Sentencing Alternatives Committee of Victoria
Second Report

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Law Department—Victoria
221 Queen Street Melbourne 3000 Australia

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1. Introduction

1. The Sentencing Alternatives Committee was established by the Victorian Government to examine sentencing alternatives available to Courts in respect of persons not subject to the jurisdiction of Children's Courts. The full terms of reference to the committee and a short review of its proceedings are set out in Schedule One.

2. Among the sentencing alternatives so available to Courts in Victoria are imprisonment and, where the offender is a person under the age of twenty-one years at the date of conviction, detention in a youth training centre. Such detention is also a sentencing alternative available to Children's Courts in respect of persons subject to their jurisdiction, but as it is not limited to such persons its examination falls within the terms of reference to the Committee. In respect of each of these alternatives, the law of Victoria makes provision for parole of the offender, which may shortly be defined as the release of the offender, either from prison or youth training centre (as the case may be), before the completion of the term for which he was committed, under the supervision of a parole officer and subject to such conditions as the paroling authority imposes.[1] We will for convenience refer to parole under each of these alternatives as, respectively, 'adult parole' and 'youth parole'.

3. Since adult parole in its present form was introduced into Victoria in 1957, it has remained a feature of the Victorian penal system. Its introduction into Victoria was followed in subsequent years by its introduction into each other Australian State and by its application to Federal prisoners, although the precise features of the scheme may have varied in the different jurisdictions in which it operated. Similar systems operate in the United Kingdom and in a number of American States.

4. Provision for parole in respect of sentences of imprisonment has in recent years been the subject of criticism in different jurisdictions, and in its Interim Report, dated 25 January, 1980, on the Sentencing of Federal Offenders, the Australian Law Reform Commission recommended that parole for Federal prisoners should be abolished. This recommendation was not based solely upon defects in the system which were peculiar to the manner in which it operated for Federal prisoners. It rested very largely upon criticism which was expressed to apply to parole systems generally. In view of the important part which the parole system plays in Victorian penal administration, the Committee accordingly decided that it should give priority to an examination of the system in Victoria and its conclusions are contained in this Report.

5. As we have said, Victoria has provision for both adult parole and youth parole. The criticisms which the Committee will consider have in the main been directed to adult parole, but insofar as those criticisms are valid, they could also be applied to youth parole. Many of the other considerations which are relevant to one form of parole are also relevant to the other, and it is therefore appropriate that both forms of parole should be considered in this Report. There are however significant differences in the legislation relating to each type of parole, and in some of the considerations which are relevant to each. In order therefore to avoid unnecessary complexity, the problems of each type of parole will be dealt with separately.

1. The Committee has adopted the definition of parole, contained in the First Report of the Criminal Law and Penal Methods Reform Committee of South Australia, Chapter 2, paragraph 7.

6. Another feature of penal law and administration in Victoria which, like parole, affects the length of time which an offender who has been sentenced to imprisonment may be required to serve in prison is the system of remissions. Remissions are granted by executive act and unless lost, actually shorten the sentence which has been imposed by the Court. In this latter respect they differ from parole which does not alter the sentence imposed but which may affect the period during which the offender is incarcerated under that sentence. The relationship between parole and remissions is however such that in the opinion of the Committee it is appropriate that they should both be considered in this Report.

7. Apart from the Interim Report of the Australian Law Reform Commission, to which we have referred, four other reports which have been officially commissioned in recent years have examined the parole system in South Australia, New South Wales and Western Australia respectively.[2] Each of these reports has been critical of some aspects of the parole system with which it was concerned. There have been a number of publications overseas, particularly in the United States of America, which have been critical of parole systems in different jurisdictions. Insofar as it has examined this material, the Committee has not, in the main, sought to evaluate the validity of any criticism made of a feature of the particular parole system with which the report was concerned. In different jurisdictions, parole principles and parole practice, both in regard to sentencing and to the decision to release on parole, may vary, and such variations may increase or diminish the importance of any criticism made of a particular feature of the parole system under consideration. We are concerned however with the parole system in Victoria and the conditions under which it operates in this State. Consequently, although consideration of reports upon systems in other jurisdictions has been helpful in forming our own opinions, we have generally refrained from analysing in this Report the arguments which have been advanced in others. In regard however to the Interim Report of the Australian Law Reform Commission, which unlike the other reports to which we have referred upon Australian parole systems recommends the abolition of parole, the important part that the parole system plays in the penal administration of Victoria and the clear hope expressed in the Interim Report that State Parliaments will decide to abolish State parole (see paragraph 348), have persuaded us to examine in some detail the reasons advanced in the Report for that recommendation.[3]

2. Adult Parole in Victoria

A. Legislative Framework of Parole

2.1 The legislative provisions relating to parole in Victoria are mainly contained in the Community Welfare Services Act 1970 and any references to sections hereafter (unless otherwise identified) are references to sections in that Act. The full text of the relevant sections is set out in Schedule Two.

2.2 By section 190, where a person is convicted of any offence and sentenced to be imprisoned for a term of not less than twelve months, the Court is empowered as part of the sentence, to fix a lesser term (called 'the minimum term') during which the offender shall not be eligible to be released on parole. If the term of imprisonment imposed is not less than two years, the Court is required to fix such a minimum term unless it considers that the nature of the offence and the antecedents of the offender render the fixing of a minimum term inappropriate. A minimum term so fixed shall be at least six months less than the term of the sentence.

2. First Report of the Criminal Law and Penal Methods Reform Committee of South Australia (the 'Mitchell Report') 1973; Report of the Royal Commission into New South Wales Prisons (the 'Nagle Report') 1978; Report of the Committee Appointed to Review the Parole of Prisoners Act (N.S.W.) (the 'Muir Report') 1979; Report on Parole, Prison Accommodation and Leave from Prison in Western Australia (the 'Parker Report') 1979.

3. See paragraphs 2.27 to 2.57 (infra).

2.3 By section 178, an Adult Parole Board is constituted. The Board shall consist of—

(a) a Judge of the Supreme Court;
(b) the Director-General of Community Welfare Services;
(c) a full-time member appointed by the Governor in Council; and
(d) two other persons appointed by the Governor in Council, one of whom shall be a woman.

2.4 By section 195, the Adult Parole Board may in its discretion by a parole order, direct that a prisoner undergoing a sentence of imprisonment in respect of which a minimum term was fixed be released from prison on parole at a time which is not before the expiration of the minimum term. Until the expiration of the term of imprisonment the Board may in its discretion vary the parole order or cancel the parole, and if during that period, the prisoner commits an offence for which he is subsequently sentenced to more than three months imprisonment his parole is ipso facto cancelled. Where a prisoner's parole is so cancelled, no part of the time between his release on parole and his recommencing to serve the unexpired portion of his term of imprisonment shall be regarded as time served in respect of that term. (Section 197).

2.5 Whilst he is on parole, he shall be under the supervision of a parole officer and shall comply with such requirements as are specified in the parole order. (Section 195 (3)).

2.6 The legislation also provides for further release upon parole notwithstanding the cancellation of an earlier parole. (Section 198).

B. Practice and Procedure Regarding Parole

2.7 In considering the practice in Victoria in regard to parole, an important starting point is the law, as laid down by the Full Supreme Court, regarding the principles to be observed by the sentencing Court. The system of parole in some other jurisdictions is often criticised on the alleged ground that the Court, in fixing both the length of the sentence imposed and the length of the minimum term, is apt to regard the latter as the sentence appropriate to be served by the offender for the crime that he has committed, and in fixing the former is more concerned by the public impact it will make in the way of general deterrence and in satisfying public indignation excited by the crime. Each of these latter factors may have a part to play in determining the appropriate sentence to be imposed, but to allow them to determine the sentence, without regard to the circumstances relevant to the particular offender, could obviously result in an offender being unjustly treated. In Victoria, very shortly after the introduction of the parole system in 1957, the Full Court emphasized that under the parole legislation, the sentence to be imposed by the Court is the sentence appropriate to the offence in all the circumstances, and then, but only then, the Court is to fix a minimum term in the light of the duration of the sentence imposed. The Full Court has on a number of occasions thereafter reasserted this principle. (See R. v. DOUGLAS (1959) V.R. 182; R. v. Governor of Her Majesty's Gaol at Pentridge, Ex parte CUSMANO (1966) V.R. 583; R. v. Bruce (1971) V.R. 656; R. v. CURREY (1975) V. R. 647). According to the law in Victoria, therefore, a prisoner, whether or not he is released upon parole for any part of his sentence will not be required to be kept in prison for any period longer than that which the Court has decided was a proper and appropriate sentence for the particular crime which he committed.

2.8 It is of interest to note at this stage, the result of an analysis which the Committee requested to be made of minimum terms fixed in Victoria as a proportion of the effective

terms of imprisonment imposed. Statistics had not previously been kept upon this matter, and in view of the time involved it was not practicable to do more than examine the figures over a comparatively short period. The analysis was accordingly restricted to sentences imposed in the Supreme and County Courts during 1980, and is set out in Schedule Three. In that period there were 453 persons in respect of whose sentences a minimum term was fixed. In only 14 cases, all of which were in the lower range of sentences, the minimum term was less than 30% of the effective sentence. In over 83% of the cases, the minimum term was at least 50% of the sentence and in the great majority of those cases considerably exceeded that proportion. In the case of the longer sentences, the tendency to fix a much higher proportion of the sentence as the minimum term was much more marked. There were 147 cases in which the sentence was 5 years or more, and in only 8 of those cases was the minimum term less than 50% of the sentence; in 117 of these cases the minimum term was 60% or more of the sentence imposed.

2.9 Under the Victorian system it is unnecessary for a prisoner to make an application for parole. Twelve weeks before the date upon which the prisoner is expected to become eligible for parole, the Governor of the prison where he is held is responsible for advising the Board of that date, which is determined after allowing for any remissions upon the minimum term to which the prisoner is entitled. We will subsequently discuss the question of the allowance of remissions upon the minimum term, but in order to explain the procedure in relation to parole it is at this stage only necessary to state that such remissions are allowed. If before sentence the prisoner had been held in custody for any period which, under the terms of section 202A of the Act, he is entitled to have reckoned as a period of imprisonment already served by him under the sentence, that period is also taken into account in determining his expected eligibility date. Officers of the Adult Parole Board then collate the material which is to be placed before the Board when the parole of the prisoner is to be considered. He is interviewed by a Parole Officer who may also interview members of his family, plans for his accommodation and work upon release are investigated, and any other matters which are relevant to his suitability for release are examined. Reports upon these matters are prepared for the Board and if the prisoner himself desires to prepare a submission it is included in the material to be considered.

2.10 The Adult Parole Board normally meets weekly and as a result of the arrangements which are made for the early consideration of parole for those whose eligibility date is approaching, it appears that there are few cases in which any delay in making a decision occurs. The Annual Report of the Board for the year ended 30 June, 1979[4] states that in that year 568 persons were released upon parole. Of that number 195 persons were either being re-paroled or were young persons transferred from a youth training centre. By virtue of section 177 of the Act the latter class are regarded as having served their minimum term prior to transfer and the elapse of some further time before they could be released upon parole is inevitable. Of the remaining 373 persons released upon parole, 331, i.e. almost 90%, were so released within one month of their eligibility dates, and the other 42 included persons in respect of whom the Board required psychiatric or other reports or who had further trials outstanding. These figures of course, are not conclusive but they strongly suggest that, as a general rule, a prisoner is released as soon as practicable after he becomes eligible for release, unless the Board has decided that there is a good reason to defer such release.

2.11 Apart from cases where the Board desires to obtain some further information, there are certain circumstances in which the Board is likely to defer release for a short period beyond the date upon which the prisoner becomes eligible. If the prisoner had been

4. This report was the most recent printed report of the Board which was available to the Committee when this report was prepared.

released upon parole on any occasion during the preceding ten years, his release will almost certainly be deferred for a period beyond his expected eligibility date. The usual period of such deferment is three months, which if he is granted full remissions in respect of that period will result in his being required to serve an additional two months in custody beyond the eligibility date. This procedure is adopted by the Board in order to emphasize to the prospective parolee that one of the main purposes of parole is to enable him to become a law-abiding citizen. The Board considers that this purpose is likely to be more forcibly impressed upon him by the deferral of his release on the ground that his release on the earlier occasion failed to obtain that result, and the deferment consequently applies even if the parole granted to him previously was completed satisfactorily.

2.12 Apart from such short deferments for practical or disciplinary reasons, the Board may of course defer release for much longer periods or may deny parole altogether. If a parolee has broken his parole and is returned to prison, he may well be required to serve about one-half of the unexpired portion of his sentence, as well as the imprisonment required by any new sentence imposed upon him, before he will be reparoled. On the other hand, if the cancellation of parole resulted automatically from conviction upon a comparatively minor offence, he might be reparoled soon after serving the new sentence. If the information available to the Board, either at the time when it is considering the initial release upon parole or when it is considering re-parole, leads it to believe that the prisoner would not be a good risk on parole, parole may be denied. The Board however does not normally delay or deny parole on the ground of any breaches of discipline or unsatisfactory behaviour by the prisoner during his confinement in prison; it regards the loss of remissions or any punishment imposed in consequence of such misbehaviour, which in themselves may affect his eligibility date, as sufficient to meet that situation. It is not however possible to state exhaustively the circumstances under which the Board may defer or deny parole. Within the limits which the Court has fixed, release upon parole is a matter for the discretion of the Board, but the circumstances to which we have referred are cited as illustrations of the procedure it is likely to adopt in situations which are frequently encountered.

2.13 The figures contained in the Report of the Board for the year ending 30th June 1979 show that in that year, the position, firstly as to cases where parole was denied and secondly as to cases where parole was deferred, was as follows:

(a) *As to the denial of parole*
During the year, parole was granted in 453 cases (i.e. 568 less 115 reparoles); it was denied in 60 cases, in 32 of which the prisoner had previously been released on parole on 2 or more occasions. Reparole was granted in 115 cases and denied in 55 cases, in 42 of which the prisoner had previously been released on 2 or more occasions. Consequently, there was a total of 683 cases in which the Board made a final decision as to whether a prisoner should or should not be paroled or reparoled on the sentence he was then serving. In all but 28 of the cases in which parole was denied, the prisoner either had already been released at least twice on parole or had breached a parole on the current sentence. The 28 cases represent a proportion of 4% of the total.

(b) *As to the deferral of parole*
The Report states that there were 276 cases in which parole was deferred. These cases cannot be added to the total of cases in which a final decision was made as an unspecified number of them would be included amongst those in which parole was granted later in the same year. The Report however states that of the 276 cases, 59 were persons who were transferred to the jurisdiction of the Board pursuant to the provisions of the Community Welfare Services Act, and 170 were persons who had previously been released upon parole. As to the first of these groups we have

already pointed out in para. 2.10 that some deferment of release beyond the eligibility date is inevitable in the case of young persons transferred from a youth training centre. As to the second group we have also pointed out in para 2.11, that the Board will normally defer release for a short period in order to emphasize to the prisoner the desirability of his abstaining from further breaches of the law. The remainder of the deferred cases i.e. less than 50, is stated in the Report to have resulted from circumstances which are therein set out and which are both readily understandable and appear to be reasonable.

2.14 Prisoners who become eligible for parole are held in prisons which are scattered over the State and the dates upon which the prisoners are respectively to be considered for a decision as to parole will spread over the whole year. It is obviously not practicable for any Board, even if its members were engaged full-time, to journey to each prison where a prisoner is held to consider his case for parole at a time when it is appropriate for such case to be considered. It is also impractical, from the point of view of travel, accommodation, and security considerations, to assemble at some central point where the Board may meet, all prisoners whose cases are then due to be considered. As we have said, the prisoner will have been interviewed by a Parole Officer and a report prepared for the information of the Board, including any submission which the prisoner himself may desire to have considered. The Board normally meets at weekly intervals at its office in Melbourne, and upon the material which has been placed before it, makes its decision as to parole, which is communicated to the prisoner through the prison authorities. If he has been granted parole, he is then normally required to attend before the Board when his obligations are explained to him. This procedure has in the case of other jurisdictions been the subject of criticism, to which we will subsequently advert. It is however relevant in relation to these criticisms to refer to the part which is played in Victoria by the Full-time member of the Board. We will do so after outlining the procedure in regard to a cancellation of parole, in respect to which his activities are also relevant.

2.15 We have already referred to the statutory provisions relating to the cancellation of parole, namely that parole is ipso facto cancelled where the prisoner is sentenced to another term of imprisonment for more than three months in respect of any offence committed during the parole period, and that, apart from such ipso facto cancellation, the Board may in its discretion at any time before the expiration of the parole period cancel the parole. This latter power extends of course to cases of conviction which have not resulted in ipso facto cancellation and to breaches of other conditions contained in the parole order, but it is not restricted to these circumstances. In practice however, the power is normally only exercised if the conduct of the parolee is such as to indicate a gross disregard of his obligations or in other ways a danger that his parole will not be satisfactorily completed. Even in such cases the Board may consider that a warning conveyed to the parolee either by his parole officer or by attendance before the Board will suffice. It is not necessary that the parolee should be required to attend before the Board before an order for cancellation is made, and in many cases e.g. if he has disappeared, it would be impracticable so to require. Whenever parole is cancelled, whether ipso facto upon a further sentence or by order of the Board, the Board will consider whether reparole will be denied or will be further considered at a date which it will then determine.

2.16 The office of a full-time member of the Board, appointed by the Governor in Council, was established by an amendment of the Act in 1974. Apart from his normal duties as a member of the Board, he acts as a liaison officer between the Board and the prison and parole administrations and the prisoners. At our request he provided us with a statement of his main duties and mode of operation which is set out in full in Schedule Four. From the point of view of his contact with the prisoners, it will be observed that he is required to visit all prisons and departmental offices to ensure that prisoners who come within the

jurisdiction of the Board are aware of the nature of the parole scheme and its operation, that he interviews prisoners whose cases have been considered by the Board or whose cases for release are about to be considered, that where release upon parole has been deferred or denied the decision is explained and discussed, that he hears representations from prisoners and provides information and advice when they desire to have their cases further considered by the Board, and that he himself will bring cases to the attention of the Board for further consideration. He is also available to discuss cases and to hear representations from prisoners' families and friends and their legal representatives.

2.17 We have outlined the foregoing procedure, partly from information given to us by the Chairman and other members of the Board and partly from a booklet called 'On Parole' which was published by the then Social Welfare Department in April 1978. The booklet was designed to inform all prisoners who were eligible for parole of the nature and incidents of the parole system and it sets out in a comprehensive and easily readable form the information which will enable them to understand the system. We were informed however that the booklet is now out of print and although it is intended to have a revised issue printed, a shortage of finance in the Department had so far made this impracticable. In view of the criticism which at the present time is being directed against the parole system and which in part is based upon an alleged uncertainty by prisoners as to how they will be treated under it, we consider it unfortunate that the booklet is not generally available to all prisoners falling within the system. The possession of a printed statement of the principles and practice of the system is likely to be of more enduring value to a prisoner than the verbal information he may obtain from the full-time member or from other officers in the Department and the cost of the publication would be a minor element in the overall administrative expenditure.

C. The Benefits of the Parole System

2.18 There can be little doubt that a properly administered parole system is capable of conferring considerable benefits both upon the community and upon the prisoners to whom it applies. Those benefits may be assessed, both from the penological and from the financial points of view.

2.19 The imposition of a sentence of imprisonment, part of which is directed to be served in the normal way by incarceration and the remainder of which may be suspended for a period during which the prisoner is released upon certain conditions relating to his behaviour is in appropriate cases a commendable criminal sanction. It combines the deterrent and retributive effects of actual imprisonment with the deterrent effect of threatened further imprisonment. It enables the Court to indicate to the offender and to the community the degree of seriousness with which it regards the crime which the offender has committed, by imposing the punishment which he shall be liable to suffer for that crime. But it also gives the offender the opportunity by his conduct thereafter to mitigate the severity of that punishment.

