive adequate and on-going training to apply this philosophy in practice throughout their period of service.

- 6.6.2 Director's Rule 43 (5) should be amended to specify those disciplinary charges for which a prisoner may be placed in an Observation Cell. The present open-ended definition "good order, good government, and security of the prison" provision should be rescinded.
- 6.6.3 Transfers of prisoners to Observation should be strictly supervised by a Chief Officer; exclude the officer involved in the original confrontation with the prisoner; and be followed by an examination by a Medical Officer (See Section 5.4.2.3 of this report).
- 6.6.4 Use of restraints must be strictly in accordance with Section 42 of the Prisons Act 1981.
- 6.6.5 A formal grievance handling procedure should be set up so that prisoners' requests, complaints, etc., (of a collective nature) can be brought before the Administration. Many of the complaints relating to canteen use, gymnasium use, wearing of special gym gear etc., brought to my attention could be dealt with in this way.

- 6.6.6 Standing and Local Orders should be reviewed and any petty rules or restrictions deleted. Rules should generally relate to categories of security, hygiene, cleanliness and orderliness. Unless they fit into those categories then their existence should be questioned. It should also be made clear to staff that officers have no authority to institute their own programme of restrictions.
- 6.6.7 The use of disparaging language to prisoners, e.g. the term "crim" or "crims" when speaking to them must not be tolerated.
- 6.6.8 Unnecessary searches should be discontinued. There is no merit in strip searching prisoners on "non-contact" visits. Searching before, or after, contact visits should be on the basis of "random" searching or where a genuine suspicion exists.
- 6.6.9 Procedures to permit prisoners to make application to the Superintendent for his personal consideration should be clearly defined.
- 6.6.10 All prisoners should have the opportunity to be involved in meaningful work and to be paid a reasonable rate of pay. A programme of rewards and incentives should be

introduced to encourage output and improve efficiency. Workshop conditions should be similar to those in outside industry.

- 6.6.11 I recommend that, where necessary, additional Trade Instructors be employed so that Part 6.6.10 can be implemented.
- 6.6.12 I recommend that education facilities be improved to enable more prisoners to receive basic and advanced education. Prisoners should be allowed to study in their cells, as an alternative to vegetating in the exercise yards.
- 6.6.13 An institutional newsletter should be circulated regularly to all prisoners, listing changes in routine, privileges, etc.
- 6.6.14 The withdrawal of privileges must be strictly in accordance with Director's Rule 30. Privileges should not be suspended, or cancelled where a prisoner has committed misconduct unrelated to the privilege in question. Remand prisoners held for serious crimes are not penalised by losing privileges. Similarly, sentenced prisoners charged with other criminal offences should not forfeit privileges, except as provided by Director's Rule 30.

## 6.7 STAFF SELECTION, TRAINING AND DEVELOPMENT.

- 6.7.1 Selection of staff must ensure that properly motivated persons are selected to fill positions in the prison service.
- 6.7.2 I recommend that staff be employed on a 12 month contract basis during their probationary period to permit misfits to be isolated and removed. Award and leave provisions shall not be effected by this proviso.
- 6.7.3 Uniformed staff should receive adequate training in use of firearms and restraints. Fire-emergency training and evacuation procedures information should be given to all staff. First aid training should be updated periodically.
- 6.7.4 I recommend that The Staff Training Branch institute a means of identifying problem officers. These officers should be counselled, helped and retrained and, if necessary, transferred between institutions. Where problems prove intractable, the officer should be dismissed.

- 6.7.5 A system of 'time out' for Fremantle officers up to and including Chief Officers, should be introduced in the interests of staff and prisoners. Twenty or so officers at a time should be exchanged with officers in other metropolitan prisons for a period of about 3/4 months. This should be an ongoing programme which should be continued at the new maximum security prison.
- 6.7.6 Officers should not be posted to Fremantle Prison until they have completed at least 6 months in the service at other institutions and have been reported on as suitable for Fremantle.
- 6.7.7 Staff must be encouraged to develop positive relationships with prisoners by close daily contact. This may come about by accelerating the "Expanded Role of the Prison Officer" programme at Fremantle. Day to day exercise of skills in communication and negotiation with prisoners will lead officers to identify problems before trouble erupts.
- 6.7.8 A system should be introduced to permit officers who suffer stress as a result of any work-related occurrence, to receive counselling or other assistance.