2.20 When an offender has committed a crime which is serious enough to warrant a substantial period of imprisonment, the appropriate length of the sentence to be imposed upon him should be such as to indicate to him and to the community the degree of seriousness with which the crime he has committed, having regard to all the attendant circumstances, should be regarded. Such a sentence will accord with the general objective of the criminal law of deterring potential offenders from committing similar crimes. It will also adequately cover any aspect of retribution which may legitimately be required and goes as far as justice will permit it to go as a deterrent to the particular offender from committing future unsocial acts. Although no problem in sentencing is easy, the determination of the

length of sentence which is necessary for these purposes is the type of problem with which the Court is familiar and with which it is usually competent to deal upon the material which is available to it at the time of sentencing. An offender whose sentence is determined on these principles can have no legitimate ground for complaint if he is required to serve the sentence imposed upon him. From the practical point of view, however, the purpose of the criminal law of protecting the community from the commission of criminal acts may still be attained if the prisoner is given the opportunity by his subsequent conduct to mitigate the punishment imposed upon him. There will be some cases in which such an opportunity for mitigation of the punishment will be clearly inappropriate. The very nature of the crime that the offender has committed or his antecedent history may be such that the Court considers that, irrespective of how he may subsequently behave, the interests of the community require that he should be incarcerated until the term of the sentence it has imposed has been served. But when the Court has considered that neither of these disqualifications apply, it would appear to be an enlightened approach to penal practice to allow to the prisoner an opportunity to earn some alleviation of the punishment imposed upon him. The Court however may consider that there are limits to the degree to which he may be permitted to mitigate a punishment which it has considered appropriate to the crime which he has committed. It may consider that the interests of justice require that he should at least serve a certain period in prison, both from the point of view of retribution and of deterrence. The appropriate length of such a minimum period of imprisonment is again a problem which a Court should be qualified to determine upon the material which is available to it at the time of sentencing.

2.21 It is upon these considerations that the legislation in Victoria relating to the parole system is based. At the time of sentencing, the Court fixes the period of the sentence which in its opinion is appropriate to the crime which the offender has committed and at the same time fixes the minimum period in prison which he will be required to serve before he can be given the opportunity to mitigate the punishment which has been imposed upon him. After he has served that minimum term, the legislation permits a review to be made as to whether the safety of the community requires that he should be held in custody for some further part or even for the whole of the sentence which has been imposed upon him. If, after such review, it is decided to release him on parole and he successfully completes his period of parole, the purpose of the original sentence as far as he himself is concerned would appear to have been substantially attained, i.e. the community has been protected from any further offences by him during the currency of his sentence, and he has been punished for his offence by a period of incarceration and by a continuing liability to serve the balance of his sentence in the event of proven misbehaviour during his parole. Whether of course he has been as successfully deterred by his experience from committing further offences after his parole expires, as he would have been by imprisonment for the whole of his sentence, can never be established, but at least the results which have been attained have been so attained without the cost to both him and the community which his further imprisonment would have involved. If, on the other hand, upon release upon parole his conduct shows that such release was premature, he can be recalled and imprisoned under the sanction of the sentence originally imposed upon him for the crime he had committed, and as the further imprisonment to which he is liable is limited to the balance of the sentence which he has not served, his punishment for that crime remains the same as that which was originally adjudged to be appropriate. He has merely thrown away the opportunity which was afforded to him to mitigate that punishment.

2.22 In referring to the opportunity for mitigation of the sentence which a system of parole offers, we have not overlooked the existence of provision for remission of sentences which also operates as a mitigation of the sentence originally imposed. Such remissions may be granted to a prisoner who has earned them by diligence and good conduct during the period while he is incarcerated. They apply whether the sentence is one upon which the prisoner is

eligible for parole or not. At a later stage, we will discuss them and their application to a prisoner who is eligible for parole but at this stage we are considering the results which follow from the parole system itself.

2.23 In another respect it can be claimed that an adequate parole system assists in furthering the proper objectives of penal measures. If such measures can achieve what is referred to as the rehabilitation of the prisoner, both he and the community have gained a significant benefit. Rehabilitation in this sense means the development of a state of mind which predisposes him against the commission of unlawful acts. On the lower plane that state of mind may develop from a fear of punishment, in which case it might be more accurately described as resulting from effective deterrence. On the higher plane, it results from a combination of many mental or emotional elements which we will not endeavour to name, but which guidance and advice may help to foster. Despite improvements in prisoner treatment, there is at present little optimism that in a prison atmosphere rehabilitation, except as a response to deterrence, will often be achieved. On the other hand, parole requires regular contact with and supervision by a parole officer. If a satisfactory relationship has been established between parolee and parole officer and regular contact is maintained, there are two results which may reasonably be anticipated. In the first place, the obligation to maintain such contact should develop a constant awareness on the part of the parolee of the dangers which he faces if he breaches his parole and thus strengthen the benefit of deterrence. Secondly, the guidance and advice of an officer whom he respects is likely to be far more conducive to his rehabilitation on the higher plane than any contacts or advice to which he would be subjected in prison. It is of course futile to expect these beneficial results to be achieved unless the parole service is adequately and efficiently organized, but if it is not, this is a failing of the administration of the system and not a defect in the concept of parole.

2.24 In evaluating the benefits of the parole system in Victoria, it is interesting at this stage to make a study of the statistics which have been collated by the Parole Board since it began its operations on 1 July 1957. In the 22 years to 30 June 1979, a total of 14993 releases upon parole were made and of that number 10,026 of the paroles had been completed without cancellation. 696 persons were still on parole and parole had been cancelled either by the Board or automatically by reconviction in 4261 cases. Excluding the persons who were still upon parole, those figures show that 70% of the paroles granted had been successfully completed. Some of the prisoners shown as being released had been reparoled after a former release upon an unsuccessful parole, which would mean that the number of releases shown would exceed the number of individuals actually released; but the number of paroles shown as being successfully completed would not be affected by an earlier unsuccessful release and would accurately reflect the number of individuals who had successfully completed a period of parole. It follows therefore that the proportion of individuals released upon parole who successfully completed a period of parole would be higher than the 70% which these figures may at first suggest, and indeed may be considerably higher than that percentage, according to the number of reparoles included in the number of releases. These figures would of course need to be collated with figures showing the length of the parole periods for prisoners who successfully completed their paroles in order to obtain an accurate assessment of the saving to the State which the releases on parole had affected. These latter figures are not available to us but of 568 persons released on parole in the year 1978/79, the parole period for more than half of them was for twelve months or more and for less than 10% of them was under six months. It is not unlikely that the picture in previous years was substantially similar. Bearing in mind the very great cost of maintaining prisoners in gaols, it cannot be doubted that the parole system in Victoria has resulted in an immense saving of public funds during the years in which it has been in operation.

2.25 The cost of maintaining the prisoner in gaol is not the only saving which results from a successful parole. The imprisonment of an offender will often mean that the support of his dependants will become a charge upon public funds, and his return to the community as a potential member of the work force reduces the likelihood of that charge continuing. Moreover it is not only in terms of direct financial gain that the benefit to the State of a successful parole can be measured. Imprisonment of an offender protects the community from further offences by him during the period of his imprisonment, but if he can be successfully inhibited from committing such offences for the same period without actually spending the whole of it in prison, it is unnecessary for us to elaborate upon the significant social advantage which will have accrued both to him and to the community.

2.26 In view of these various considerations, it is not surprising that when the parole system was introduced into Victoria in 1957, it was regarded as a significant advance in penal administration and was subsequently adopted by other States and by the Commonwealth. The statistical analysis to which we have already referred, which showed that over 70% of the parolees who had been released in the first twenty-two years of the scheme had successfully completed their parole, appears moreover to afford convincing proof of the value of the scheme. It may be however that, despite its attraction in principle and its effectiveness in practice, a process in penal administration contains serious defects. It may be that the necessary machinery for its practical application involves such unacceptable departures from other principles of penal administration that it should be discarded in order to preserve the latter principles. It may be that it is so prone to misunderstanding and to misapplication that in practice it creates more serious problems than it solves. Insofar as any difficulties which it creates are capable of being met by procedural amendments, those amendments should be made, but if difficulties still remain, a decision must be made upon a balance of its merits and demerits as to whether it should be retained.

D. The Criticisms of the Parole System

2.27 We have already mentioned several official reports,[5] which contain criticisms of the parole system as it operates in a number of Australian jurisdictions. We then indicated that as we were concerned with the system in Victoria we did not intend to analyse in detail the criticisms contained in such reports of parole systems in other jurisdictions, except in the case of the Interim Report of the Australian Law Reform Commission. We acknowledged however the assistance we had received from such other reports in forming our own opinions. In the case of the Interim Report of the Australian Law Reform Commission (to which we will hereafter refer as the A.L.R.C. Report), the fact that it alone of the Australian reports recommended the abolition of parole and that it expressed the hope that State Parliaments would decide to abolish State parole made it desirable that we should examine in some detail the criticisms of parole contained in it, and the reasons advanced for such criticisms.

2.28 The terms of reference of the Australian Law Reform Commission were to review and report on the laws of the Commonwealth and the Australian Capital Territory relating to the imposition of punishment for offences and any related matters. The recommendations in the A.L.R.C. Report, insofar as they relate to parole, are accordingly limited to parole for Federal prisoners, i.e. offenders who are sentenced to imprisonment by Federal Courts or by State Courts exercising Federal jurisdiction. The Report states that on 31 December 1979 the number of Federal prisoners represented about 3% of the total Australian prison

5. See paragraph 7 supra.

population (para. 168). Not all prisoners are of course eligible for parole under existing conditions, parole in the great majority of cases being limited to prisoners serving sentences of one year or more. It is however clear that the number of Federal prisoners who would be affected by the Commission's recommendation for the abolition of parole would be a very small proportion of the number of prisoners in Australia who are eligible for parole. The Commission itself, in answer to the suggestion that the adoption of its recommendation would create chaos in correctional systems around the country, states in paragraph 348 'Given the small number of Federal prisoners, the overall impact of the abolition of Commonwealth parole would be negligible'.

2.29 However, in considering the question of parole for Federal prisoners, the Commission had to examine not only the problems which are peculiar to the Federal system but the question of whether generally the concept of parole was one which was desirable in a penal system. It is clear from the A.L.R.C. Report that it did not favour the general concept of parole. Insofar as its recommendations relate to problems which are peculiar to the Federal system, it is not part of our function to debate those problems and we will refrain from doing so. We will merely observe that it would be unfortunate if the conditions relating to the imprisonment of a small proportion of the prisoners sentenced by the Courts of a State and held in the prisons of that State differed substantially from the conditions relating to a much larger proportion of those who were also so sentenced and held. However the observations of the Commission upon aspects of parole which are not peculiar to the Federal system must clearly be examined to determine the extent to which they are applicable to the Victorian system, and to consider whether any changes should be made in that system.

2.30 In the summary of the A.L.R.C. Report (at p. XXVI), the Commission states 'Unfortunately, in practice, parole causes deeply felt and, in many cases, justifiably resented injustices. Parole has many failings. The chief of these are:

- it promotes indeterminancy and uncertainty in criminal punishment;
- it is founded on the unacceptable assumption that conduct in society can be safely predicted at all and, specifically, can be predicted on the basis of conduct in prison;
- its proceedings are conducted in secrecy and parole decisions which affect the liberty of individuals are unreviewable; and
- it is a 'charade'. The spectacle of a long sentence of imprisonment no longer deceives the community which knows that the offender will serve a much shorter period in prison before being released on parole.'

The arguments and the material upon which these assertions are based are dealt with at pp. 179-215 of the Report. As however it is not unlikely, in view of the length of the Report, that the summary will be more widely read than the full text of the Report, it is not inappropriate that we should make our comments upon the passage we have cited.

2.31 The introductory statement that, in practice, parole causes injustices is presumably mainly based upon the failings which it is asserted to have, since the Commission does not purport to have investigated any individual instance of alleged injustice. The statement that such injustices are deeply felt and in many cases justifiably resented is not surprising if the injustices in fact exist, but in the context of the Report is no doubt greatly influenced by an Offender Survey which the Commission conducted and the results of which are set out in Part 3 of Appendix D (pp. 521 et seq). Seventy one per cent of the prisoners who answered the questions stated that in their view the parole system as it then stood was either pretty unfair or very unfair (p. 529). However, a lesser percentage of 58% disagreed with a statement that parole procedures were really pretty fair (p. 530). Although it is described as a national survey, the questionnaire upon which it was based was distributed to all Federal prisoners and to prisoners in only one maximum security institution in each of New South

Wales and Victoria. Many prisoners did not answer the questionnaire (see Appendix D, p. 511), and it is reasonable to assume that those who did would be likely to include those who felt most strongly about the questions asked. The Commission concedes that the sample tested was not statistically representative of the entire prison population. Insofar as the questions related to parole, a more reliable indication of the attitude of State Offenders might have been obtained if, instead of being limited to prisoners in maximum security institutions, it had been practicable to include in the survey the views of offenders who were in fact upon parole at the time. It is also interesting to speculate upon what response the Commission would have received if it had asked the prisoners whether parole should be abolished. The A.L.R.C. Report does not segregate the answers given by prisoners in the Victorian maximum security institution, and in all the circumstances the survey gives no reliable indication of the extent of any dissatisfaction with the parole system in Victoria on the part of those to whom it applies. Some dissatisfaction by those who feel they have been unfairly treated, either by the original sentence or by the way in which the parole system has operated, can be assumed, but whether or not such dissatisfaction is likely to be so substantial as to amount to a material factor in determining whether a system of parole should be retained can certainly not be deduced from such an incomplete Offender Survey. Its likely strength can only be assessed from a consideration of the alleged failings in the system and the extent to which any of those which do exist may be remedied or mitigated.

2.32 The first alleged failing of parole to which the Commission refers in the summary is that it promotes 'indeterminancy and uncertainty' in criminal punishment. There is of course nothing indeterminate or uncertain about the sentence pronounced by the Court which fixes in definite terms both the length of the sentence and the length of the period which is to be served before the prisoner becomes eligible for parole. Remissions may vary these periods but remissions are available whether parole is provided for or not. At the outset it may be said that if a prisoner is to be given the opportunity by his subsequent conduct to mitigate the sentence which has been pronounced upon him by the Court, some uncertainty as to the actual period which he will spend in custody under the sentence is necessarily imported. That uncertainty however is largely dependant upon the quality of his subsequent conduct, which is a matter within his own control, and to that extent can hardly be regarded as a failing in the system of parole. It appears clear however, from para. 318 of the A.L.R.C. Report, where the Commission elaborates the objection which we have cited from the summary, that the Commission is referring to the uncertainty which derives from the fact that the controlling authority has to decide whether and, if so, when a prisoner will be released upon parole, both at the initial stage when he has completed the non-parole period which the Court has fixed and also at a subsequent stage, if he has been released upon parole and his parole has been cancelled. It criticises this uncertainty upon what it describes as 'two basic grounds'; first, that the decision to release on parole is too often exercised in a haphazard and idiosyncratic way, and not in a consistent and principled fashion, and second, that where discretion to release on parole is vested in parole boards, great anxiety is experienced by prisoners and their families when the parole application is being considered in their absence and in ways that are not known and understood.

2.33 The first of these two basic grounds upon which the Commission relies to assert uncertainty, namely, that the decision to release upon parole is too often exercised in a haphazard and idiosyncratic way and not in a consistent and principled fashion, is asserted as a fact and the material upon which it is based is not set out in the A.L.R.C. Report. It may or may not be soundly based in regard to some jurisdictions; we express no opinion upon the matter as we are solely concerned with Victoria. In any system where a decision ultimately rests upon an exercise of discretion, different decisions in apparently similar cases may occur. Such differences however do not necessarily involve inconsistency, although they are frequently so described by critics who have not had or exercised the opportunity of examining the different considerations which have led to the different

decisions. No system of course is perfect and inconsistencies may occur. But they are far less likely to occur when all the decisions are made by the same and not by different tribunals, and the members of the tribunal have worked together over a long period, during which they will naturally have developed guidelines to assist them in the exercise of their discretion. We are not aware of any evidence to support this criticism in relation to the Board in Victoria. Moreover, if such evidence exists and is credible, it would constitute a criticism, not of the system of parole itself but of the manner in which a particular parole board was stated to operate.

2.34 The second basic ground upon which the Commission criticises the uncertainty involved in parole decisions is that great anxiety is experienced by prisoners and their families when the parole application is being considered in their absence and in ways that are not known and understood. We have already referred to the steps which are taken in Victoria to acquaint prisoners with the matters which the Board is likely to consider in making its decision, both by published information and by access to the full-time member of the Board. Insofar as the consideration of parole occurs in the absence of the prisoner, criticism of the system may be warranted and this is a matter to which we will advert at a later stage. But as an element affecting the uncertainty of parole decisions it appears to have little relevance.

2.35 It is of course true that, as long as parole depends upon a discretionary system, some uncertainty as to whether a prisoner will be released when he is eligible for parole can never be completely eliminated. In fact, as the Australian Law Reform Commission itself says in paragraph 318 of its Report, there is a reasonable probability that a prisoner will be released on completion of the non-parole period, and the figures that we have already cited[6] show that in Victoria by far the greater proportion of prisoners in respect of whom the Court has fixed a minimum term is released on parole on or very shortly after the dates upon which they become eligible for such release. There would be very few of those who were not so released who would not be aware that their release would be deferred and aware of the reason for such deferment. Even in the case of a prisoner to whom parole or reparole was denied, he can be assured that, according to the law in Victoria,[7] the total period during which he will be kept in prison will not exceed the period which the Court has decided was a proper and appropriate sentence for the particular crime which he committed. In our opinion the element of uncertainty as to release, which is inherent under the parole system, is not in Victoria a matter of major significance in determining whether the system should be retained.

2.36 The second feature which in the summary the Commission states to be a main failing of parole is that 'it is founded on the unacceptable assumption that conduct in society can be safely predicted at all and specifically, can be predicted on the basis of conduct in prison'. In the body of the Report, the Commission goes further and states that one of two basic problems relating to parole 'which are fatal to its retention' is the assumption that we can predict human behaviour with sufficient accuracy to conclude that some prisoners should be released on parole because they do not constitute a threat to society and would be benefitted by parole, whereas others should not (para. 329). There would be very few options in criminal punishment which did not to some extent depend upon predictions of human behaviour. In the primary task of determining the particular punishment to be imposed upon an offender and the degree of severity of punishment, the relevance of deterrence as an element in such determination requires consideration of the extent to which the punishment is likely to affect the future conduct of the offender. The decision as to whether or not a person charged should be released on bail, and, if so, the amount of

6. see paras. 2.10 and 2.13 (supra)
7. see para. 2.7 (supra)

bail, requires a prediction as to whether he is likely to respond to it. In regard to procedures which are more closely comparable to parole, the decision as to whether or not a particular offender should be released upon probation or upon a common law bond, or whether or not a sentence imposed upon an offender should be suspended, depends to the same degree as parole does upon a prediction as to how he is likely to behave during the currency of the period for which he is released. To suggest in relation to any of these last three procedures, that the inability to predict the behaviour of a particular offender with sufficient accuracy to determine whether he should be so released is a basic problem in the procedure which is fatal to its retention, would appear to us to be an extraordinary suggestion. And yet by parity of reasoning, the importance which the Commission attaches to this consideration in regard to parole would appear to lead to this conclusion.

2.37 In our opinion, the Commission has attached far too great an importance to this alleged failing of parole, in treating it as a basic problem which is fatal to the retention of the system. We agree that the conduct of a prisoner in the prison has limited value in predicting what his conduct is likely to be if he is released. It may in some cases indicate that neither he nor the community is likely to be benefitted by his release, or it may in some cases support a legitimate hope that benefit will follow. When we interviewed him, however, the Chairman of the Board informed us, that, unless the behaviour of a prisoner in gaol was of such a nature as to indicate that his release would constitute a danger of physical harm to members of the community, it was not normally taken into account in determining whether he should be released on parole at his eligibility date. As we have already said (in para. 2.12) the Board regards the loss of remissions or any punishment imposed in consequence of misbehaviour, which in themselves may affect his eligibility date, as sufficient to meet that situation. If, of course, complete accuracy in the prediction of a prisoner's future behaviour were essential to the maintenance of a system of parole, that accuracy could never be attained and the system would have to be abandoned. The figures however which we have already cited of the results of parole in Victoria indicate that in the vast majority of cases, parolees have completed their parole without proven misbehaviour. It would in our opinion have been a most unfortunate result if the 70% of parolees who completed their paroles without cancellation had been deprived of this opportunity to mitigate their punishment merely because it was not possible to predict with accuracy at the time of their release what their subsequent conduct upon parole would be.

2.38 The third failing of parole to which the Commission alludes is that 'its proceedings are conducted in secrecy and parole decisions, which affect the liberty of individuals are unreviewable'. This is a criticism which raises serious problems and which warrants very careful examination. It is however a criticism of the procedure adopted in the implementation of the parole system rather than of the principle of parole itself. It is convenient that before we examine it in detail, we should study the fourth main failing of parole which the Commission alleges.

2.39 The last main failing of parole which the Commission asserts in its summary is expressed in these terms i.e. 'it is a 'charade'. The spectacle of a long sentence of imprisonment no longer deceives the community which knows that the offender will serve a much shorter period in prison before being released on parole'. In the main body of the A.L.R.C. Report, the Commission refers to a minority report of the Muir Report in New South Wales,[8] which minority report contains the views of the Director of Probation and Parole in that State and which refers to confusion among members of the community because the Court has pronounced two different terms of imprisonment in the same sentence. (para. 343). In the concluding paragraph of the section of the Report dealing with

8. Report of the Parole Review Committee chaired by Judge A.G. Muir, Q.C., to review the parole system in New South Wales, February 1979.

Parole, the Commission says 'It (i.e parole) has been brought into disrepute in the community and amongst those most intimately involved in it. From the point of view of ordinary citizens what is seen is a strange procedure whereby, even though a judicial officer has ordered an offender to be sentenced to imprisonment for a term, the prisoner will in fact usually serve a term that is much less than the term imposed. This is why parole has been described as a 'charade'. The attempt to pretend that a very long sentence is imposed which most people know will not be served is only likely to be effective as a deterrent if the pretence is convincing. It is no longer so.' (para. 350). The description of parole as a charade was not of course invented by the Director of Probation and Parole in New South Wales nor by the Australian Law Reform Commission. It was so described by Professor Norval Morris, the then Dean of the Law School in the University of Chicago in a paper presented at the 19th Australian Legal Convention in July 1977. In the paper, in which he said that he wished to focus on American practice concerning, inter alia, parole, he said 'Parole allows for judicial announcement of larger punishments than are in fact carried out. The thought is, apparently, thus to maximise deterrence while reducing the suffering from the punishment actually applied. For a few years, this charade may have been unnoticed, but by now every judge knows the practice, as does the public. Judges who wish to punish severely simply inflate their sentences to reflect anticipated deflation by the parole board. No one is deceived, but under the vagaries of parole decisions subject to diffuse political and public pressures, some prisoners will suffer randomly, or worse, discriminatorily, to no social gain.' (see 51 Australian Law Journal, p. 525). We are not concerned by the uses or abuses which may be made of the parole system in other jurisdictions, but with any criticisms which may be properly made of its operations in Victoria. We have already referred to the law in Victoria as to the basis upon which sentences are to be imposed and the irrelevance of parole board practice to the fixing of those sentences. It is comforting to see that the Commission has not in terms relied upon the views expressed by Dr. Morris in support of its recommendation, but its reiteration of the word 'charade' and its references to deception and pretence suggest that it may not have been uninfluenced by them.

2.40 Although the word 'charade' is literally inappropriate, it could perhaps be loosely used in relation to a system under which an offender is sentenced to a term of imprisonment which is inordinately long for the offence he has committed and which it is not intended that he should in fact serve. In Victoria the law requires that the sentence imposed should be one which is appropriate to the offence committed and to the circumstances in which it was committed. There is no pretence about that sentence. If the prisoner is not made eligible for parole or if he throws away the opportunity which he is given by parole to mitigate it, he is intended to serve it and will in fact serve it. There is no 'charade' so far as people who fully understand the system are concerned, and if, as the Commission asserts, the community is no longer deceived by the sentence imposed, then nobody would be misled by it. The reference to 'deception' is the more difficult to understand once it is realised that the lesser term during which the offender shall not be eligible to be released on parole is fixed by the court as part of the sentence (section 190) and is announced in open Court at the same time as the term of imprisonment imposed. That announcement in itself makes plain that the offender may not be required to serve the full term of the sentence imposed. If that fact warrants the description of the procedure as a 'charade', the term could with equal justification be applied to a procedure which has been long established and is well recognized in many jurisdictions, namely, the suspended sentence. In that procedure the Court imposes a sentence of imprisonment upon the offender, and then makes a provision by which, dependent upon his future conduct, he may not be required to serve it. A sentence making a prisoner eligible for parole achieves the same result as to a part of the sentence imposed, although the decision as to whether he will be required to serve it is committed by the Court to a parole board. At a later stage in the A.L.R.C. Report (para. 388), the Commission supports the power of a Court to suspend sentences of imprisonment,

and in that context does not suggest that the procedure is a 'charade'. We also would make no such suggestion, and having regard to the manner in which the system of parole operates in Victoria, we see no justification for that system being so described.

2.41 Although we disagree with the terms which the Commission has employed in dealing with this matter, the question of the public reaction to parole is of course important. If a citizen learns that a prisoner, by the combined effect of parole and remissions, has been released at a time when he has served perhaps less than half of the sentence imposed upon him, it is not unlikely that the citizen would be considerably disturbed and may feel that the law has failed to give him and other members of the community the protection which the criminal law should provide. In jurisdictions where it is not uncommon for a Court to fix a non-parole period which appears disproportionately low in comparison with the sentence imposed, this problem is likely to be intensified. In Victoria fortunately, as we have already pointed out, the strong line that the Full Court has taken as to the principles upon which the head sentence should be imposed, make this latter result unlikely. The general public however, while it may understand the earlier release which is made possible by the fixing of a minimum term, is much less likely to be familiar with the generous remissions upon that term for which our law provides. In our opinion, it is because of this fact and because of a failure to appreciate that the prisoner, although released, still remains liable to serve the balance of his sentence if his parole is cancelled, that any hostile reaction to the system of parole by some members of the community is due. The principles of the system itself however cannot logically be condemned because of any dissatisfaction with the remissions allowed or because of any misunderstanding of the system.

2.42 A further aspect of the reaction to the parole system is of course the reaction of prisoners themselves. Prisoners are inclined to resent any failure to release them on parole at the date upon which the Court has said they are eligible for it, however justified the refusal of parole may be. Such resentment is of course limited to the comparatively small proportion of prisoners who are so affected but at any one time there may be a sizeable number of prisoners involved. In Victoria the appointment of the full time member of the Board, one of whose duties is to explain the decision and its reasons to a prisoner affected, is calculated to reduce any resentment felt, but some resentment will undoubtedly persist.

2.43 As we have previously said, the value of a system must be judged upon a balance of its merits and demerits. In Victoria, in our opinion, the extent of any public dissatisfaction with the system of parole, which has only been expressed in isolated cases, and the existence of an unjustified resentment against it by a minority of prisoners, do not constitute a significant objection to a system which has resulted in substantial benefits in the great majority of cases.

E. The Questions of Procedure and Appeal

2.44 We turn now to consider the failing of parole which the Australian Law Reform Commission alludes to in the following terms, viz:- 'its proceedings are conducted in secrecy and parole decisions, which affect the liberty of individuals are unreviewable'. As we have said, this is a criticism of the procedure adopted in the implementation of the parole system rather than of the principle of parole itself. But if a system necessarily involves the adoption of a certain procedure in order to make the system workable, any defects in that procedure may properly be relied upon in an attack upon the system itself.

2.45 When a decision is made by a Court, there are certain safeguards against possible injustice which exist. Those safeguards are a public hearing, the right of affected parties to be present and to be heard, access by interested parties to all material upon which the Court

may act, the giving of reasons for the decision, and normally a right of appeal against the decision. In Victoria, as in the case of most other jurisdictions, sittings of the Parole Board do not take place in public, the prisoner is not entitled to be present and to be heard nor to have access to the material upon which the Board may act, formal reasons for the decision arrived at are not generally promulgated although they may be communicated to the prisoner by the full time member, and there is no right of appeal against the decision. As a preliminary to examining the significance of these variations in procedure between a Court and the Parole Board, it is necessary that the decisions of the Board should be understood in their proper perspective.

2.46 Every individual whose case comes before the Board has already been before a Court. The Court has determined the maximum length of time during which he may be imprisoned for the offence he has committed; it has determined whether or not he should be eligible for parole during that period; it has decided the minimum term he must serve in custody; and by the operation of the law under which it acts, it has committed to the Board the decision as to whether and, if so, when and for what period within the limits which it has prescribed, he should be released upon parole. The decisions of the Board are therefore in implementation of the decision the Court has already made and in making them the Board is discharging an executive function. While it is true to say that the decisions of the Board affect the liberty of individuals, so do the well recognized and accepted executive decisions as to whether the Royal prerogative of mercy should be exercised in regard to a prisoner and as to whether he should receive remissions upon his sentence. It would be novel to suggest that these latter two examples of executive decisions should only be made in compliance with the circumstances which attend the making of a decision by a Court. The circumstances under which the Board makes its decisions are those which normally attend the making of other executive decisions, excepting to the extent to which these latter decisions may have been made liable to appeal.

2.47 In the case of the Parole Board, the fact that it is an independent body which is presided over by a Supreme Court Judge and the very nature of the decisions which it has to make invite a comparison between its procedure and that of a Court. Such a comparison however should not overlook the fact that it is performing an executive function. If it is both desirable and practicable that some of the incidents of its procedure as an executive body should be altered to incorporate the safeguards against possible injustice which apply in the procedure of a Court, then common sense suggests that those alterations should be made. The Australian Law Reform Commission proposes (A.L.R.C. Report, para. 341) that, pending the abolition of parole, a number of interim measures should be taken, and the proposals relevant to the matter we are now discussing are:

(a) that prisoners should be given full reasons when they are refused release upon parole;
(b) that prisoners should have a general right of access to documents considered in relation to parole release decisions made about themselves, subject to exceptions to be specifically provided for by the law;
(c) at least where the parole authority is inclined to refuse parole to a prisoner, such prisoner should have a right to be present and to be represented including by legal counsel when parole decisions are made affecting him;
(d) review of all decisions concerning parole should be available to prisoners.

2.48 It is convenient first to examine the proposal that a prisoner should have a right to be present and to be represented by counsel when decisions are made affecting him. We have already pointed out, in dealing with the procedure of the Board in Victoria, that it would be quite impracticable for the Board, either to travel to a prison where a prisoner whose parole is due to be considered is held, or to assemble all such prisoners at a central point, in order

to enable a prisoner to be present when his case is being considered. (see para. 2.14 supra). To enable all affected prisoners to be present at the time when their respective paroles were due to be considered, there would need to be several Boards operating full time. It would be most unlikely that any State would be prepared to assume the costly financial problem involved and even if it were, there would be two unfortunate consequences. In the first place, a proliferation of Boards would increase the danger, which at the present time we consider is minimal in Victoria, of inconsistency of decisions in regard to parole. In the second place, it would not be possible to appoint as members of a full time Board, either a Supreme Court Judge who was at the same time still actively engaged in the discharge of normal judicial duties or the Director-General of Community Welfare Services. Both such appointments in our opinion materially contribute to the status of the Board and the confidence which can be placed upon its decisions. If in every case a preliminary review first took place and the right of appearance was limited to prisoners where, as the Commission expresses it, the parole authority was inclined to refuse parole, the number of cases concerned would of course be considerably reduced. Such a procedure, however, which involves the Board in first forming a preliminary view adverse to the prisoner before his case was finally considered can hardly be considered a satisfactory procedure, and in any event, whether the necessity for a dual consideration of doubtful cases would result in any substantial reduction in the overall workload may be open to question. If prisoners were entitled to legal representation upon such hearings, when questions of calling witnesses and of crossexamination of parole officers and doctors who had furnished reports would naturally arise, the time involved in the making of decisions would immeasurably increase. The question of access to such reports, with which we subsequently deal, also raises serious problems in regard to desirability. The Chairman of the Parole Board expressed the opinion that formal hearings relevant to parole, either with or without legal representation of the prisoner, would render the system unworkable, and we agree with that opinion.

2.49 In regard to the proposal that prisoners should be given full reasons when refused parole, we have already referred to the role of the full time member of the Board in Victoria in the explanation of Board decisions to the prisoners concerned. Insofar as a statement of the Board's reasons would be relevant to any contemplated appeal, any significance in the proposal depends upon whether such an appeal should be provided for and we subsequently discuss this question. In no other respect however does the proposal appear to effect any significant improvement in the Victorian Board's present procedure.

2.50 The proposal in regard to access to documents raises some serious difficulties. The documents with which the Board will be mainly concerned are the report by the parole officer who has interviewed the prisoner and investigated the circumstances which are likely to exist upon his release, and any psychiatric or other medical reports which may be relevant. In relation to the latter, it is obvious that they may contain material which in the best interests of the prisoner himself, should not be disclosed to him. In relation to the former, it must be recognised that the development of a satisfactory rapport between prisoner and parole officer will materially assist the prospects of a successful parole. The Chairman of the Board informed us that this rapport is considered so important that if in fact a prisoner expressed dissatisfaction with a parole officer, another officer was usually appointed. The Board should be able to rely upon reports being frankly given and he expressed the opinion that access by the prisoner to reports of his parole officer could lead to such reports either being 'watered down' so as not to damage such rapport or in fact damaging it. The Commission itself recognised that some exceptions to this general right of access should exist, but it considered that such exceptions should be specifically provided for by law, and the only instance that it cited was 'a substantial ground of overriding public policy which warranted denial of access in a particular case'. (A.L.R.C. Report, para. 338). The resolution of that question in any particular case, unless it were committed to the decision of the Board alone, would raise practical difficulties which it is not necessary for us

to elaborate. While it seems to be unfair that the granting or withholding of parole may materially depend upon reports to which the prisoner is not allowed access, the confidentiality of such reports is, in our opinion, an important aspect of the system of parole. Experience in fact indicates that they are much more likely to err in favour of the prisoner than against him. But insofar as they may operate against his interests, that is a danger which in our opinion must on practical grounds be accepted as an incident of the system, and taken into account when a balance is made between its merits and demerits in determining whether the system should be retained.

2.51 The proposal that decisions by the Parole Board should be subject to appeal also raises very difficult problems. If a person is denied a legal right, it is proper that he should be able to appeal against that denial. But no prisoner of course has a legal right to parole under the sentence of the Court. He is made eligible for parole and his right is to have the Board decide, in the proper exercise of its discretion, whether or not he should be released and if so, upon what conditions. We have already pointed out that the Court itself has determined both the upper and lower limits within which that discretion may operate, and in implementing the decision of the Court, the Board is performing an executive act. In order however to maintain confidence in executive bodies and to guard against oppression or unfairness in the exercise of their powers, it is sometimes desirable to provide for a right of appeal against the discretionary decisions which they are required to make. Whether in the case of parole it is so desirable depends upon the consideration of a number of factors, including the practicability of operating a workable system of parole which provides for appeal.

2.52. One of the first questions is that of the tribunal to which any appeal would lie. In Victoria, where the Chairman of the Board is a Judge of the Supreme Court, it is obvious that the Supreme Court would be the appropriate tribunal if a right of appeal was instituted, and it also appears appropriate that any such appeal should lie to the Full Court and not to a single judge. Under the Act (section 181(2)), any question of law arising before the Board shall be decided by the Chairman alone. Appeals upon questions of law might arise, and it would be a very unusual course to provide for a right of appeal from one judge of the Supreme Court to another one on a question of law, whatever the capacity may be in which they are respectively acting. It is not unreasonable to anticipate that, if a right of appeal existed, the great majority of prisoners who were dissatisfied with a decision of the Board and who would have nothing to lose by appealing against it would in fact exercise the right. In the year 1978-79, the report of the Parole Board shows that while 568 persons were released upon parole, 276 persons had their release upon parole deferred and 91 persons had their parole cancelled by order of the Board. Even a prisoner who had been granted parole might consider that some condition attached to the parole was unduly onerous and desire to appeal against the order. The task of hearing appeals, even if a large proportion of them was frivolous, would obviously add a tremendous burden to the work of the Full Court, if it were the appellate tribunal, or to the general work of the Supreme Court if appeals to a single judge were allowed. If the hearing of appeals took place on an adversary basis with the examination and crossexamination of witnesses, the time and the cost involved in dealing with them would be very great indeed.

2.53 In dealing with the proposal that prisoners should be allowed access to material before the Board (para. 2.50 supra) we have already referred to the dangers which the loss of confidentiality in regard to such material would involve. On an appeal it is difficult to see how such confidentiality could be maintained and the same dangers would exist. We have also referred to the practical problems which would be involved if prisoners had a right to appear before the Board when their parole was being considered. (para. 2.48 supra). If they were to have such a right of appearance before an appellate tribunal on an appeal, problems of a similar type would arise.

2.54 The practical considerations to which we have adverted, in our opinion, make it undesirable to provide for a right of appeal to the Full Court. The alternative of an appeal to a single Judge of the Supreme Court also has undesirable features. In addition to any practical difficulties involved, the unsatisfactory position of an appeal from a Board consisting of a Supreme Court Judge and other experienced members to another Supreme Court Judge sitting alone would be created. Such a position would be bound to invite a comparison between the capacities of the respective tribunals, and would tend to erode the confidence of an ultimately correct decision which an appellate procedure should provide. The constitution of the Parole Board in Victoria is in itself designed to reduce considerably the likely occurrence of those circumstances which in the case of some other executive bodies have suggested the desirability of an appeal procedure. Moreover, the availability of the full-time member to investigate complaints and if he thought fit to have a decision reconsidered by the Baord, and the consideration which the Board is prepared to give to letters received from prisoners, their relatives or their representatives afford further safeguards against possible injustice.

2.55 In our opinion, for these reasons, it is not practicable to incorporate a satisfactory appellate procedure into the parole system in Victoria, and the absence of such a procedure is not likely to result in any substantial injustice. Insofar, however, as any potentiality for unfairness results from the absence of an appeal procedure, it is a matter to be taken into account in determining whether the parole system should be retained.

F. Summary and Conclusion

2.56 We have now examined the various objections to the parole system upon which the Australian Law Reform Commission relies to support its recommendation that the system should be abolished, apart from objections which are peculiar to the Federal system of parole and which are not relevant to an assessment of the parole system in Victoria. In the course of that examination we have concluded—

(a) that the element of uncertainty as to release, which is inherent under the parole system, is not in Victoria a matter of major significance in determining whether the system should be retained (paras. 2.32 to 2.35);
(b) that the difficulty of predicting future conduct exists in regard to many accepted criminal procedures and is not a sufficient reason for the abandonment of those procedures (paras. 2.36 to 2.37);
(c) that the extent of any public dissatisfaction with the system of parole and the existence of any unjustified resentment against it by a minority of prisoners do not in Victoria constitute a significant objection to the retention of the system, (paras. 2.41 to 2.43); and
(d) that the procedure of the Adult Parole Board does involve some features which are capable of operating unfairly against a prisoner, namely, the lack of access by a prisoner to material upon which the Board may rely, the lack of a right to appear or to be represented before the Board when his parole is under consideration, and the lack of a right of appeal against a decision of the Board; that it is not practicable to eliminate those features and still maintain a workable and satisfactory system of parole; but that in Victoria the constitution and the practice of the Board are likely to reduce considerably the danger of unfairness occurring (paras. 2.44 to 2.55).