6.7.9 Unless in the case of charges against prisoners laid under Sec. 70 of the Prison Act 1981, officers should generally prosecute their own charges from the laying of the charge up to the hearing before a Visiting Justice. The prosecuting officer should only be used in an advisory capacity or to prosecute Sec. 70 charges.

#### 6.8 ADMINISTRATION

Many of the complaints relating to Fremantle Prison are linked to perceived problems with the Administration. It should be borne in mind, however, that prison management, particularly in a maximum security setting, is no easy task and that to balance the need for security, prisoners' welfare, staff morale and wellbeing while ensuring that all the requirements of the Act and Regulations, and Director Rules are complied with is both mentally and physically exhausting.

6.8.1 I recommend that the position of Deputy Superintendent removed following the 'STAFF UTILIZATION REVIEW COMMITTEE' report be reinstated to give additional strength to the administration.

6.8.2 I recommend that either the Superintendent or the Deputy Superintendent be available (on a daily basis) to interview prisoners who make application for "personal" interviews.

- 6.8.3 Both the Superintendent and Deputy Superintendent should visit all cellular and working areas daily and spend time with both staff and prisoners. The present hierarchical structure limits the Superintendent's scope in this regard.
- 6.8.4 I recommend that the Superintendent and Deputy Superintendent receive training in Command Post operation and procedures.
- 6.8.5 Regular briefing and de-briefing sessions should be introduced by the Superintendent in which all staff can participate and be kept informed of institutional development and changes etc.
- 6.8.6 Administration must give clear indications to staff that pettiness and harassment have no roles to play in a modern prison system.

## 6.9 GENERAL RECOMMENDATIONS

- 6.9.1 I recommend that a representative of the Manager of Secondary Industries participate in meetings of the Work Placement Committee and that this committee work to encourage the gainful employment of all prisoners. The committee should endeavour to satisfy both the needs of prisoners and the requirements of the industries.

6.9.2 I recommend that censoring of prisoners' mail be carried out by one officer to reduce the likelihood of leakage of personal information.

6.9.3 The stated but unwritten policy of refusing media access to prisoners may normally be correct. However, I recommend that in instances such as the recent ABC programme "Out of Sight, Out of Mind", that prisoners and staff be permitted to participate.

#### 6.10 CONCLUDING REMARKS

I have given my opinions on the causes of the events of 4/5 January 1988 and have provided a number of recommendations which, hopefully, could reduce the level of tension within the prison. These recommendations alone, however, will have no lasting effect on the operation of the prison unless there is a commitment on the part of the Department and the Administration of the prison, together with the prison officers, to develop an atmosphere in which prisoners believe that they are being treated reasonably and fairly. Security and discipline, while essential, cannot operate independently of a commitment to encourage prisoners to develop a sense of self-esteem.

## NOTES

1. The Chief Officer serves as the Superintendent of the institution on public holidays.
2. Palmer, W. "Programming for Long Term Inmates: A New Perspective" Canadian Journal of Criminology 26(4) 439-466. 1984
3. The Report of the Royal Commission of Inquiry upon Various Allegations of assaults on, or Brutality to Prisoners in Fremantle Prison and of Discrimination against Aboriginal or Part Aboriginal Prisoners Therin and upon Certain other Matters Touching that Prison, its Inmates and Staff. His Honour Robert Edmund Jones. Perth, 1973.

GOVERNMENT'S RESPONSE TO THE RECOMMENDATIONS

MADE BY MR. J. MCGIVERN

6.2 INTERIM RECOMMENDATIONS SUBMITTED DURING THE COURSE OF THE ENQUIRY TO THE EXECUTIVE DIRECTOR.

- 6.2.1 Immediate provision of suitable access for fire fighting units. This would entail the provision of a new security gate on the south wall of the prison overlooking Fothergill Street. I understand this has previously been suggested and perhaps is already in the pipeline. In any case, immediate action should be taken to proceed with this work. (11.1.88)

Response: Deferred for consideration with the Report of the Working Party on Building Repairs. It should be noted, however, that the Fire Brigade have indicated that access by their hydraulic platform truck (which is too large for the front gate) would be of very limited value in fighting a fire. The cost of providing suitable access would be high and there are substantial security implications.

- 6.2.2 Endeavour to reduce the high level of tension which exists in the prison. The scaling down of the visibility of M.S.U. officers is desirable. I would not suggest reducing the number of officers on duty at this time, but merely returning the officers concerned to normal uniform and dress. (11.1.88)

Response: Already implemented.