2.57 It is in our opinion only upon the last of these conclusions that any case for the abolition of the parole system in Victoria could rest. Against it must be set the undoubted benefits which the system confers both upon the great majority of the prisoners to whom it applies and upon the community. We have examind those benefits at length in paragraphs 2.18 to 2.26 above. It maintains both the punitive and the deterrent aspects of sentencing,

but it also gives a prisoner the opportunity to mitigate his punishment by subsequent good conduct in the community. It enables him during the period of parole to maintain his family, to preserve his family life and to re- establish himself in the community both as a citizen and a wage earner. It affords the opportunity for his rehabilitation to be assisted by the guidance and help of a parole officer. It is far less expensive to the State than the cost of maintaining the prisoner in gaol; it may well remove the burden from the State of providing for his indigent dependants; and by reducing the daily gaol population it may well save the enormous capital cost of providing additional gaol accommodation. The parole system when properly operated is in our opinion one of the most humane and inexpensive procedures available in a corrective system, and its value is demonstrated by the very high proportion of successful paroles which the Victorian statistics establish. In any system of penal administration, the possibility of some injustice in individual cases cannot be eliminated, but, in our opinion, in Victoria the benefits of the parole system so far outweigh the dangers of such injustice occurring that the system should undoubtedly be retained.

We therefore recommend that the system of adult parole be retained in Victoria as an integral part of the sentencing process.

2.58 At a late stage in the deliberations of the Committee, a review of parole in England and Wales, which had been prepared by the Home Office and dated May 1981, was brought to our attention.[9] In a number of significant respects, the system of parole in England differs from that in Victoria and caution must be observed in drawing analogies between them. The English review is however factual and objective, presenting arguments for different views and only expressing conclusions when they appear to be beyond controversy on the facts set out. Many of the facts set out and the submissions canvassed are relevant to the matters we have discussed in relation to parole in Victoria. For example, in relation to the question of the abolition of parole, (paragraphs 49-52), the review points out the benefits which would be lost if parole were abolished and the facts upon which it relies are similar to those upon which we have relied in coming to our conclusion. It indeed sets out a further significant fact, namely that the most recent analyses of reconviction statistics in England indicated that those released on parole, having been sentenced to over four years imprisonment, had better reconviction records that those not granted parole. Similar analyses have not been made in Victoria but there appears to be no logical basis for suggesting that if they were made a similar favourable tendency would not be observed. The review also discusses (in paragraphs 67-83) the question of grafting some aspects of judicial process onto the basically administrative process by which release upon parole is presently determined. It indicates, as we have done, the practical difficulties which would arise and the not unlikely result that the disadvantages which would follow from any such process would outweigh any advantages obtained. We do not intend to discuss the various aspects of the review in detail, but it does make clear that in England, when the parole system was introduced in 1968, its nature as an essentially administrative process was asserted and has been so maintained up to the present time.

2.59 In paragraph 55 of the review it is stated 'Parole has proved one of the more imaginative and successful developments in modern penal practice.' That is our own opinion in relation to parole in Victoria. Despite the differences between the systems in England and Victoria, they both fundamentally rely upon the concept of part of a sentence of imprisonment being suspended during a period of conditional release under supervision, and in each country the system is administered by executive process. It is comforting therefore to find this opinion expressed so recently by the Home Office after a review of the working of the system in England and Wales since the parole provisions of the Criminal Justice Act 1967 came into force.

9. Review of Parole in England and Wales, Home Office, May 1981.

3. Possible Modifications of the Victorian System

3.1 We have examined a number of possible modifications of the Victorian system of adult parole with a view to determining whether improvements can be effected. In some cases the matter examined formed a part of a parole system in another jurisdiction; in some cases it was a criticism of that parole system; but the examination was not limited to those two types of cases. It is not necessary in this Report to discuss each of the matters we have so examined but some of them in our opinion warrant specific comment. These matters can be conveniently discussed under the following headings:

(a) Eligibility for parole.
(b) Standard statutory non-parole periods.
(c) Combined effect of parole and remissions.
(d) Supervision during parole.
(e) Credit for time on parole if parole cancelled.
(f) Parole during life sentences.
(g) Guidelines for parole.
(h) Automatic parole on short sentences.

A. Eligibility for Parole

3.2 In Victoria a prisoner is eligible for adult parole if the Court fixes a minimum term in respect of a sentence of imprisonment imposed upon him. The Court cannot fix a minimum term if the sentence is less than twelve months; it may do so if the sentence is less than two years but not less than twelve months; it shall do so if the sentence is not less than two years, subject to a proviso that it shall not be required to do so if it considers that the nature of the offence and the antecedents of the offender render the fixing of a minimum term inappropriate. (section 190).

3.3 In the case of an offender whose offence is serious enough to warrant imprisonment, we agree with the general framework as to eligibility which the law so provides. Short terms of adult parole are of little practical value and would seldom justify the additional administrative burden they would impose upon the parole service. The section therefore provides that any minimum term fixed shall be at least six months less than the term of the sentence. In view of the extent to which a sentence is in the vast majority of cases reduced by remissions, it is clear that there is little effective scope for parole in the case of short sentences. The discretion of the Court to fix a minimum term if the sentence is for twelve months or more is likely to be sufficient to provide for any case where parole may be of value.

3.4 We consider however that the terms of the proviso, which permits the Court to refrain from fixing a minimum term where the sentence is not less than two years, are unduly restrictive. The proviso permits the Court to adopt this course only if it considers that 'the nature of the offence and the antecedents of the offender' render the fixing of a minimum term inappropriate. The conjunctive nature of this expression has, according to the Parker Report,[10] led some judges to the view that unless they find on both grounds that parole is inappropriate, they must fix a minimum term. It is clear that either 'the nature of the offence' or 'the antecedents of the offender' may in some cases lead to the conclusion that provision for parole would be inappropriate, and any doubt about this position should be removed. There may moreover be circumstances, other than those referred to, where parole would be inappropriate; for example, where the offender was a transient who planned to leave the State as soon as he was released, or where upon release a prisoner was

10. Report on Parole, Prison Accommodation and Leave from Prison in Western Australia, 1979 at page 14.

likely to be deported or to be extradited to serve sentences or face charges elsewhere. It is not possible to define exhaustively the circumstances which in a particular case would make parole inappropriate but the Court should not be precluded from considering such circumstances.

3.5 *We therefore recommend that the proviso to section 190 of the Act be amended to provide that the Court shall not be required to fix a minimum term if it considers that either alone or in combination:*

(a) *the nature of the offence,*
(b) *the antecedents of the offender, and*
(c) *any other relevant circumstance,*

renders the fixing of a minimum term inappropriate.

B. Standard Statutory Non-parole Periods

3.6 In some jurisdictions, the legislation relative to parole either provides that the non-parole period or minimum term shall be a fixed proportion of the sentence or requires that a minimum term to be fixed by the Court shall be not less than a certain proportion of the sentence. In some cases the Court is permitted to depart from the proportion so fixed if it states its reasons for so doing. In our opinion any legislation to fix the length of a minimum term by reference to a proportion of the sentence would be undesirable in Victoria. The sentences affected would vary from as short as twelve months to as long as twenty years or more, and what might be a reasonable non-parole proportion of a sentence in the lower range might warrant quite serious criticism if applied to a sentence in the higher range. Even if the Court were given a discretion to depart from the proportion so fixed, a statutory proportion which in terms applied to sentences of any length could hardly be departed from on the ground that it was inappropriate for a sentence of the length in fact imposed.

3.7 Presumably such a provision is intended to achieve two results, firstly, to promote consistency in the fixing of minimum terms, and secondly, to guard against the adoption of a course which appears to be not uncommon in some jurisdictions, namely, the imposition of a head sentence which is far longer than the circumstances in the particular case would seem to warrant and then the fixing of a minimum term which is so much shorter than the head sentence that it is impossible to find any reasonable relationship between the two. Insofar as the first of these objectives is intended, it is a mistake to confuse uniformity with consistency. Consistency involves a due weighing up of all the circumstances, both similar and dissimilar, which may exist in a number of cases. The application to all such cases of a uniform rule which has no regard to the dissimilarities which may exist, is much more likely to create inconsistency. We think the provision would have much more value in regard to the second objective, and if in Victoria experience had shown a tendency on the part of the Courts to develop what we regard as the objectionable practice to which we have referred, we might well have favored some statutory curb upon such tendency. We have already referred to the firm line which the Full Court in Victoria has laid down as to the imposition of a head sentence which is appropriate to the actual circumstances of the crime committed and of the offender who committed it, (para. 2.7 supra), and the analysis which was made of minimum terms as a proportion of the terms of imprisonment imposed (para. 2.8 supra) showed no evidence of such a tendency developing.

3.8 In these circumstances we consider that the statutory prescription of a minimum term is unnecessary and could lead to unsatisfactory results. The Court has the opportunity to be fully informed as to the precise circumstances of the offence and of the offender. It has

determined the sentence which it is appropriate to impose, and its determination of the minimum period which the offender will be required to serve in custody under that sentence is far more likely to be appropriate in the circumstances than any period which is determined by the application of an arbitrary rule. If it errs, its decision is subject to appeal by either the offender or the Crown.

3.9 In order to illustrate the different problems which may exist in different jurisdictions, we conclude this section with an interesting comparison between certain New South Wales statistics quoted in the Muir Report[11] and Victorian statistics derived from the analysis set out in Schedule Three. Both sets of statistics relate to the non-parole or minimum term as a percentage of the sentence imposed. The New South Wales statistics relate to the non-parole periods of prisoners released on parole between 1974 and 1977, and the Victorian statistics to the minimum terms of prisoners sentenced in 1980, but despite these differences and the relatively short term covered by the Victorian figures, the statistics appear to indicate a marked difference during the respective periods between the practices of the Courts in the two States. In New South Wales in 1977, the percentage of prisoners so released whose non-parole period was less than 30% of the sentence was 31.4 per cent; in Victoria the percentage of prisoners sentenced with a similar minimum term was 3.1 per cent. In New South Wales, the percentage of prisoners released with a non-parole period of less than 50% of the sentence was 76 per cent; in Victoria the percentage of prisoners sentenced with a similar minimum term was 16.6 per cent. One of the factors which influenced the Muir Committee to recommend a statutory non-parole period (albeit with a discretion in the Court to specify a non-parole period of greater or less duration) was the problem flowing from the disparity between aggregate sentence and non-parole period. The figures in Victoria indicate that in this State that problem is greatly reduced.

C. Combined Effect of Parole and Remissions

3.10 By section 203 of the Act, the Governor in Council is empowered to make regulations for or with respect to (inter alia) the mitigation or remission of any sentence of imprisonment (including any sentence in respect of which a minimum term is fixed and the minimum term thereof) as an incentive to or reward either for good conduct or for special industry in the performance of any work or labour allotted to an offender whilst he is imprisoned under such sentence. In Part XIII of Division III of the Regulations, Regulation 97D provides that in respect of any sentence, including any sentence in respect of which a minimum term is fixed and the minimum term thereof, the Director-General may grant remission not exceeding fifteen days for each complete calendar month of the sentence actually served, with pro rata remission for portion of a calendar month.

3.11 As section 203 states, the purpose of the grant of remissions is to act as an incentive to or reward for good conduct or special industry whilst the prisoner is imprisoned under his sentence. They are an obvious aid to prisoner management and it is fair that the prisoner should be rewarded for such good conduct or special industry. In relation to the sentence under which he has been imprisoned, whether or not he was made eligible for parole under that sentence, remissions in our opinion should continue to be available, based upon his conduct whilst imprisoned. The problem which arises is whether they should be available upon the minimum term and, if so, at what rate.

3.12 When a prisoner has been made eligible for parole, the hope of gaining such parole as early as possible should itself operate as an incentive to good conduct. We have already said that in practice the Parole Board does not attach much weight to prison behaviour in determining whether a prisoner should be released upon parole, but that is largely because

11. Report of the Committee Appointed to Review the Parole of Prisoners Act (N.S.W.) 1979.

remissions are at the present time granted upon minimum terms and the failure to gain such remissions as a result of unsatisfactory behaviour will in itself delay the date upon which the prisoner will become eligible for parole. To further delay parole because of such behaviour would appear to be a second penalty exacted for the same fault. If however remissions were not granted upon minimum terms, this consideration would have less weight and conduct in prison might assume a greater significance in determining the date of release upon parole. On the other hand, if remissions were granted only upon the head sentence, the only benefit that a prisoner who was released upon parole would gain from them would be a reduction of his parole period or, if his parole was cancelled, a reduction of the sentence that still remained to be served. To a prisoner who was still serving a minimum period and who was hoping for parole, that benefit would appear to be remote and would add very little to the hope of early release as an incentive to good conduct. On the whole we consider that the immediate benefit which a prisoner serving a minimum period would readily appreciate of having his minimum term reduced by some remissions would be a material incentive to good behaviour during that minimum term and some provision for such remissions should be retained.

3.13 The present scale of remissions does however warrant careful examination. Under the present regulations, the maximum remissions which may be granted to a prisoner, both upon his sentence and upon his minimum term, amount to one-third of the periods pronounced by the Court. As they are granted in relation to conduct while in prison, a prisoner does not of course continue to earn them upon his sentence whilst he is released upon parole, and this is a matter which we will subsequently discuss. As to the scale of remissions on the sentence itself, however, we consider that while it is generous it is not excessive. It has over the years been progressively increased to its present size, probably in part because of the concern of hard pressed prison administrators who are anxious to restrict the growth of prison populations and because of the pressure exerted by critics who consider that in general the sentences imposed by Courts are longer than are necessary to safeguard the community. It is not however significantly out of line with the scale applied in a number of other jurisdictions; it has been in force in Victoria for a number of years; and as it is impossible to determine on objective grounds the scale which would both produce the optimum benefit in prisoner management and also not unduly prejudice community safety, we see no sound reason to alter it.

3.14 In relation to minimum terms however, the application of the same generous rate of remissions does create a problem. We have already referred (in para. 2.41) to the possibility of adverse public reaction when a prisoner, by the combined effect of parole and remissions, is released a considerable time before the length of the sentence which the Court has considered appropriate to the offence has elapsed. The length of that time will of course materially depend upon the margin which the Court itself has fixed between the minimum term and the sentence pronounced, but the greater the remissions allowed on the minimum term, the greater the discrepancy will appear to be between the sentence pronounced and the time the prisoner is required to be kept in custody. There is however at least one practical advantage which results from the same rate of remissions being applied to both sentence and minimum term. A detailed examination of the sentences imposed in Victoria during the period covered by the analysis in Schedule Three, showed that in more than one third of the cases, the minimum term fixed was at least two-thirds of the effective sentence imposed. The maximum remissions available on the effective sentence would reduce its length by one-third. Therefore in these cases the sentence imposed upon a prisoner who had been granted such remissions would itself have expired either at or before the time he had completed the service of the minimum term fixed by the Court. The grant of remissions upon the minimum term at the same rate as those available on the sentence prevents the occurrence of such anomalies.

3.15 Despite the danger which exists of an adverse public reaction to the apparent leniency extended to a prisoner by the combined effect of parole and remissions, we do not consider that, at the present time and under the present circumstances, the remissions available either upon the sentence or the minimum term should be reduced. The rulings of the Full Court as to the principles to be applied in the determination of the sentence and the practice of the Courts in Victoria to fix minimum terms which are generally much higher in relation to the sentences imposed than those which we have noted in other jurisdictions, both tend to limit the degree to which any such adverse public reaction is likely to assume significnt proportions. Moreover, the present scale of remissions upon both sentence and minimum term has existed for a number of years, and to remove or to reduce substantially a privilege which has existed for some time, in the absence of any new factor arising which would justify that course, would be bound to generate a high level of resentment and discontent among prisoners. Even if the privilege should not initially have been granted, we know of no new factor which could now be relied upon to justify its removal.

D. Supervision During Parole

3.16 By section 195(3) of the Act, a person who is released on parole by order of the Adult Parole Board shall during the period from his release until the expiration of his term of imprisonment (which is called the 'parole period') be under the supervision of a parole officer. In this section of the Report we deal with certain considerations relative to such supervision, insofar as they apply to the ordinary case where a Court under section 190 of the Act has made a prisoner eligible for release upon parole.

3.17 The supervision which the Act directs is obviously desirable, both to enable the Board to be informed of any conduct by the parolee which either breaches his parole or places it in jeopardy, and to assist the parolee by guidance and advice. The desirable intensity of such supervision will no doubt vary in different cases, particularly in the later stages of a long parole, but unless supervision is maintained to the degree desirable in each case, efficiency of the parole service will suffer and it will attract legitimate criticism. The maintenance of adequate supervision depends not only upon the quality of the parole officers but also upon the size of the case load which they are required to carry. That case load depends upon the number of parole officers available, and is greatly increased at the present time because parole officers are also required to act as probation officers under the Crimes Act.

3.18 The supervision exercised over probationers and, to a lesser degree, that exercised over parolees, has for some time been the subject of strong criticism in Victoria. We do not intend to embark upon an examination of the validity of such criticism, but there can be little doubt that insofar as it is justified, it largely results from a shortage of personnel in the parole and probation staff of the Department. The Government must of course itself decide, having regard to the number of competing claims which have to be met from the funds available, the extent to which additional finance can be allotted to any particular service. We will merely observe that an efficient probation and parole service, with its potentiality to reduce the substantial financial burden of providing custodial accommodation for offenders, is likely to be economically justifiable. There are however certain measures which we have considered to alleviate the shortage of staff and to assist in making a desirable degree of supervision practicable.

3.19 The first of these measures relates to the use of honorary probation and parole officers. Before the introduction of the Penal Reform Act 1956, the Courts made considerable use of honorary probation officers to supervise offenders who had been released upon common law bonds or otherwise. With the altered penal structure which was introduced by that Act and later legislation, a body of stipendiary probation and parole officers was established. Provision still existed in the legislation for the appointment by the

Governor in Council of honorary probation officers (see Crimes Act 1958, sec. 507(2)) but under the Community Welfare Services Act 1970, provision only exists for the appointment of stipendiary parole officers. (section 189(2)). A trained body of stipendiary officers is in general likely to be better equipped to deal with the problems of parole and probation, but if the State can not afford to employ sufficient officers to enable both services to function efficiently, an opportunity to augment the service by the use of honorary officers should not, in our opinion, be neglected. In general, it is probable that honorary officers would be more suitable to act as probation officers, particularly for young offenders, than they would be to act as parole officers, and a greater use of them for the former purpose would reduce the case load on stipendiary officers. If however a satisfactory relationship has been established between an offender and a probation officer, and the offender, after a subsequent conviction, is eventually to be released on parole, there is often an advantage to be gained by his former probation officer being appointed as his parole officer. In general therefore, probation officers should be eligible for appointment as parole officers.

3.20 *We therefore recommend:*

(a) *that the legislation be amended to enable honorary parole officers, as well as honorary probation officers, to be appointed by the Governor in Council; and*
(b) *that greater use be made by the Department of Community Welfare Services of both honorary probation officers and honorary parole officers.*

3.21 A further proposal considered related to the length of the period of supervision. In February 1981, the Director-General referred to the Committee a proposal for which support had been given at a meeting of Correctional Administrators and which was expressed as follows:- 'that a parole disposition could be discharged if the Parole Board believed that a parolee had made a satisfactory adjustment and that supervision or the legal requirements were no longer appropriate'. The Administrators were particularly concerned about parolees with very long parole periods, during which parole could constitute a substantial psychological burden and during the whole of which they could face quite serious consequences as the result of even a minor infringement.

3.22 The proposal raised two aspects i.e. (a) a relaxation of the supervisory requirements of the legislation or of the parole order made by the Board and (b) a defacto remission of the sentence from the time that the parole disposition was discharged.

3.23 The Committee considered that it is and should be the duty of the Parole Board to implement the sentence imposed by the Court and not to vary that sentence. If the sentence is to be varied, it should only be done by the Governor in Council in the exercise of the Royal prerogative of mercy. Even if a parolee appeared to have made a satisfactory adjustment, some value might still be derived, particularly from the point of view of deterrence, by his remaining upon parole during the remainder of his sentence. In the opinion of the Committee, the exercise of the Royal prerogative to remit the balance of his sentence should only be considered in very special circumstances e.g. upon the recommendation of the Parole Board when the Board is satisfied that the parolee has made a satisfactory adjustment and that his continuance on parole is likely to have substantial detrimental effects upon him either psychologicaly or in an unreasonable restriction of his future freedom of movement.

3.24 The question of the extent of supervision during a long period of parole is however a matter for the Parole Board to determine. The Director-General informed the Committee that the framework of parole supervision had already been revised because of the shortage of personnel in the Department, and that prisoners are now graded in terms of community risk, only those who were deemed to require close supervision being so supervised. The variation of supervisory requirements during a long period of parole is already within the power of the Board under section 197(1)(a) of the Act and as long as some measure of

supervision by a parole officer is required in the order of the Board, the provisions of section 195(3) of the Act are complied with. The Board is the appropriate body to determine the degree of supervision desirable from time to time in particular cases, and as it has the power to do so, no recommendation by us on this aspect of the proposal is necessary.

3.25 *We therefore recommend, in regard to the proposal raised by the Correctional Administrators for the discharge of parole, that:*

(a) *any variation in the sentence imposed by a Court should only be effected by the Governor in Council in the exercise of the Royal prerogative of mercy;* and

(b) *that the exercise of such prerogative to discharge a prisoner from parole and to remit the balance of his sentence should only be considered in very special circumstances, e.g. upon the recommendation of the Parole Board when the Board is satisfied that the parolee has made a satisfactory adjustment and that his continuance on parole is likely to have substantial detrimental effects upon him either psychologically or in an unreasonable restriction of his future freedom of movement.*

E. Credit for Time on Parole if Parole Cancelled

3.26 Under the present law, when parole is cancelled either automatically by conviction or by order of the Board, the parolee is liable to serve the whole of the unexpired portion of his sentence as at the date of his release upon parole. He does not however lose the benefit of any remissions of sentence which he may have gained while in prison prior to release or which he may gain after cancellation of his parole. It has been suggested that the law operates harshly on a prisoner, particularly if he has spent a considerable time on parole without proven misbehaviour, and that some credit should be given to him on his sentence in respect of the time spent on parole.

3.27 The danger of cancellation of parole with the consequent liability to serve the remainder of the sentence in gaol is the main deterrent which the system of parole provides against unsatisfactory conduct by a parolee. Any significant reduction in the effectiveness of such a deterrent would seriously diminish the value of the system as an acceptable penal measure. Some flexibility in the present law to allow for hard cases could however in our opinion be introduced without any serious reduction in deterrence. The Board of course at the present time has the power to release a prisoner again on parole at any time after a former parole has been cancelled (subject to any limitations resulting from any further sentence imposed upon him) and in determining the date when it will again release him, it will no doubt have regard to his conduct during the period he was on parole. Whenever he is reparoled however, he will still remain liable to serve the balance of the sentence which then remains unserved, and as far as the length of his sentence is concerned he will have gained no benefit from his good behaviour during any length of time whilst released upon his former parole. The only way in which he could be given any such benefit would be by some remission of the sentence.

3.28 It has been suggested that the whole of the time spent by a prisoner on parole between his release and the commission of any act which constituted a breach of his parole should count as part of the time served under the sentence. Where a prisoner successfully completes his parole without it having been cancelled by the Board and without committing an offence which results in automatic cancellation, the time spent on parole is regarded as time served under the sentence, by virtue of section 196 of the Act. It does not however follow that a prisoner who has failed to complete his parole satisfactorily should be similarly rewarded, and to do so would in our opinion considerably reduce the effectiveness of the present sanction against a breach of parole.

3.29 A majority of the Committee does not consider it is desirable to endeavour to prescribe a formula by which the credit to be received by the prisoner can be calculated. There would be little justification for any credit to be given to a parolee who had offended shortly after his parole commenced, and a parolee is not under the same degree of supervision as a prisoner is, which enables the conduct of the latter to be regularly assessed for the purpose of the grant of remissions. In our opinion, wherever parole is cancelled, the Parole Board should consider whether having regard to the time spent on parole and the parolee's conduct during that period, any reduction in the time yet to be served under the sentence is warranted. As we have already said in the previous section of this Report (para. 3.23) we do not consider that the Board itself should have the power to vary the sentence imposed by the Court. That is a matter the responsibility for which should rest with the Executive Council, but the Board could properly recommend to the Governor that some remission of the sentence should be granted.

3.30 *We therefore recommend that when parole is cancelled, either by the order of the Board or automatically by conviction, the Parole Board, having regard to the time spent on parole and the parolee's conduct during that period, should have power to recommend to the Governor in Council that the prisoner be granted some remission of his sentence in respect of that period.*

F. Parole During Life Sentence

3.31 Until the abolition of capital punishment in 1975, life sentences had played very little part in criminal administration in Victoria for very many years. The Executive Council had occasionally commuted death sentences to sentences of imprisonment for life but the Courts had had no power to impose such sentences. The Crimes (Capital Offences) Act 1975 however substituted for the penalty of death the mandatory penalty of imprisonment for the term of the offender's natural life in the case of a person convicted of treason or murder and since the Act came into force, many persons have been so sentenced. In *R* v. *SCHULTZ* (1976 VR 325) the Full Court held that the then provisions of the Social Welfare Act 1970 relating to the fixing of a minimum term did not apply to a sentence of imprisonment for the term of a person's natural life. The question of the release of a prisoner who is so sentenced therefore under the present law rests entirely upon executive action in the exercise of the Royal prerogative of mercy.

3.32 The prescription of a mandatory life sentence for the crimes of murder and treason and the consequent removal from the Court to the Executive of the responsibility to determine in each case the appropriate term of imprisonment which the offender should suffer is a matter which requires examination. At the present time, however, we are considering the life sentence in the context of parole, and as it is probable that, even if there is some change eventually in the present law and the life sentence is no longer made mandatory for the crimes of murder and treason, it will remain as the maximum sentence for these crimes, it is appropriate that we should at this stage express our views upon the application of the parole system to it.

3.33 When the prescribed penalty for murder and treason was death, the exercise of the prerogative of mercy was accompanied by a power of the Executive to substitute a sentence of imprisonment for the sentence of death. Section 496 of the Crimes Act authorised the Governor, in all cases in which he was authorised on behalf of Her Majesty to extend mercy to any offender under sentence of death, to do so upon condition that such offender be imprisoned for such term as he thought fit and he might also, if he thought fit, fix a minimum term during which the offender should not be eligible to be released on parole. Section 497 provided for the conditions so imposed to be converted to the equivalent of a sentence of the Court. In such cases unless the death sentence was commuted to a sentence

of life imprisonment, there was no difficulty created in the application of the parole system to the substituted sentence. It had been converted to the equivalent of a sentence of the Court; the prisoner thereafter was sentenced to a fixed term of imprisonment, and, if a minimum term had been fixed, he was eligible for parole after he had served the minimum term, in the same way as any other prisoner so sentenced.

3.34 Both section 496 and section 497 of the Crimes Act were however repealed when the Act was amended to substitute imprisonment for life for the penalty of death, and no comparable power to convert a sentence of imprisonment for life into a sentence of imprisonment for a term of years was enacted. The Royal prerogative of mercy is not of course affected (see section 505 of the Crimes Act) and as we have already said the prisoner sentenced to life imprisonment may be released in the exercise of such prerogative. If he is so released however he still remains subject to the sentence of imprisonment for life which has been pronounced upon him. It is only by virtue of that sentence that any authority would exist for him to be brought back into and held in custody should it be considered that such action was desirable, and he would remain subject to that sentence for the rest of his natural life, unless at some stage the balance of the sentence then remaining were remitted by executive action.

3.35 By section 500 of the Crimes Act, the Governor in all cases in which he is authorised on behalf of Her Majesty to extend mercy to any person under sentence of imprisonment may do so by directing that the prisoner be released—

(a) on condition of his entering into a recognizance before a justice as thereinafter mentioned; or
(b) on parole pursuant and subject to the provisions of the Community Welfare Services Act 1970.

3.36 In terms, section 500 of the Crimes Act applies to any person under sentence of imprisonment and therefore would apply to any person under sentence of imprisonment for life. To adopt the first procedure referred to in the section, i.e. to release him upon a recognizance entered into before a justice, would appear to be appropriate only to cases where the time remaining to be served under the sentence was comparatively short, and would be quite inappropriate for a prisoner under a life sentence, particularly in view of the powers which are conferred by later sections upon Magistrates' Courts in the case of a prisoner who was so released. Those powers include a power to direct that a person who has failed to observe any of the conditions of his recognizance be committed to prison for the unexpired portion of his original term of imprisonment. The section does however enable the prisoner to be released upon parole pursuant and subject to the provisions of the Community Welfare Services Act and presumably it would be under this section that at the present time the parole system would be applied to a prisoner serving a life sentence. Although the legislation so empowers the Executive in the exercise of the Royal prerogative of mercy to release a life prisoner upon parole, there is no legislative provision which requires that the Executive should give consideration to this question or which regulates the procedure to be adopted when such consideration is to be given. A procedure to cope with this position has however in fact been approved by executive decision and applies at the present time. Under section 188(3)(b) of the Community Welfare Services Act 1970 the Minister has the power to require the Adult Parole Board to furnish a report and recommendation with respect to any prisoner for the time being undergoing a sentence of imprisonment. The approved procedure relies upon this power to initiate action by the Parole Board. The procedure is as follows:

(a) The Adult Parole Board is to undertake an initial review of each case within twelve months of the imposition of the sentence. This review is to be made in consultation with, or on the basis of reports obtained from such persons as may be necessary.
(b) The purpose of the initial review is to enable the Board to fix a time when it will again review the case, and reviews thereafter take place at intervals of not longer than five years.

(c) On the occasion of each review, the Board will furnish a report and recommendation to the Minister, who may in his discretion, require the Board to furnish an additional report and recommendation at any time.
(d) Assuming the Board eventually recommends the release of the prisoner and the Minister for Community Welfare Services concurs in the recommendation, the Attorney- General may recommend to the Governor that, by the exercise of the Royal prerogative, the prisoner be released upon such terms and conditions as may be appropriate.

3.37 In our opinion the present legislative and executive provision for the release upon parole of prisoners sentenced to life imprisonment is unsatisfactory in several respects—

(a) In the first place, there is no adequate provision to enable the opinion of the Court to be obtained upon the question of the release of the prisoner. In our opinion, this is a serious omission in the case of a crime the sentence for which is mandatory. Although both murder and treason are crimes which are so serious that a sentence of life imprisonment may be warranted, they are crimes in which the degree of moral turpitude involved may vary substantially in different cases; murder, for example, may range from deliberate cold blooded killing in pursuit of entirely selfish ends to a killing which results from compassion to the victim. The most obvious independent authority who has had the opportunity of assessing both the aggravating and mitigating circumstances in a particular case is the trial judge. Normally in a criminal case where the judge has the power to determine the appropriate sentence, his assessment of those circumstances is reflected by the sentence imposed and the minimum term (if any) fixed by him, but where the sentence is mandatory and no minimum term can be fixed, that assessment is not so reflected. In these circumstances the desirability of consultation with the Court before a decision as important as that of the release of a prisoner who has been sentenced to life imprisonment by Parliamentary direction is manifest.
(b) A second unsatisfactory feature of the present position, arising from the fact that no minimum term can be fixed in relation to a life sentence, is that the ordinary remissions of sentence which can be granted to a prisoner in respect of his conduct while imprisoned cannot be granted to a prisoner serving a life sentence. They obviously cannot be granted upon the sentence itself, as by its very nature, its length is indeterminate, and in the absence of a specified minimum term there is no part of the sentence upon which they could operate.
(c) A third unsatisfactory feature of the present position is, as we have pointed out above, that a life sentence prisoner who is released upon parole remains subject to the life sentence for the rest of his natural life, irrespective of whatever mitigating circumstances may have been involved in the crime that he committed, and there is no provision to enable the period of his parole to be limited to a specified term.

3.38 In relation to the first criticism of the present position to which we have adverted, it is interesting to note the provision which has been made in England to enable the opinion of the Court upon the release of the prisoner to be obtained. When the death penalty for murder was replaced in England by the penalty of life imprisonment by the Murder (Abolition of Death Penalty) Act of 1965, the Act provided that, on sentencing a person convicted of murder to life imprisonment, the Court might at the same time declare the period which it recommended to the Secretary of State as the minimum period which should elapse before the offender was released on license (section 1(2)). The same Act by section 2 required the Home Secretary to consult both the Lord Chief Justice and the trial judge (if available) before authorising release on license. When the 1965 Act was passed the Parole Board did not exist, but it is stated by the Advisory Council on the Penal System in its 1978 Report[12] that the Home Secretary can release a life sentence prisoner only if he is

12. Home Office: 'Sentences of Imprisonment', Report of the Advisory Council on the Penal System, February 1978, para. 227.

recommended to do so by the Parole Board (though he is not bound to accept their recommendation). Any recommendation which the Court may make under section 1(2) is optional and the recommendation has no binding effect upon the Executive. In its Report, the Advisory Council stated that the power of the Court to declare a recommended minimum period before release had only been exercised in 8% of the total number of convictions for murder.[13] In view of the statutory provision for consultation with the judiciary at the time of release and the inconsistency in the use of the power to make a declaration, at the time of sentence, of the recommended minimum period before release, the Advisory Council recommended the repeal of section 1(2) of the Act.

3.39 It is unlikely nowadays that any knowledgeable person would contemplate that a prisoner sentenced to life imprisonment, unless he died unexpectedly, would in fact spend the remainder of his life in prison. It is even more unlikely that he would in fact do so.[14] There is however in Victoria no statutory system which provides for a time to be fixed when his release could be considered; there is no provision either statutory or administrative which requires the views of the sentencing Court to be considered before such release is authorised; and there is no statutory procedure to provide in appropriate cases that a sentence of life imprisonment could be converted into a sentence for a fixed term of years to enable a prisoner in such cases to be freed from the liability of recall to prison during the whole of the remainder of his life. We recognise that the Royal prerogative of mercy should be freely exerciseable, and indeed under a system where a sentence of life imprisonment is mandatory, whatever mitigating circumstances may exist in a particular case, the opportunity for its exercise is essential if a just and humane result is to be achieved in all cases. But we consider that greater public confidence will be felt in a system of justice in which the Court is given a greater opportunity to exercise its traditional function of determining the punishment appropriate for a particular offence than exists at the present time. Under the system of parole, the implementation of part of that traditional function is entrusted to the Parole Board. In our opinion, the procedure in the case of life sentences should approximate more closely to the procedure provided generally for parole in other criminal cases and while the very nature of a sentence for life imprisonment may involve a greater recourse to the Royal prerogative than other sentences involve, that recourse should be limited to cases where the ordinary procedures cannot be satisfactorily adopted to meet the problems which the life sentence raises.

3.40 We consider in the first place that in all cases where a sentence of life imprisonment is pronounced, the Court should have the power to fix a minimum term during which the offender should not be eligible to be released upon parole. Such a recommendation was made by both the Nagle Commission in New South Wales and the Mitchell Committee in South Australia. The fixing of a minimum term provides a starting point at which, in the normal course of sentencing procedure, consideration of whether the prisoner should be released on parole can commence. In fixing such a term, the Court which has heard all the evidence in the particular case can make and indicate its own assessment of the relevance of any mitigating or aggravating factors in the case. We do not suggest the adoption of the English provision which enables the Court to recommend a minimum period to the Executive for two reasons; firstly because such a recommendation has no binding effect in law and we intend the fixing by the Court of a minimum period to have the same legal effect in regard to parole upon a life sentence as it would have in regard to any other sentence imposed by the Court; and secondly, because the fixing of such a minimum period is

13. ibid. para. 257.
14. A very detailed research of the time actually served by life sentence prisoners in Australia was published in July 1975 by the Australian Institute of Criminology, a substantially abridged version of which was published in the Aust. & N.Z. Journal of Criminology (June 1976) pp 77-87. The research showed that although there was a wide variation between the longest and shortest periods spent in custody by different prisoners, the average length of detention of life sentence male prisoners was thirteen years.

intended to facilitate a procedure for parole which can be implemented without the Executive necessarily taking any step to exercise the Royal prerogative of mercy. We do not however consider that the Court should be bound to fix such a minimum term in all cases of life imprisonment. Under the proviso contained in section 190(1) of the Act, the Court is not now required to fix a minimum term in the case of any other sentence if upon certain grounds it considers the fixing of a minimum term is inappropriate. We have already recommended that these grounds should be extended (see para. 3.5 supra) and whether or not that recommendation is accepted in regard to sentences other than those of life imprisonment, it is clear that in the case of crimes which are serious enough to incur the liability to a life sentence, there may be circumstances in a particular case which in the opinion of the Court may render inappropriate the fixing of a minimum term at the date of sentencing. One such circumstance may well be the inability of the Court at the time of sentencing to predict with any degree of confidence whether and if so when the release of the prisoner would not constitute an unacceptable danger to the community. The fear has sometimes been expressed that if the Court were given the power to fix minimum terms in cases of murder and treason, the term so fixed may sometimes be far longer or far shorter than the circumstances would eventually warrant. Insofar as any such error was apparent at the time of sentence, the ordinary procedure of appeal, by either the prisoner or the Attorney-General, would of course be available to correct it. Insofar as subsequent events or knowledge may show that an error was made, a minimum term which was too long would not prevent the exercise of the Royal prerogative to release the prisoner on parole under section 500 of the Crimes Act, and the time of release of the prisoner could be determined in precisely the same way as it is now determined; and a minimum term which was too short would not automatically result in the release of the prisoner when the term expired, as the Parole Board would still have to decide whether parole should be granted. In making that decision the Board would be able to take into account any such subsequent events or knowledge. One further consequence of a minimum term being fixed by the Court would be that the prisoner would be eligible for the normal remissions available upon minimum terms as an inducement to and reward for satisfactory behaviour during his imprisonment.

3.41 Where the Court fixes a minimum term, we consider that, as in the case of other sentences, the Parole Board should have the power to release the prisoner upon parole on or after the expiration of the minimum term, and that the normal provisions as to parole would then operate. Before deciding to release the prisoner, the Board would of course consider the extent of any danger to the community which his release would involve. Where the Court has not fixed a minimum term, the release of the prisoner upon parole would depend, as at the present time, upon a direction by the Governor in Council (see section 500 of the Crimes Act, para. 3.35 above). In such cases the procedure which has already been approved by executive decision, modified to incorporate consultation with the sentencing Court in a manner similar to that laid down in England, should in our opinion be adopted. Such consultation is in our opinion highly desirable in cases where the view of the Court as to the minimum term to be served in custody by the particular prisoner has not been expressed by the fixing of such a minimum term by the Court. We do not however consider it necessary that, as in England, the consultation should be with both the trial judge and the Chief Justice. Its purpose will in our opinion be adequately achieved if it is provided that the consultation should be with the trial judge, if available, but, if he is not available, with the Chief Justice. Such a procedure does not purport to limit the power to exercise the Royal prerogative, as whatever the nature of the recommendation or advice which may be received from either the sentencing Court or the Parole Board under it, the Executive would still be free to exercise such prerogative. It would however ensure that, in cases which had not already been provided for by the fixing of a minimum term by the Court, there would be a periodic review of the question of parole and that consideration had been given to all relevant factors before a decision was made.