- 6.2.3 The identifying of those prisoners not involved in the riot situation or likely to have been a party to it who can be returned to workshop situation. Even if only a few prisoners are returned to each workshop, I think the overall effect would be to indicate to the prisoner body that normality is on the way to being restored. (11.1.88)

Response: Already implemented on a phased-in basis.

- 6.2.4 The use of yards should be considered on the same basis as the return to the workshops so that more prisoners can spend a longer period in the prison yards. (11.1.88)

Response: Already implemented.

6.2.5 The Prisoner Services officers such as psychologist and social workers, should be given wider access to the prisoner population. It is well-known that these officers are able to talk through many problems with prisoners and reduce tension. Except in the cases of those prisoners classed as high-risk security prisoners or who were actively involved in the riot recently, it would be preferable if other prisoners desirous of seeing Prisoner Services could have their interviews carried out in the offices previously used or at least in the offices available at the old canteen area. (11.1.88)

Response: Already implemented.

6.2.6 Provision should be made to provide support services staff on a daily basis for these prisoners now housed in the Special Handling Unit in New Division to remove any suggestion that these prisoners are undergoing some form of punishment. (14.1.88)

Response: Already implemented.

6.2.7 Reconstruction of No. 3 Division should include the provision of sewered toilets to the cells even if some accommodation is lost in the process. (3.2.88)

Response: Deferred for consideration with the Report of the Working Party on Building Repairs.

6.2.8 The withdrawal of privileges (e.g. contact visits) from the prisoners charged by Police in connection with the recent riot is unwarranted and constitutes unfair treatment in my opinion. It is also, I believe, contrary to the Director's Rule No.30(4). I recommend that the status quo in regard to privileges be restored. (3.2.88)

Response: In the circumstances at the time, and given the need to ensure the control and security of the prison, it is not accepted that the withdrawal of privileges was unfair or unwarranted. Legal opinion confirms that the action was consistent with Director's Rule 30.

With the gradual return to normal operations, privileges withdrawn from prisoners charged by police in connection with the riot have been reinstated.

### 6.3 SECURITY AND SAFETY

6.3.1 The rush of prisoners into the Division could have been prevented had a turnstile entry gate, with a controlled rate of entry, been in operation. This should be provided.

Response: Agreed. Being implemented.

- 6.3.2 The installation of a sprinkler system in the living area should be considered as a matter of priority.

Response: Deferred for consideration with the Report of the Working Party on Building Repairs.

- 6.3.3 One or two sets of breathing apparatus should be held in each division for emergency purposes and sufficient staff trained in its use, so that someone is always on duty.

Response: Agreed. Being implemented.

- 6.3.4 Cell fittings and furnishings should be treated with a fire retardant chemical.

Response: Technical reports on the feasibility and cost of this recommendation have been requested.

- 6.3.5 An intelligence gathering unit, forming part of the present Directorate Support Branch, should be established to collect, analyse and code information from all sources. This unit should have the ability to produce daily estimates of likely problems developing within institutions and to forecast the level of intervention required to deal with them.

Response: The Department has been requested to investigate the cost, staff and other resource implications of this recommendation.

- 6.3.6 Proper contingency plans need to be developed to handle hostage/riot/fire emergencies in different areas of the prison with staff trained in their implementation.

Response: Agreed. Existing contingency plans will be refined.

- 6.3.7 Additional security accommodation becoming available within the prison system (e.g. Albany) should allow for maximum dispersal of long term security prisoners and reduce the likelihood of cliques and factions forming. To be effective, dispersal must be monitored and placement of such prisoners periodically reviewed.

Response: See response to 6.3.8.

- 6.3.8 A Special Handling Unit must be retained to isolate those prisoners who pose a problem in prison management because of the disruptive nature of their behaviour. Under no circumstances should such a Unit lead to greater "discipline" for the prisoners therein and living, recreational, occupational, and visiting

opportunities should be comparable with those within the prison generally. A review of the position of those prisoners in the Special Handling Unit on a regular basis is essential.

Response: Agreed that the management of high risk prisoners requires both dispersal and isolation (in a Special Handling Unit). The requirements of a Special Handling Unit will be fully met when the new maximum security prison is completed. The facilities of the unit at Fremantle Prison are acceptable on an interim basis.

6.3.9 Metropolitan Security Unit involvement in day-to-day management should be rejected. A highly trained mobile unit to deal with serious disturbances, or incidents, is essential but the danger exists that its use becomes commonplace and that other effective alternative strategies are ignored.

Response: Agreed. This approach is consistent with the operation of the Metropolitan Security Unit since its inception.

6.3.10 Specific staff increases were proposed by the Superintendent, and W.A.P.O.U. also saw the need for additional staff. The opening of Canning Vale Prison led to a reduction in staff at Fremantle in anticipation of lowered musters. Because of changes at Fremantle (for example, the establishment of the Special Handling Unit) and continuing muster problems, I recommend that the staffing position be reviewed.

Response: The establishment of the Special Handling Unit at Fremantle Prison requires 11 officers at an estimated annual cost of \$310,000. The balance of the staff establishment is based on a comprehensive staff review in 1986/87 and no increase to meet current programmes is proposed.

## 6.5 LIVING CONDITIONS

6.5.1 Policies and facilities for long term prisoners, as outlined in Section 2.2.3 of this report, must be implemented as soon as practicable and without waiting for the opening of the new maximum security prison. Such improvements could do much to reduce the level of hopelessness and frustration felt by many of the prisoners.

Response: These matters have already been addressed to the extent that the physical facilities at Fremantle Prison allow. They have been comprehensively planned for in the new maximum security prison.

- 6.5.2 Additional contact visiting facilities are recommended as a matter of priority. I have suggested in Section 2.2.2 how these could be achieved.

Response: Additional contact visits will be provided by extending visiting days from five per week to six per week. The cost of this extension is estimated at \$50,000 - \$60,000 p.a.

- 6.5.3 I recommend a later lock-up during the height of summer, possibly 8pm to allow cells to cool, to some degree, before lock-up. Only those prisoners electing to participate should be involved.

Response: It is not accepted that the extension of out of cell hours (at an estimated cost of \$150,000 per month) is cost justified.

- 6.5.4 Efforts should be made to eradicate the plague of cockroaches and insects which infest the divisions. The issue of non-inflammable, non-toxic to humans cockroach bait, or spray, and mouse traps is recommended.

Response: Agreed that further pest control action will be implemented. Attention is drawn to the fact that Health Department personnel treated most areas of the prison, including cells, as recently as 24/25 and 26 March, 1987, with follow-up procedures on 14 May, 1987. The difficulties in achieving adequate pest control in the old buildings are acknowledged.

- 6.5.5 A system of forced air, or other form of ventilation to the cells should be considered.

Response: Deferred for consideration with the Report of the Working Party on Building Repairs.

- 6.5.6 I recommend that Director's Rule 35(1) be amended to provide all prisoners with two free local telephone calls per week to relatives or friends without the prisoner being required to justify the purpose of the call.

The balance of Rule 35 to be amended, if necessary, to give effect to the above proviso.

Response: The Department is to report on the security, cost, staff and other resource implications of this proposal.

- 6.5.7 Prisoners should not be required to wear communal underwear. Unless a system can be devised to permit the laundering of underwear and its return to the same

prisoner, then prisoners should be issued with underwear and provided with facilities to launder it.

Response: The Department to report on the administrative requirements of implementing this proposal.

## 6.6 MANAGEMENT OF PRISONERS

6.6.1 The Department's Corporate Plan properly establishes that "the management and routine of a person committed to prison should be just and humane in keeping with prevailing community standards". It is important that the officers receive adequate and on-going training to apply this philosophy in practice throughout their period of service.

Response: Agreed. Consistent with current practice.

6.6.2 Director's Rule 43(5) should be amended to specify those disciplinary charges for which a prisoner may be placed in an observation cell. The present open-ended definition "good order, good government, and security of the prison" provision should be rescinded.

Response: The effective management of the prison requires more flexibility than the implementation of the recommendation would allow.

6.6.3 Transfers of prisoners to observation should be strictly supervised by a Chief Officer; exclude the officer involved in the original confrontation with the prisoner; and be followed by an examination by a Medical Officer (see section 5.4.2.3 of this report).

Response: The recommendations in respect of supervision and examination are agreed in modified form as follows:

(i) Observation placement should be supervised by a chief officer or senior officer.

(ii) Follow-up examination should be conducted as soon as practicable by a medical officer or nurse or hospital officer.

Exclusion of the officer involved in the original confrontation is not practical under the variety of circumstances which may apply.