3.42 The problem would still remain that a prisoner released upon parole either by the order of the Parole Board or by the direction of the Governor would be subject to the life sentence imposed and would be liable to have his parole cancelled at any time during the rest of his natural life. That liability would remain, whatever mitigating circumstances may have existed in the crime he committed, and however minor any breach of his parole may be. It could only be removed by a power to alter the sentence itself. We have already referred to the power which formerly existed under the Crimes Act for the Governor in Council to substitute a sentence of imprisonment for a sentence of death (see para's. 3.33 and 3.34 above). Although under the Royal prerogative, the Executive could doubtless remit a sentence imposed by the Court, it is doubtful whether the Executive, without legislative authority, could impose a sentence of imprisonment upon a prisoner whose sentence had been so remitted (see R.v. SCHULTZ (1976 V.R. 325). At least such doubt should be removed by appropriate legislation. Where a life sentence prisoner has been considered suitable to be released upon parole, either by the Court and the Parole Board in the case where a minimum term has been fixed or by the Executive, upon the recommendation of the Parole Board and after consultation with the sentencing Court, in the case where such a minimum term was not fixed, there are bound to be cases where it will be undesirable that he should be required to remain upon such parole for an indeterminate and possibly very long period. We consider therefore that legislation similar in effect to that which formerly existed in regard to the death sentence should be enacted. Such legislation should provide that whenever a person under a sentence of life imprisonment was directed to be released upon parole, either by the Governor under section 500 of the Crimes Act or by the Adult Parole Board under section 195 of the Community Welfare Services Act 1970, the Governor might direct that a sentence of imprisonment for a determinate period should be substituted for the life sentence imposed, and the parole period in respect of the prisoner should be calculated as if such substituted sentence had originally been imposed upon the prisoner. It is desirable that the length of such substituted sentence should also be the subject of a recommendation by the Parole Board and of consultation with the sentencing Court.

3.43 *We therefore recommend:*

(1) *that when an offender is sentenced to imprisonment for life, the Court be empowered but not required to fix a minimum term during which the offender shall not be eligible to be released on parole;*
(2) *that when the Court has fixed such a minimum term, the Adult Parole Board be empowered under section 195 of the Act to release the prisoner on parole after the minimum term has elapsed;*
(3) *that when the Court has not fixed such a minimum term, the Minister for Community Welfare Services shall within twelve months of the imposition of the sentence require the Adult Parole Board under section 188(3)(b) of the Act to furnish a report and recommendation with respect to the prisoner, and thereafter to furnish further reports and recommendations with respect to him at intervals which the Board may from time to time determine but which shall not be greater than five-yearly;*
(4) *that before releasing the prisoner on parole under sub- paragraph (2) above, or recommending in any report furnished under sub-paragraph (3) that he be released upon parole, the Adult Parole Board shall consider, in addition to any other relevant matters, the extent of any danger to the community or to himself which the release of the prisoner on parole may be likely to involve;*
(5) *that whenever the Adult Parole Board either determines to release the prisoner on parole under sub-paragraph (2) or recommends in any report furnished under sub-paragraph (3) that he be released upon parole, it shall report to the Minister its opinion as to the desirable length of time during which such parole, if not cancelled, should continue;*

(6) *that before any prisoner who has been sentenced to life imprisonment is released upon parole under section 500 of the Crimes Act 1958, the trial judge, or if he is not available the Chief Justice, shall be consulted both upon the question of such release and upon the question of the desirable length of time during which such parole, if not cancelled, should continue;*
(7) *that legislation be enacted to authorise the Governor in Council, in all cases where a prisoner who has been sentenced to life imprisonment is released upon parole, to substitute for the sentence of life imprisonment, a sentence of imprisonment for a determinate period to enable the length of the parole period to be determined.*

3.44 It is important to point out that our recommendations relate to the application of parole to the life sentence, whenever the latter sentence is imposed. We have necessarily dealt with the question of parole on the basis of the present law under which a life sentence is the mandatory sentence for murder and treason, but the fact that we have so dealt with it is not to be misconstrued as an approval by us of that law. Whether or not the life sentence should continue to be mandatory is a question which raises important aspects which go far beyond the question of the proper provision for parole under such a sentence and which merit separate consideration. The recent issue by the Victorian Law Reform Commissioner of Report number 12 upon 'Provocation and Diminished Responsibility as Defences to Murder' and the recommendation which is made in that report that life imprisonment should be the maximum penalty for manslaughter raises some of those aspects. Although the present mandatory nature of the life sentence in our opinion adds force to the proposals which we have made for parole, those proposals are not dependent upon the life sentence continuing to be mandatory and it would be unfortunate if their implementation was delayed until a decision was eventually made as to whether it should so continue. We have consequently not embarked upon a discussion of this important question at this stage, and consider that our proposals should be put into immediate effect.

3.45 Some legislative provision will clearly be necessary to give effect to some of our proposals, although other aspects of the recommended procedure could be implemented under the present law. We have not endeavoured to frame any necessary statutory amendments as, if our proposals are approved, it is obviously more appropriate that the task should be undertaken by Parliamentary Counsel. *We consider however that the procedure in regard to parole upon life sentences might be more readily understood if, insofar as it is practicable to do so without undue repetition, it were set out in a set of provisions specifically designed for that purpose. We recommend accordingly.*

G. Guidelines for Parole

3.46 At the present time under the law of Victoria, the granting of parole to any offender sentenced to a term of imprisonment of not less than twelve months rests upon discretionary decisions. In the first place, the sentencing Court decides whether the offender will be eligible for parole and, if so, the length of the minimum term to be first served. The only statutory requirements which restrict or guide the discretion of the Court are that any minimum term fixed shall be at least six months less than the term of the sentence and that, if the term of the sentence is not less than two years, the Court shall fix a minimum term unless it considers that the nature of the offence and the antecedents of the offender render the fixing of such a term inappropriate. In the second place, when the Court has decided that an offender will be eligible for parole, the Adult Parole Board may in its discretion direct that he be released on parole at a time which it specifies and may in its discretion cancel the parole. Its jurisdiction to release him is of course, limited to the period during which he is eligible for parole, i.e., after the minimum term fixed by the Court has expired.

3.47 It has been frequently proposed that what are called "guidelines" should be prescribed to govern or to influence the exercise of these discretionary powers. The word "guidelines" requires

some definition. It is not literally apt to describe a rule which in fact takes away a discretion which it purports to guide. We are not however engaged upon an exercise in semantics in any pedantic sense, and we use it in the sense of any principle or rule or standard which, whether mandatory or permissive, should or may generally be applied in the making of any decision relating to parole. In this sense, guidelines may be established in several ways. They may be prescribed in actual terms by statute or by a body which is authorised by statute to prescribe them. They may be prescribed by the binding force of judicial decisions. If they are so prescribed they have the force of law and must be observed by the tribunal to which they are directed. But even a guideline which has the force of law may be expressed in terms which reserve to the tribunal a power to depart from the principle stated in certain circumstances. On the other hand guidelines may be promulgated by the tribunal itself, in which case they can be changed from time to time and do not in themselves bind the tribunal to apply them in all cases.

3.48 A guideline which has the force of law is of course an authoritative direction as to the manner in which an otherwise discretionary power shall be exercised. But all guidelines, whether they have the force of law or not, appear to have two possible advantages. Firstly, they may tend to produce consistency in discretionary decisions. Secondly, they inform those who will be affected by the discretionary decision of the principles or some of the principles which will or are likely to be applied in the making of that decision. On the other hand, the drafting of satisfactory guidelines is a task of considerable difficulty. The question of whether or not a particular offender should be released upon parole is one which, if it is to be both fair to the offender and consistent with a due regard for the interests of the community, requires a consideration of a number of factors and an evaluation of the weight to be attached to each of such factors in the particular case. An inflexible guideline is therefore seldom a satisfactory one, and yet in an endeavour to preserve a proper degree of flexibility, the guideline may need to be expressed in such terms that the aim of producing consistency in decision is no more nearly achieved than if no such guideline was laid down. Guidelines can be of value by indicating factors which the tribunal should consider in reaching its decisions but it is seldom practicable for them to be so framed as to identify exhaustively every factor which is relevant. Any value that they may have in promoting consistency in decision or in conveying information, which is likely to be helpful to those who are subject to such decisions, will be reduced in proportion to the degree to which the existence of any stated factor and the weight to be attributed to it depend upon a subjective determination by the tribunal.

3.49 As to the decision of the Court in determining whether the offender shall be eligible for parole and, if so, the minimum term first to be served by him, we have already referred (in paragraph 3.46 above) to the existing statutory requirements which restrict or guide the exercise of the Court's discretionary power. We have already recommended (in paragraph 3.5) an amendment to the Act to clarify and extend the statement of factors the Court should consider in determining whether an offender should be eligible for parole. We have also (in paragraphs 3.6 to 3.8) expressed our opinion that the provision by statute of a standard non-parole period which would either remove or limit the discretion of the Court to determine the length of a minimum term is undesirable. We do not consider that the prescription of any further guidelines for the exercise of these discretionary powers by the Court would improve the administration of the criminal law in this State. As we have pointed out, the decision of the Court is subject to appeal by either the offender or the Crown; in the case of an offender convicted by the Supreme or County Court, under sections 567 or 567A of the Crimes Act 1958, and in the case of an offender convicted by a Magistrates' Court, under sections 73 or 74 of the Magistrates' Court Act 1971. As to eligibility for parole, the onus is already placed upon the Court to make the offender so eligible, if the sentence is for two years or more, unless it considers that parole is inappropriate. As to the length of the minimum term, the proper term will depend upon so many diverse circumstances that in our view it would be impracticable to frame any guideline or set of guidelines which would adequately encompass all the considerations which would be relevant to its determination. To select any one such consideration and to promulgate a guideline concerning it would inevitably tend to suggest that it should carry more weight than other considerations which have not been spelt out. That risk may sometimes be warranted, particularly if in a certain jurisdiction experience had shown a tendency by Courts to undervalue the importance of the particular

consideration. For example, in some penal codes, a criterion is laid down that an offender should not be released upon parole at a time which would depreciate the seriousness of his crime or promote disrespect for law. We have already said that statistics do not suggest that Courts in Victoria are developing any dangerous tendencies in this regard which a statutory guideline may correct. In these circumstances it is in our opinion preferable to rely upon the existence of a comprehensive appellate jurisdiction to develop consistency in decisions rather than to endeavour to achieve the same result by prescribing guidelines which are necessarily flexible and therefore imprecise.

3.50 On the other hand, decisions of the Parole Board are not subject to the regulatory influence of an appellate procedure which might tend to promote consistency. They are however decisions which are not made by a multiplicity of authorities but which are made by the one Board, the members of which change infrequently and who deal with a large number of cases in each year. It is inevitable that a small body of responsible persons who deal with many cases over long periods of time will develop criteria to assist them in arriving at their decisions, and the decisions of such a Board are far more likely to be consistent than the decisions of a number of diverse tribunals. In the absence of any credible evidence of inconsistency in the decisions of the Board, we do not consider that the aim of consistency requires the prescription of guidelines imposed upon it to achieve that result. But in one respect the promulgation of the criteria which the Board applies in arriving at its decisions would have significant value. It is frequently asserted that, under the present procedure, an offender is unaware of what those criteria are, and, whether or not this ignorance is as widespread as it is asserted to be, it is desirable that steps should be taken to meet the criticism. We have already referred to the duty of the full time member of the Board to explain its decisions to those who are affected by them, but such an explanation after the decision has been made is no help to the offender who is awaiting the decision. We have also referred to the comprehensive booklet called "On Parole" which is designed to inform offenders of the incidents of the parole system, but we have also referred to the present deficiency in its availability to offenders. In any event, a concise statement of the criteria which the Board will apply is likely to be much more readily comprehended by an offender than what he may deduce from a study of the booklet, informative though it is.

3.51 The drafting of such criteria is in our opinion a task which the Board itself is the appropriate body to undertake. No other body of persons will have had the experience which the Board has had in identifying the problems which parole may pose or in determining criteria which are best designed to meet those problems and which it is practicable to apply. The publication of such criteria will not only inform offenders of the principles by which their cases will be judged, but will also enable such principles to be subject to public scrutiny. If any of them do not accord with the principles which the Legislature considers should operate, appropriate legislative action can be taken.

3.52 (a) *Accordingly, other than the amendment to section 190 of the Act which we have recommended above in paragraph 3.5, we do not recommend any additional legislative prescription of criteria to be applied by a Court in determining whether an offender should be eligible for parole and, if so, the length of the minimum term of imprisonment to be served by him.*

(b) *We recommend that the Adult Parole Board should draft and publish a concise and readily understandable statement of the criteria which it will apply in determining whether an eligible offender will be released upon parole, and if so, when.*

3.53 We can se no advantage to be gained by the publishing of guidelines relating to a decision of the Board as to whether or not parole should be cancelled. The parolee will already have been warned, either by the Board or the full time member, of the obligations which attach to him whilst on parole, and any further information will be of little practical value. We accordingly make no recommendation in relation to such decisions of the Board.

H. Automatic Parole on Short Sentences

3.54 In the Home Office review of parole in England and Wales (May 1981) to which we have already referred (see para. 2.58 above) a suggestion for automatic parole for prisoners serving sentences from six months to three years in length is discussed. The Director-General of Community Welfare Services requested the Committee to consider the same possibility in Victoria for prisoners similarly sentenced. Any proposal for automatic release upon parole must of course involve a means of determining the time when a prisoner would be entitled to such release. In a proposal which is intended to apply to sentences over a range of six months to three years, the obvious means of fixing a date of entitlement to automatic release is by fixing a proportion of the sentence which the prisoner must first serve in prison, with possibly a fixed minimum term which must also be served. The proposal which the Committee was asked to consider was that, unless the prisoner had had a prior parole history, in which case consideration by the Parole Board would be necessary, prisoners sentenced to such terms of imprisonment would be automatically released on parole after serving two thirds of their sentences less any remissions of sentence which they had been granted.

3.55 The English suggestion was of course made in the light of the existing statutory provisions for parole in that country and in considering the application of a similar system in Victoria, it is important to bear in mind the differences between the parole systems in each country. Unlike the position in Victoria, the Court in England does not determine eligibility for parole or fix minimum terms which must first be served. Under the Criminal Justice Act 1967, a prisoner serving a determinate sentence may on the recommendation of the Parole Board be released after having completed not less than one-third of his sentence or twelve months, whichever expires the later. There is therefore a minimum term which is fixed by statute and thereafter his release is dependant upon a recommendation of the Parole Board. As in Victoria remissions of up to one-third of the sentence may be allowed for good behaviour. In view of these allowable remissions, the effect of the minimum requirement that at least twelve months must be served before release is that eligibility for parole only operates for those serving terms of more than eighteen months imprisonment. Indeed, to provide for any meaningful period on parole, the sentence would need to be considerably more than eighteen months. The Home Office review expressed the opinion that there were substantial attractions in extending the central idea of parole to a greater proportion of the prison population. So long however as parole depended upon a recommendation of the Parole Board which was based upon an assessment of the prisoner's suitability for parole, the review set out reasons which is said seemed valid for the retention of the rule for minimum imprisonment for 12 months. It was in these circumstances that it raised for discussion the question of automatic release on parole after service of one-third of the sentence in the case of sentences from 6 months to 3 years, rather than release on the recommendation of the Board after an assessment of the prisoners suitability.

3.56 In Victoria the law does not require that a prisoner should spend 12 months in custody before being released upon parole. The initial assessment of whether a prisoner should be made eligible for parole is made by the Court at the time of sentence. The subsequent assessment by the Parole Board as to whether he is ready for release at the time when the minimum term fixed by the Court has expired does not require a period of twelve months in custody to enable an informed decision to be made. The main factor therefore which in England has raised in the case of shorter sentences the question of automatic release rather than release dependent upon a favourable decision as to suitability does not operate in Victoria. Apart moreover from its effect upon the question of whether release upon parole should be automatic or discretionary in the case of the shorter sentences, we have already referred to the restrictive effect in England, of the minimum requirement of twelve months custody upon the length of the short sentence for which it is practicable to provide parole. This restriction is greater than that which the legislation imposes upon short sentences for which parole can be provided in Victoria. Whereas in England to provide for any meaningful period on parole, the sentence would need to be considerably more than eighteen months, a prisoner in Victoria can be made eligible for parole on any sentence of twelve months or more and even on the shortest of those sentences a meaningful period on parole can be provided. There is another much less obvious consequence of difference between the legislation in England and Victoria which results in the

former being more restrictive than the latter in the sentences upon which parole can be provided. In England in calculating the minimum requirement of twelve months custody, time in custody before sentence does not count. In Victoria, provision is made whereby time spent in custody before sentence may count as part of the sentence. In comparing therefore the sentences upon which in the two countries it would be practicable to release a prisoner on parole, allowance must be made for these respective provisions. These several differences between the legislation of the two countries do not of course mean that a proposal similar to that which is being discussed in England would not be of value in Victoria but they do indicate that certain factors which might favour the adoption of the proposal in England either do not exist or have much less force in Victoria.

3.57 Any proposal to substitute automatic release upon parole for prisoners serving sentences of up to 3 years in length in place of the system which has operated in Victoria since 1957 would require very critical examination. The Victorian system involves the dual safeguards of consideration, firstly by the Court and secondly by the Parole Board, before a prisoner is released upon parole, and it is of interest to observe that in para. 52 of the Home Office review to which we have referred, it is stated "It is the selectivity of the present system which has enabled so many prisoners to be released early without unacceptable consequences in terms of public safety". One could add to that statement that in Victoria it is probable that the control which is exercised over release upon parole by the Court and the Parole Board has materially contributed to the public acceptance of the system and it would be a pity if that public acceptance was jeopardised.

3.58 It has been suggested in favour of the proposal, both here and in England, that its adoption would reduce the prison population. Any scheme which, arbitrally or otherwise, reduces the time a prisoner is required to spend in prison under a sentence imposed by a Court will of course in the short term reduce the prison population and thus tend to alleviate a recurrent problem which prison administrators face. We have in earlier sections of this report already stressed the importance of this consideration in relation to parole generally. But the cost to the State is only one factor, albeit an important one, among the many which are relevant to the question of whether a modification of an existing sentencing alternative should be recommended.

3.59 In the opinion of the Committee, *a great deal of research would need to be undertaken into the ramifications of a proposal to make such a fundamental change in the Victorian system of parole before a recommendation on the matter could be properly considered.*

4. Youth Parole and Remissions

A. Parole

4.1 Adult parole relates to offenders who have been sentenced to imprisonment in a gaol. In the case however of most young offenders, whose offence is considered serious enough to warrant a custodial order, Courts in Victoria are empowered to order a form of custody other than imprisonment, namely by detention in a youth training centre. Provision is made by the Community Welfare Services Act 1970 for parole for this class of offender and we refer to such parole as "youth parole". By section 169, the Youth Parole Board which is constituted under the Act may by order in writing direct that a young person detained in a youth training centre be released upon parole.