6.6.4 Use of restraints must be strictly in accordance with section 42 of the Prisons Act 1981.

Response: Agreed. Reflects current requirements.

- 6.6.5 A formal grievance handling procedure should be set up so that prisoners' requests, complaints, etc., (of a collective nature) can be brought before the administration. Many of the complaints relating to canteen use, gymnasium use, wearing of special gym gear, etc., brought to my attention could be dealt with in this way.

Response: Current grievance mechanisms are adequate. Director's Rule 9 sets out procedures for requests and complaints by prisoners. In addition, prisoners may forward uncensored mail to the Minister, Executive Director, the State Ombudsman and the Commonwealth Ombudsman.

- 6.6.6 Standing and Local Orders should be reviewed and any petty rules or restrictions deleted. Rules should generally relate to categories of security, hygiene, cleanliness and orderliness. Unless they fit into those categories then their existence should be questioned. It should also be made clear to staff that officers have no authority to institute their own programme of restrictions.

Response: Agreed.

- 6.6.7 The use of disparaging language to prisoners, e.g. the term "crim" or "crims" when speaking to them must not be tolerated.

Response: Agreed.

- 6.6.8 Unnecessary searches should be discontinued. There is no merit in strip searching prisoners on "non-contact" visits. Searching before, or after, contact visits should be on the basis of "random" searching or where a genuine suspicion exists.

Response: Agreed. This is current practice and it is acknowledged that some searches following the riot were excessive.

- 6.6.9 Procedures to permit prisoners to make application to the Superintendent for his personal consideration should be clearly defined.

Response: Agreed.

- 6.6.10 All prisoners should have the opportunity to be involved in meaningful work and to be paid a reasonable rate of pay. A programme of rewards and incentives should be introduced to encourage output and improve efficiency. Workshop conditions should be similar to those in outside industry.

Response: See response to 6.6.11.

6.6.11 I recommend that, where necessary, additional trade instructors be employed so that part 6.6.10 can be implemented.

Response: The physical limitations of Fremantle Prison preclude the implementation of these proposals in respect of further work opportunities and additional trade instructors. These matters have been comprehensively planned for in the new maximum security prison.

6.6.12 I recommend that education facilities be improved to enable more prisoners to receive basic and advanced education. Prisoners should be allowed to study in their cells as an alternative to vegetating in the exercise yards.

Response: Agreed in principle. The issue has been fully addressed in the planning for the new maximum security prison. There is limited scope for improvement at Fremantle Prison and this will be further examined.

6.6.13 An institutional newsletter should be circulated regularly to all prisoners, listing changes in routine, privileges, etc.

Response: Agreed that more comprehensive and/or more widely circulated advice to prisoners is desirable. Consideration is being given to means of better advising prisoners of relevant matters.

6.6.14 The withdrawal of privileges must be strictly in accordance with Director's Rule 30. Privileges should not be suspended or cancelled where a prisoner has committed misconduct unrelated to the privilege in question. Remand prisoners held for serious crimes are not penalised by losing privileges. Similarly, sentenced prisoners charged with other criminal offences should not forfeit privileges, except as provided by Director's Rule 30.

Response: It is not accepted that the withdrawal of privileges following the recent riot was other than in accordance with Director's Rule 30. See response to 6.2.8. The withdrawal of privileges is an important management sanction.

## 6.7 STAFF SELECTION, TRAINING AND DEVELOPMENT

6.7.1 Selection of staff must ensure that properly motivated persons are selected to fill positions in the prison service.

Response: Agreed.

- 6.7.2 I recommend that staff be employed on a 12 month contract basis during their probationary period to permit misfits to be isolated and removed. Award and leave provisions shall not be affected by this proviso.

Response: Agreed. Consultation with the Prison Officers' Union will be necessary.

- 6.7.3 Uniformed staff should receive adequate training in use of firearms and restraints. Fire emergency training and evacuation procedures information should be given to all staff. First aid training should be updated periodically.

Response: Agreed. Reflects current practice and is being progressively implemented through the Regional Update Skills Training (RUST) programme.

- 6.7.4 I recommend that the Staff Training Branch institute a means of identifying problem officers. These officers should be counselled, helped and retrained and, if necessary, transferred between institutions. Where problems prove intractable, the officer should be dismissed.

Response: Agreed.

- 6.7.5 A system of "time out" for Fremantle officers up to an including Chief Officers, should be introduced in the interests of staff and prisoners. Twenty or so officers at a time should be exchanged with officers in other metropolitan prisons for a period of about 3-4 months. This should be an ongoing programme which should be continued at the new maximum security prison.