4.2 The expression "young person" is defined to mean a person of or over the age of 15 years and under the age of 21 (section 3), but for the purposes of Part VIII of the Act (which deals with parole) the definition is extended to include any person over the age of 21 years who is undergoing a sentence of detention in a youth training centre or released on youth parole (section 153). A young person, within the age limits so defined, may be detained in a youth training centre by order of a Court, or in certain cases by direction of the Minister. A Children's Court may so order in some cases (Children's

Court Act 1973, section 26(1)(f)) and, although our Terms of Reference are limited to the examination of sentencing alternatives available to Courts in respect of persons not subject to the jurisdiction of Children's Courts, the facts that the same alternative is available to both Children's and other Courts and that in whatever Court it is directed youth parole is provided for under the same conditions are relevant to a consideration as to whether there should be any and, if so, what change in these conditions. In the case of the adult Courts, jurisdiction to order detention of a young person in a youth training centre is given by the Crimes Act 1958, section 476A and the Magistrates' Courts Act 1971, sec. 71. Apart from detention by order of a Court, power is given to the Minister, upon the recommendation of the Adult Parole Board or the Director-General, to direct that a young person imprisoned in a prison be transferred to a youth training centre (Community Welfare Services Act 1970, sec. 167). Upon such transfer, the sentence of imprisonment becomes for all purposes a sentence of detention in a youth training centre.

4.3 There is a significant difference between the statutory provisions relating respectively to the grant of adult and youth parole, in regard to the extent of the control which the Court can exercise over such grant. In the case of adult parole, it can only be granted by the Adult Parole Board if the Court has made the prisoner eligible therefor by fixing a minimum term and the Board cannot release the prisoner until the minimum term fixed by the Court has been served. In the case of youth parole, any young person detained in a youth training centre may under the statute be released upon parole by the Youth Parole Board at any time, whether he is so detained by order of a Court or following a transfer from prison by Ministerial order. His eligibility for parole is established by the statute. If he is detained by order of the Court, the Court has no power to fix a minimum term which he must serve before release. If he is detained following a transfer by the Minister, any minimum term which a Court may have fixed in relation to his prison sentence ceases to have any effect as far as his release upon parole is concerned (section 168).

4.4 This apparently lesser degree of control by the Court over the grant of youth parole must however be considered in the light of other considerations which to a large extent counterbalance it or reduce its significance. In the first place, (restricting our attention to the adult Courts with which we are concerned in this Report), the power of the Court to direct that a young offender be detained in a youth training centre can only be exercised in cases where the Court was empowered to imprison the offender for the offence he has committed. The Court therefore has the choice of the remedy it will adopt in each case. It is reasonable to assume that in cases where it has chosen the alternative of detention in a youth training centre, the Court has considered that the offender is one who should be eligible for parole. If on the other hand it chooses imprisonment, it has the same measure of control over the grant of parole as it would have had in the case of any adult offender. Indeed, in one respect the existence of the alternative remedy of detention in a youth training centre gives the Court a greater measure of control over the grant of parole than exists in the case of adult offenders. Adult parole cannot be granted to a prisoner whose sentence is less than 12 months, but if a Court chooses to direct that a young person be detained in a youth training centre in lieu of imposing a sentence of imprisonment, its order makes the offender eligible for parole at any time and irrespective of the length of the detention directed. In the second place, although the Court has no power to fix a minimum term, the overall length of sentences of detention which a young person may be ordered to serve is limited in the case of Magistrates' Courts to two years and in the case of other Courts to three years. If within this lower range of sentences, the Court considered that in a particular case the offender should be required to serve a minimum period before being released upon parole and it was not prepared to leave the determination of that minimum period to the Parole Board, it would of course have to impose a sentence of imprisonment. In considering sentences in this range, however, it is clear that any difference between the respective views of the Court and the Parole Board as to the appropriate length of such minimum period is unlikely to assume the same degree of significance as it may assume in the case of much longer sentences.

4.5 The greater flexibility in determining the date of release upon parole which the statute provides in the case of young offenders is not surprising. The younger a delinquent the greater the hope that society entertains for his reformation under appropriate control; at the same time however, the

younger a delinquent the more likely he is to be influenced by his peer group. Any institution for young delinquents is bound to have a large proportion of inmates who have not responded well to whatever controls have existed outside the institution in their individual cases, and the danger of bringing them together in the institution is that of developing influences which are counterproductive to the training they are to receive. This is a dilemma which faces all corrective institutions. It means that in general, as soon as a trainee has reached the stage where hope may reasonably be entertained that the controls which in his case can be brought to bear outside the institution should suffice to keep him out of further trouble he should be released. The determination of this optimum point of time for his release is no easy task, but it is more likely to be correctly determined if the decision is made during the time that he is under constant surveillance than if the Court attempts to make it at the time of sentence. It is not practicable for a Court to keep under constant review each case where it has ordered detention in a youth training centre. The decision consequently must be committed to a body which can maintain such constant review and the conditions affecting the sentence must be flexible enough to permit the body to whom the decision is so committed to give effect to it at the time when it considers that the most favourable results will follow.

4.6 The procedure adopted by the Youth Parole Board in the determination of whether and, if so, when a young person detained in a youth training centre should be released on youth parole is similar to that adopted by the Adult Parole Board in the determination of cases of adult parole. Unlike the case of the adult prisoner however, in respect of whom a decision as to whether and, if so, when he should be released does not need to be undertaken until shortly before the expiration of his minimum term, the eligibility for parole at any time after sentence of the young person detained in a youth training centre requires the procedure adopted by the Youth Parole Board to provide for this situation. Shortly after its establishment, the Board took the view that, other than in exceptional cases, short periods of parole involved a wasteful use of administrative personnel and effort and were of doubtful value to the parolee. In cases where a trainee had been already removed from the ordinary civil community to institutional care for a considerable time, even a short period of parole might assist him in settling back into the community, but in general a short period of supervision by a parole officer would be unlikely to make any significant contribution to his rehabilitation. The Board therefore decided that, unless a case was specially referred to it by an officer of the Department or otherwise appeared to warrant special attention, it would not consider parole in cases where the detention ordered was less than 6 months. All other cases were however considered by the Board as soon as practicable after the Court order was made, and the Board having regard to the age and history of the offender, the nature of the offence and the length of detention ordered by the Court would then determine when the question of parole would next be considered. We are informed that the Board still maintains this practice, subject to one modification which has been made in the light of later experience, namely, that except in special cases, the Board will not consider parole unless the period of detention ordered was at least nine months.

4.7 As in the case of the Adult Parole Board, the Youth Board reaches its decision on the basis of reports from officers of the institution where the trainee has been held, a parole officer who interviews the trainee and where appropriate his family or other connections, medical officers, and any other relevant material upon the trainee's file. Review reports are frequently discussed with the trainee to acquaint him with their contents, but as in the case of the Adult Parole Board, the trainee is not given access to all the material upon which the decision is made, nor is he present or entitled to be represented at the hearing, and there is no formal appeal available against the Board's decision. However, a trainee can write to the Board requesting reconsideration of a decision and in every such case, his request is brought to the Board's attention.

4.8 It is unnecessary for us to describe in detail the effect of other legislative provisions relating to youth parole. It is sufficient to say that insofar as they relate to the cancellation of parole and the effect of such cancellation they are similar to those which relate to adult parole.

4.9 The similarity of the statutory frameworks relating respectively to adult and youth parole and of the procedures under which each type of parole operates, means that the criticisms which have been made of adult parole, insofar as those criticisms are valid, may also be applied to youth parole. The

conclusion to be drawn from an evaluation of those criticisms should in our opinion depend upon a comparison between the respective benefits and disadvantages involved in the system of youth parole, as it does in the case of adult parole.

4.10 The advantages of a system of supervised parole for young offenders appear to be so obvious that it should be unnecessary to discuss them at length. We have already referred to the importance of the release of a young offender at the time when he is most likely to have derived benefit from his detention and least likely to have been adversely affected by it. Difficult as it may be to determine correctly when that time has arrived, the parole system enables that decision to be promptly implemented. The ability of an offender to keep himself out of further trouble after he has been released will moreover frequently depend upon the controls which can be exercised upon his conduct. The system of parole provides two such controls, namely, the supervision of a parole officer and the deterrent effect of that part of the sentence, the service of which has been suspended. It may of course be that in spite of these considerations there would be less recidivism if all young offenders for whom some institutional training was necessary were sentenced to fixed terms of detention and required to serve the terms so fixed. No satisfactory proof one way or the other is likely to be obtained, but, as was the case in relation to adult parole, the statistics which have been maintained by the parole authorities seem to warrant optimism as to the results which have followed from youth parole. The Tables which are annexed to the Report of the Youth Parole Board for the year ended 30th June 1979 indicate that during the 18 years since 1st July 1961, when the system of youth parole was established, 5404 orders for release upon parole had been made and in only 1317 cases (i.e. less than 25% of the total) had the parole been cancelled, either by order of the Board or by reconviction. It would in our opinion be a policy of despair to proceed upon an assumption that a reasonable period of supervised parole for a young offender, who would otherwise spend the same period in custody, will be of no significant value in helping him to conform to accepted community standards. Such an assumption is not supported by the figures we have quoted, and the far more positive policy for the handling of delinquent young people which a system of parole presents should in our opinion be maintained.

4.11 The question however still remains whether, in the light of any of the criticisms which have been made of the parole system in general, any change should be made in the procedures by which the system of youth parole is implemented. In view of the comments we have already made upon a number of these criticisms when dealing with adult parole, we consider that the only aspects of the youth parole system which need consideration are those related to the circumstances in which decisions of the Youth Parole Board are made, i.e. the reliance of the Board upon material to which the trainee may not have been given full access, the absence of the trainee or of any person representing him from the hearing, and the fact that there is no right of appeal against the decision.

4.12 Fundamentally, the considerations upon which we have already relied to conclude that, in the case of decisions by the Adult Parole Board, it would be either impracticable or undesirable to endeavour to engraft upon a procedure which is essentially administrative features which would be appropriate for a hearing by a Court, apply also to the decisions of the Youth Parole Board. We have discussed these considerations fully in the second chapter of this Report (see paragraphs 2.44 to 2.55) and it is unnecessary to repeat in detail what we have there said. In relation to decisions by the Youth Parole Board however there are certain matters which we desire to emphasize. The system of youth parole which is administered by the Youth Parole Board applies not only to offenders under the age of 21 years who have been dealt with by adult Courts but also to the much younger group of offenders who have been ordered by Childrens Courts to be detained in youth training centres. It would be both inconvenient and anomalous to have different rules applicable to hearings before the Board, according to the age of the offender whose case was being considered. Certainly in regard to the younger group of offenders the adoption of the more adversary features which usually attend a hearing of contested matters in Courts could hardly be regarded as a desirable development. We have moreover already referred to the desirable objectives in a parole system for young offenders of determining the optimum date for the release of the offender and of prompt implementation of the decision reached. The flexibility and expedition in the system which facilitates the attainment of

these objectives is more likely to exist when the decision is made by an administrative tribunal under the present informal circumstances than if a hearing with the normal incidents of a Court proceeding were required. The desirability of confidentiality of the reports, which the Board considers and of the maintenance of a satisfactory rapport between trainee and parole officer, to which we have already referred in discussing adult parole, is certainly of no less significance in dealing with young offenders. Insofar as any danger of potential unfairness to the offender is involved in the present procedure it is considerably reduced by the constitution of the Board, which is presided over by a Judge of the County Court. That danger is in our opinion minimal, and is far more than offset by the undoubted advantages which accrue to the young offender from the present system of youth parole. In the result we consider that any substantial alterations to the present procedures of the Board, which were designed to make such procedures similar to those which are appropriate for a hearing in a Court, would tend to make those procedures unworkable or to introduce factors which would militate against the maintenance of a satisfactory system of youth parole. Accordingly, we do not recommend any such alterations in the present procedures of the Board.

4.13 In the case of the Adult Parole Board, we have however recommended that the Board should draft and publish a concise and readily understandable statement of the criteria which it will apply in determining whether an eligible offender will be released upon parole, (see paras, 3.50 to 3.52 above). The publication of a similar statement by the Youth Parole Board would also in our opinion be of value in the field of youth parole for the same reasons as those which we have set out in those paragraphs and which it is unnecessary for us to repeat.

4.14 *We therefore recommend*

(a) *That the present system of youth parole be maintained and operated by the Youth Parole Board generally in accordance with the procedures under which that Board now operates: and*

(b) *That the Youth Parole Board draft and publish a concise statement of the criteria which it will apply in determining whether and if so when a young offender will be released upon parole.*

B. Remissions

4.15 The provision for remissions in the case of young offenders ordered to be detained in youth training centres is very much more limited than that for offenders who have been sentenced to imprisonment. We have already pointed out that in the case of the latter, the Regulations authorise the Director General to grant remissions not exceeding one third of the sentence. Those remissions may be granted upon a sentence of imprisonment whether or not a minimum term has been fixed in respect of it, and if a minimum term has been fixed, the remission granted during the period of the service of the minimum term is regarded also as a remission on the minimum term for the purpose of assessing the offender's expected eligibility date for release on parole. (Community Welfare Services Regulations, Division III, Part XIII, Regulation 97D.) In the case of trainees under sentences of detention in youth training centres, it is only in the case of those whose sentences have been considered to be inappropriate for parole by the Youth Parole Board or whose sentence is being served in lieu of a fine that remissions may be granted. Such remissions are subject to good progress and response of a trainee to the treatment programme, and may not exceed one-quarter of the total sentence. (Community Welfare Services Regulations, Division II, Part XIVA, Regulations 107A and 107B.) As there is no provision for the court to fix a minimum term in the case of detention in a youth training centre and the Youth Parole Board can release a trainee on parole at any time after sentence, there was of course no need for the Regulations to provide for the contingency of minimum terms. The significant differences between the provisions made for the two types of sentence are, firstly, that in the case of trainees, remissions can only be granted to those whose sentences have been considered inappropriate for parole and who consequently without the grant of remissions would be required to serve in custody the whole of the sentence imposed irrespective of their behaviour and response to training, and, secondly, the different scale of remissions available in respect of each type of sentence.

4.16 An order for detention in a youth training centre is intended to be rehabilitative but it is also punitive. Its rehabilitative aspects consist of training in the institution and, if the trainee is considered appropriate for parole, of supervision by a parole officer during the remainder of the period of detention ordered. The order is punitive because of the actual detention involved in the order and, if the trainee is released upon parole, because of the restrictions imposed upon him and his continuing liability to further detention if his parole is cancelled. There is little logical basis for the granting of remissions upon the period of detention ordered. They cannot in any substantial way promote the rehabilitative aspects of the order. In fixing the period of the order, the Court presumably has determined the period which in its opinion is necessary to afford the offender the opportunity to respond satisfactorily to his training and any shortening of that period may abort the most important consequence which is hoped for as a result of the sanction which the Court has chosen. The Parole Board can release the offender on parole at any time and as his response to the training he is receiving would probably be the most significant factor in determining the date of such release, there is no need for remissions either to reward him for his response or as an aid to prisoner management. Release upon parole in itself furthers both of these objectives. Some trainees however will not be released upon parole and a proportion of those who are released will have their parole cancelled. It is in relation to these two groups that remissions must be further considered.

4.17 In relation to the first of these groups, we have already referred to the practice of the Youth Parole Board of not considering the release of a trainee upon youth parole (except in special cases) when the length of the period of detention which was ordered in his case is not long enough to permit a sufficiently long period on parole. By far, the greatest number of trainees who are not released upon youth parole are those who have been ordered such short period of detention. There are others whose period of detention may have been long enough to permit their release upon youth parole but who before the time of such release were transferred to a prison, either because they were found to be unsuitable for a youth training centre or because they have received further sentences. Any trainee who is so transferred is thereafter subject to the Adult Parole Board in regard to parole and his entitlement to remissions is determined by the regulations which relate to those who were sentenced to imprisonment. Apart from these two classes, there would be very few trainees who were not released upon parole by the Youth Parole Board, and in relation to whom the question of remissions would consequently arise. If a trainee is not released upon parole, the order for detention deprives him of his liberty in the same way as a sentence of imprisonment and the considerations which justify the grant of remissions upon a sentence of imprisonment would appear to justify remissions upon the period during which he was ordered to be detained. The present Regulations provide for remissions where the sentence of detention is considered to be inappropriate for parole, and although the wording of the regulations appears more apt to apply to the case of short sentences, we were informed that in fact they are interpreted to apply to all cases where youth parole was not granted. The scale of the remissions available is lower than that available upon a sentence of imprisonment, and we consider this question at a later stage, but the eligibility for remissions of all trainees who are not granted parole appears to be covered by the manner in which the present regulations are interpreted. In the case of a trainee whose sentence is considered to be too short to be appropriate for parole, his eligibility for remissions is determined at a very early stage in his detention.

4.18 In the case of a trainee who has been released upon parole his parole period covers the remainder of the period for which he was ordered to be detained, and if his parole is cancelled he is liable to serve the remainder of that period in detention. If his parole is not cancelled, he has still been in one sense worse off than if he had been sentenced to imprisonment for the same period for which he was ordered to be detained. A prisoner would be eligible for remissions upon his sentence in respect of the period for which he was imprisoned prior to his release upon parole. A trainee on the other hand remains liable until the end of his parole period to serve the whole of the period of detention ordered. We have however already pointed out (in paragraph 4.16 above) that, having regard to the rehabilitative aspect of an order for detention, there is good reason why that period should not be shortened. In the case therefore of a trainee whose parole is not cancelled, we do not consider that provision should be made for remissions.

4.19 It is in the case of the cancellation of parole that the position in regard to remissions requires careful analysis. Upon cancellation any one of three results may follow viz. the trainee may be treated as still eligible for further parole and a later review date, having regard to any further sentence passed upon him, will be fixed; or he may be transferred to gaol to serve the remainder of his sentence as imprisonment; or he may be judged to be inappropriate for parole. If he is again released upon parole, he is substantially in the same position in regard to remissions as he was when he was first paroled, and there is no need for us to reiterate the considerations which then arise. If he is transferred to prison, his entitlement to remissions will be determined under the regulations which relate to those who were sentenced to imprisonment and his position as a former trainee is no longer relevant. If the Youth Parole Board decides that he is not appropriate for parole, we were informed that he would be regarded as eligible for remissions under the present regulations, but that such remissions would only be granted in relation to the portion of his sentence which upon cancellation he was liable to serve and in relation to any further sentence which had been imposed upon him. In other words, he would not be granted remissions in relation to the period he had spent in detention prior to his release upon parole. In this respect his position is consistent with that of the trainee who has been released upon parole which has not been cancelled. Consistency in the treatment of trainees is more important than any differences between that treatment and the treatment accorded to those who have been sentenced to imprisonment. Therefore, although the trainee, who has had his parole cancelled and is thereafter adjudged to be not appropriate for parole, is less favourably treated in regard to remissions than an adult parolee in similar circumstances would be, we do not consider that this difference in treatment warrants any change in the regulations or in the basis upon which they are administered.

4.20 Before we sum up our conclusions in relation to the eligibility of trainees for remissions, it is desirable to consider the scale of remissions which the Regulations authorise. As we have already stated, such remissions cannot exceed one-quarter of the total sentence. In the case of offenders who have been sentenced to imprisonment, the scale of remissions which can be allowed provides in effect for a maximum remission of one-third of the sentence. We were told that the lower scale of remissions for trainees could be justified because the conditions affecting detention in a youth training centre were considered less onerous than those affecting imprisonment. This may well be true and we have already expressed the view in Part C of Chapter 3 that the scale of remissions for prisoners may be regarded as generous. In our opinion however there are other considerations which make it desirable that the maximum remission in the case of trainees should also be one-third of the sentence. The only trainees who are eligible for remissions are those who have not been granted the ultimate benefits which may result from youth parole. We have pointed out that in the case of some of these trainees, in order to maintain consistency with the treatment of others, the proportion of the sentence upon which they may be allowed remissions is less than that upon which a prisoner's remissions would be calculated. Apart however from this limited number of cases where the variation between the two systems is warranted by the maintenance of consistency in the youth system itself, it is undesirable that inconsistencies should occur, particularly as some trainees will be transferred to prisons and the scale upon which their remissions will be calculated will be governed by the regulations applicable to prisoners. The actual time period involved in a change of scale will not be great. The maximum period of detention which can be ordered is three years, and even on that maximum period, the difference between a third and a quarter is only three months.