Response: This recommendation cannot be implemented for practical reasons which include cost, rostering problems, discontinuity and travel. However the R.U.S.T programme will provide officers with breaks from normal duties.

- 6.7.6 Officers should not be posted to Fremantle Prison until they have completed at least six months in the service at other institutions and have been reported on as suitable for Fremantle.

Response: This recommendation cannot be implemented for practical reasons, including increased overtime costs at Fremantle and the limits it would impose on transfer opportunities for current Fremantle staff.

- 6.7.7 Staff must be encouraged to develop positive relationships with prisoners by close daily contact. This may come about by accelerating the "Expanded Role of the Prison Officer" programme at Fremantle. Day to day exercise of skills in communication and negotiation with prisoners will lead officers to identify problems before trouble erupts.

Response: Agreed. This reflects policy adopted by the Department in 1986 which is currently being phased-in.

- 6.7.8 A system should be introduced to permit officers who suffer stress as a result of any work-related occurrence, to receive counselling or other assistance.

Response: Counselling and other assistance has been provided by a professional post-trauma team to prison officers who were adversely affected by the Fremantle riot. Similar services would be provided in the event of other serious traumatic incidents.

- 6.7.9 Unless in the case of charges against prisoners laid under s.70 of the Prisons Act 1981, officers should generally prosecute their own charges from the laying of the charge up to the hearing before a Visiting Justice. The prosecuting officer should only be used in an advisory capacity or to prosecute s.70 charges.

Response: This recommendation cannot be implemented for practical reasons which include the possible non-availability of the officer concerned and increased overtime costs.

## 6.8 ADMINISTRATION

- 6.8.1 I recommend that the position of Deputy Superintendent, removed following the "Staff Utilization Review Committee" report, be reinstated to give additional strength to the administration.

Response: It is not proposed to implement this recommendation as the re-establishment of a Deputy Superintendent would not resolve any deficiencies at the middle management in Fremantle Prison. The effectiveness of the current management structure has been demonstrated at Canning Vale Prison.

- 6.8.2 I recommend that either the Superintendent or the Deputy Superintendent be available (on a daily basis) to interview prisoners who make application for "personal" interviews.

Response: This recommendation cannot be implemented for practical reasons in that it would:

- (i) undermine the authority of prison officers to resolve issues; and
- (ii) reduce the efficiency of the Superintendent and Assistant Superintendents.

6.8.3 Both the Superintendent and Deputy Superintendent should visit all cellular and working areas daily and spend time with both staff and prisoners. The present hierarchical structure limits the Superintendent's scope in this regard.

Response: Agreed on the basis that visits should be by the Superintendent or an Assistant Superintendent and subject to deletion of "all".

6.8.4 I recommend that the Superintendent and Deputy Superintendent receive training in command post operation and procedures.

Response: Agreed.

6.8.5 Regular briefing and de-briefing sessions should be introduced by the Superintendent in which all staff can participate and be kept informed of institutional development changes, etc.

Response: Agreed.

6.8.6 Administration must give clear indications to staff that pettiness and harassment have no roles to play in a modern prison system.

Response: Agreed.

## 6.9 GENERAL RECOMMENDATIONS

6.9.1 I recommend that a representative of the Manager of Secondary Industries participate in meetings of the Work Placement Committee and that this committee work to encourage the gainful employment of all prisoners. The committee should endeavour to satisfy both the needs of prisoners and the requirements of the industries.

Response: This recommendation cannot be implemented for practical reasons. The duties of the Manager, Prison Industries, relate to co-ordination and management of industries in all State prisons. The Superintendent is responsible for the local management of

industries and is expected to consult with the Manager of Secondary Industries.

- 6.9.2 I recommend that censoring of prisoners' mail be carried out by one officer to reduce the likelihood of leakage of personal information.

Response: This recommendation is not accepted. The report and accompanying material do not indicate a degree of difficulty with the current system which would justify the additional staff costs involved.

- 6.9.3 The stated but unwritten policy of refusing media access to prisoners may normally be correct. However, I recommend that, in instances such as the recent ABC programme "Out of Sight, Out of Mind", prisoners and staff be permitted to participate.

Response: The media have always had access to prisons for purposes of observation and filming. There has been nothing to indicate that a change to the current restrictions on media interviews with particular prisoners is warranted.

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