4.21 We may summarise our conclusions in regard to the remissions available to trainees very shortly. Remissions serve no useful purpose in the case of a trainee who is released upon parole or who remains appropriate for parole. Indeed by shortening the period which the Court has considered necessary for the trainee to be under supervision, they may jeopardise the prospect of successful rehabilitation. They are however justified if a trainee is not to be paroled, or after cancellation of parole is not to be reparoled. Under the present regulations, as interpreted and applied by the Department, such trainees are eligible for remissions. As to the scale of the remissions allowable, there are some cases where, for the purpose of consistency in the system, they should be less favourable to the trainee than remissions available to a prisoner serving a comparable sentence would be. Such cases are at the present time provided for by administrative practice and no legislative action is necessary. Apart from such cases however the scale of remissions available for eligible trainees should be the same as that available for prisoners.

4.22 *We therefore recommend that Regulations 107A and 107B in Part XIVA of Division II of the Community Welfare Services Regulations be amended by substituting for the word "one-quarter" in each regulation the word "one-third".*

C. General

4.23 In Chapter 3 (paragraph 3.20) we recommended that the legislation relating to adult parole should be amended to enable the use of honorary parole officers. The considerations which led us to that conclusion in regard to adult parole also apply to youth parole. *We accordingly recommend that any legislative amendment which is necessary to permit the use of honorary youth parole officers should be made.*

4.24 It is desirable to point out that we have in this section of the Report dealt only with the question of parole for young offenders. There are other questions relevant to the provision made in Victoria for the treatment of young offenders which warrant separate consideration, for example, whether the power of the adult Courts to order the detention of young offenders in a youth training centre should be limited to indictable offences, as at present, and the wider question as to whether in our present society the age of 21 years is an appropriate dividing line between the adult and the young offender, so as to justify a different penal system for each class. It does not, however, appear appropriate to discuss these questions under the heading of parole.

5. Summary of Conclusions and Recommendations

A. Retention of Parole System

5.1 The system of parole upon prison sentences in Victoria has operated since 1957. It has resulted in considerable benefits to the State, both financially and socially. The benefit which it confers upon a prisoner who is released upon parole is obvious and the statistics which are available suggest that in the case of the great majority of those released upon parole it has been just as effective as continued imprisonment would have been in preventing them from committing further offences. (paragraphs 2.18 to 2.26)

5.2 Various aspects of parole, as it operates in other States, have been the subject of criticism, and the Australian Law Reform Commission has recently not only recommended the abolition of parole for Federal prisoners but has expressed the hope that State parole would also be abolished. The Committee has made a detailed examination of the grounds upon which the Australian Law Reform Commission relies for its criticism of parole, and of the extent to which such criticism can be validly made of the system of parole in Victoria (paragraphs 2.27 to 2.55). As a reslt of that examination, the Committee considers that in Victoria the benefits which the system of parole confers, both upon the great majority of the prisoners to whom it applies and upon the community, so far outweigh any defects which are inherent in the system that it should undoubtedly be retained. That view is supported by a very recent publication of the Home Office in the United Kingdom. (paragraphs 2.56 to 2.59).

5.3 The Committee has therefore recommended that the system of adult parole be retained in Victoria as an integral part of the sentencing process (paragraph 2.57).

B. Possible Modifications of the System

5.4 In the course of its examination of the criticisms which have been made of the parole system, the Committee considered the possibility of some modifications of the procedure attending the making of decisions by the Adult Parole Board. The aspects considered were the right of a prisoner to appear or to be represented before the Board, access by the prisoner to material which the Board considered in making its decision, and the question of an appeal against the Board's decision. In each case, the Committee came to the conclusin that it was either undesirable or impracticable that the present procedure should be altered. (paragraphs 2.44 to 2.55).

5.5 The Committee also considered a number of other possible modifications of the Victorian system of adult parole with a view to determining whether improvements in the system could be effected. These various matters are dealt with in Chapter 3 of the Report and the Committee's conclusions upon them are summarised in the following paragraphs of this Chapter.

C. Eligibility for Parole

5.6 Subject to one modification, the Committee considered that the conditions prescribed in section 190 of the Community Welfare Services Act 1970, under which a Court may determine that a prisoner should be eligible for parole, were satisfactory. It considered however that the terms of the proviso to the section, which permits the Court to refrain from fixing a minimum term where the sentence is not less than two years, are unduly restrictive.

5.7 It recommends that the proviso be amended to provide that the Court shall not be required to fix a minimum term if it considers that either alone or in combination—

(a) the nature of the offence,
(b) the antecedents of the offender, and
(c) any other relevant circumstance,

renders the fixing of a minimum term inappropriate. (paragraphs 3.2 to 3.5).

D. Standard Statutory Non-parole Periods

5.8 The Committee considered that legislation, similar to that in some other jurisdictions, to fix the length of a minimum term by reference to a proportion of the sentence was not necessary and would be undesirable in Victoria. (paragraphs 3.6 to 3.9).

E. Combined Effect of Parole and Remissions

5.9 The Committee considered that provision to grant remissions upon a minimum term, as well as remissions upon the head sentence, should be retained. It further considered that, despite the danger which exists of an adverse public reaction to the apparent leniency extended to a prisoner by the combined effect of parole and remissions, the scale of such available remissions should not be reduced. (paragraphs 3.10 to 3.15).

F. Supervision During Parole

5.10 The Act requires that a person who is released upon parole shall be under the supervision of a parole officer. The effectiveness of such supervision has been the subject of strong criticism as a

result of a shortage of personnel in the parole and probation staff of the Department. To assist in meeting this problem, the Committee recommends—

(a) that the relevant legislation be amended to enable honorary parole officers, as well as honorary probation officers, to be appointed by the Governor in Council; and
(b) that greater use be made by the Department of both honorary probation officers and honorary parole officers.

(paragraphs 3.16 to 3.20).

5.11 The Committee also considered a proposal emanating from a meeting of Correctional Administrators which related to a shortening of the period upon parole where a parolee with a very long parole period appeared to have made a satisfactory adjustment. The proposal raised important questions of principle, and it is undesirable to endeavour to summarise them and the conclusions arrived at by the Committee in this chapter of the Report. They are discussed and the recommendations of the Committee are set out in paragraphs 3.21 to 3.25 of the Report.

G. Credit for Time on Parole if Parole Cancelled

5.12 The Committee recommended that when parole is cancelled, either by the order of the Board or automatically by conviction, the Parole Board, having regard to the time spent upon parole and the parolee's conduct during that period, should have power to recommend to the Governor in Council that the prisoner be granted some remission of his sentence in respect of that period. (paragraphs 3.26 to 3.30).

H. Parole During Life Setences

5.13 In the case of a prisoner who is sentenced to imprisonment for life, a Court under the present legislation has no power to fix a minimum term and thus to make the prisoner eligible for parole. Such a prisoner can however be released upon parole by executive action under section 500 of the Crimes Act in the exercise of the Royal prerogative of mercy. There is no legislation provision which requires that the executive should give consideration to this question or which regulates the procedure to be adopted when such consideration is to be given. A procedure to deal with the situation has however been approved by executive decision. The Committee considers that the present legislative and executive provision for the release of such prisoners on parole is unsatisfactory.

5.14 The Committee further considers that legislative provision should be made to authorise the Governor in Council in appropriate cases where such a prisoner is released upon parole to substitute for the sentence of life imprisonment, a sentence of imprisonment for a determinate period so that the length of the parole period can be determined.

5.15 The Committee has examined in detail, in paragraphs 3.31 to 3.42 of this Report, the factors which have led it to these conclusions, and in paragraphs 3.43, it has made a series of recommendations, which it is unnecessary to reiterate at this stage, which are designed to provide a more satisfactory system.

5.16 The Committee further recommends that the procedure in regard to parole upon life sentences should, for the purposes of clarity, be set out in a separate set of legislative provisions. (see paragraph 3.45).

I. Guidelines for Parole

5.17 Other than the amendment to section 190 of the Act which is recommended in paragraphs 3.5 and 5.7 of this Report, the Committee does not recommend any additional legislative prescription of criteria to be applied by a Court in determining whether an offender should be eligible for parole and, if so, the length of the minimum term of imprisonment to be served by him. (paragraph 3.52(a)).

5.18 The Committee does recommend that the Adult Parole Board should draft and publish a concise and readily understandable statement of the criteria which it will apply in determining whether an eligible offender will be released upon parole, and if so, when (paragraph 3.52(b)).

J. Automatic Parole on Short Sentences

5.19 At the request of the Director-General of Community Welfare Services, the Committee considered a suggestion for automatic parole for prisoners serving sentences from six months to three years in length, which suggestion was based upon a discussion in a recent Home Office review of parole in England and Wales. The Committee drew attention to important differences between the parole systems in Victoria and England which indicate that certain factors which might favour the adoption in England of a proposal for automatic parole on short sentences either do not exist or have much less force in Victoria. A proposal to substitute automatic release upon parole for any class of prisoner in place of the long standing Victorian system which is based upon an assessment, firstly by the Court and secondly by the Parole Board, of suitability for parole raises serious problems. In the opinion of the Committee, a great deal of research would need to be undertaken into the ramifications of a proposal to make such a fundamental change in the Victorian system of parole before a recommendation on the matter could be properly considered. (paragraphs 3.54 to 3.59).

K. Youth Parole

5.20 The legislative provisions as to the eligibility for youth parole of young persons who have been directed to be detained in a youth training centre differ substantially from those relating to the eligibility for adult parole of prisoners sentenced to imprisonment. The differences result in a greater flexibility in determining the date of release upon parole in the case of a young offender, and such greater flexbility is an advantage in his treatment.

5.21 The procedure adopted by the Youth Parole Board in the determination of whether, and if so, when a young person should be released on youth parole is similar to that adopted by the Adult Parole Board. Any criticism which can be validly made of the latter procedure can therefore be made of the former. The Committee considers that it is only in respect of procedure that the criticisms which have been made of the parole system in general have any substantial force as applied to the system in Victoria.

5.22 The considerations which have persuaded the Committee in regard to the Adult Parole Board that it would be either impracticable or undesirable to endeavour to engraft upon a procedure, which is essentially administrative, features which would be appropriate for a hearing by a Court, apply also to decisions of the Youth Parole Board. In the latter case, the fact that the Board deals also with a much younger group of offenders who have been ordered by Children's Courts to be detained in youth training centres, and the desirability of maintaining a flexible and expeditious procedure to enable the prompt implementation of any decision reached, reinforce these considerations.

5.23 The Committee considers that the advantages of a system of supervised parole for young offenders far more than offset any danger of potential unfairness to the offender which may be involved in the present procedure. (paragraphs 4.1 to 4.12).

5.24 The Committee therefore recommends that the present system of youth parole be maintained and operated by the Youth Parole Board generally in accordance with the procedures under which the Board now operates. (paragraph 4.14(a)).

5.25 As it has recommended in the case of the Adult Parole Board, the Committee recommends that the Youth Parole Board draft and publish a concise statement of the criteria which it will apply in determining whether and, if so, when a young offender will be released upon parole. (paragraph 4.14(b)).

5.26 The provision for remissions in the case of young offenders ordered to be detained in youth training centres is very much more limited than that for offenders who have been sentenced to imprisonment. The provision which is made for them is however logically sound, having regard to the objectives of the sentence, and the Committee does not consider that, as regards eligibility for remissions, any change in the present regulations or in the basis upon which they are administered is desirable. In regard to the scale of remissions allowable however, the Committee considers that, in the interests of consistency, the maximum remission available to both trainees and prisoners should be the same. (paragraphs 4.15 to 4.21).

5.27 The Committee accordingly recommends that Regulations 107A and 107B in Part XIVA of Division 11 of the Community Welfare Services Regulations be amended by substituting for the word "one-quarter" in each regulation the word "one-third". (paragraph 4.22).

5.28 The Committee further recommends that any legislative amendment which is necessary to permit the use of honorary youth parole officers should be made. (paragraph 4.23).

Dated this 15th day of June, 1982. For and on behalf of the Committee.

F. R. Nelson
(Chairman)

Schedule One
Constitution and Proceedings of the Committee

1. The Committee, which for ease of reference is described as the Sentencing Alternatives Committee, was established by the Government on the 21st March, 1978, to examine sentencing alternatives with a view to improvement of the criminal law.

2. The terms of reference of the Committee are:
To examine sentencing alternatives available to Courts in respect of persons not subject to the jurisdiction of Children's Courts and to report upon and make recommendations to the Attorney-General:

   1. Whether any, and if so what, changes should be made in or in relation to those alternatives.
   2. In particular, whether:
      (a) any of the existing alternatives (for example, sec. 192 Social Welfare Act 1970) should be abolished or varied;
      (b) provision should be made for—
         (i) an elective entry date scheme;
         (ii) community service orders;
         (iii) a work-fine option scheme;
         (iv) suspended sentences;
         (v) additional means of compensating or assisting victims of crimes (Compare secs. 94, 96, 482, 483, 546 Crimes Act 1958; sec. 80 Social Welfare Act 1970; sec. 51 Magistrates' Courts Act 1971.);
         (vi) other sentencing alternatives.
   3. Whether there should be statutory provision:
      (a) for guidelines in relation to sentencing;
      (b) designed to produce consistent penalties in legislation. (Cf. Penalty classification as referred to in the Report dated 4 June, 1975, of the Commonwealth Government Working Party on Territorial Criminal Law).
   4. Whether provision should be made, by legislation or otherwise, for the collection of statistical data on the effects of sentences, parole or probation.

3. The members of the Committee during the preparation of this Report were:
The Honourable F. R. Nelson, Q.C., retired Justice of the Supreme Court of Victoria. (Chairman)
Mr. David Biles, Assistant Director (Research), Australian Institute of Criminology.
Mr. B. D. Bodna, Director-General of Community Welfare Services.
Dame Phyllis Frost, D.B.E.,
Mr. S. W. Johnston, Department of Criminology, University of Melbourne.
Assistant Commissioner E. A. Mudge, Victoria Police.
Mr. J. C. Walker, Q.C., Barrister at Law.
Secretary—Mr. W. U. Johnston, Research Officer to the Law Department.

(During Mr. W. U. Johnston's absence overseas, Mr. Peter O'Connell acted as Secretary of the Committee and in the closing stages of the Committee's deliberations, Mr. Bodna also was overseas and his place on the Committee was filled by Dr. K. O'Flaherty, Acting Director-General of Community Welfare Services.)

4. The Committee on 4 April 1979 presented to the Victorian Attorney-General a report upon the performance of work of a community service nature by offenders as an alternative to imprisonment. The proceedings of the Committee prior to the presentation of that report were briefly summarised in Schedule One thereof.

5. By the Penalties and Sentences Act 1981 (No. 9554) which was assented to on 19 May 1981, a number of the Committee's recommendations including the establishment of a system of community service orders as a sentencing alternative in appropriate cases was adopted.

6. Following the presentation of its report in relation to community service, the Committee commenced consideration of the principal sentencing alternatives available in Victoria. While it was considering the question of imprisonment, press reports were published of the Interim Report of the Australian Law Reform Commission in which it was recommended that parole for Federal prisoners should be abolished. As provision for parole was an important part of the Victorian penal system in regard to imprisonment, the Committee decided that in view of the recommendation of the Australian Law Reform Commission, it was desirable to give priority to its consideration of parole in Victoria, rather than to delay a report upon that matter until a comprehensive review of the principal sentencing alternatives was completed. Although the Interim Report of the Australian Law Reform Commission is dated January 1980, printed copies of the report were not available to the Committee until September 1980.

7. Since it presented its first Report, the Committee has had a further fourteen meetings. Its examination of the problems of parole, particularly those of procedure, was much the better informed by the courtesy of the Honourable Mr. Justice Starke, (Chairman of the Adult Parole Board), His Honour Judge Forrest, (Chairman of the Youth Parole Board), Mr. K. Williams, (Director of Family and Adolescent Services) and Mr. R.W. Lucas, (Full time member of the Adult Parole Board). Each of these gentlemen accepted an invitation to attend a meeting of the Committee and to discuss with its members various aspects of the parole and remission systems, and the Committee expresses its appreciation for the assistance it so received.

Schedule Two
Text of Legislative Provisions Referred to in Report

1. For the purpose of outlining and commenting upon legislation in a report of this nature, it is generally sufficient to set out the effect of the legislation. It is however sometimes desirable that the actual text of the legislation should be cited, especially if amendments are suggested. If the text of any particular piece of legislation to be cited is lengthy, an attempt to incorporate it into the body of a report often results in cumbersome drafting and irritating detail. This difficulty is sometimes met by setting out the text of legislation in footnotes throughout the report, but it appears to the Committee to be more convenient to collect in a Schedule the relevant portions of the more important legislative provisions to which reference is made. Subsections or parts of a section which are not relevant to the Report are not transcribed. Unless otherwise indicated the various provisions cited are from the Community Welfare Services Act 1970.

2. Adult Parole

178. (1) There shall be an Adult Parole Board constituted as provided in this section.

(2) The Adult Parole Board shall consist of—

(a) a judge of the Supreme Court nominated with his consent by the Chief Justice of the Supreme Court either generally or for a specified term;
(b) the Director-General of Social Welfare;
(c) a full-time member appointed by the Governor in Council; and
(d) two other persons appointed by the Governor in Council one of whom shall be a woman.

(3) to (6) - not transcribed.

190. (1) Where any person is convicted by the Supreme Court or the County Court or a Magistrates' Court of any offence and sentenced to be imprisoned then, if the term imposed is not less than two years the court shall, and if the term imposed is less than two years but not less than twelve months the court may, as part of the sentence, fix a lesser term (hereinafter called 'the minimum term') that is at least six months less than the term of the sentence during which the offender shall not be eligible to be released on parole : Provided that the court shall not be required to fix a minimum term as aforesaid if the court considers that the nature of the offence and the antecedents of the offender render the fixing of a minimum term inappropriate.

(2) Where a person is before a court to be sentenced upon convictions for more than one offence the court, notwithstanding that it sentences the offender to be imprisoned in respect of each of the offences for which he is convicted and is then to be sentenced, shall not fix a minimum term in respect of each of the offences for which he is sentenced to be imprisoned but shall fix a minimum term in respect of the aggregate period of imprisonment the offender will be liable to serve under all the sentences then imposed.

195. (1) The Adult Parole Board may in its discretion by order in writing (hereafter in this Division called a 'parole order') direct that a prisoner undergoing a sentence of imprisonment in respect of which a minimum term was fixed be released from prison on parole at the time specified in the order (not being before the expiration of the minimum term) and he shall be released accordingly.

(2) Before a prisoner is released under a parole order the Adult Parole Board may in its discretion revoke or vary the parole order and any order so varied shall apply accordingly.

(3) Any person so released shall during the period from his release until the expiration of his term of imprisonment (hereafter in this Division called the 'parole period') be under the supervision of a parole officer and shall comply with such requirements as are specified in the parole order in accordance with the regulations.

NOTE: Sections 175 and 177, which it is not considered necessary to transcribe, provide for cases where a young person who has been sentenced to detention in a youth training centre is required to serve the detention as imprisonment in a prison. In such cases the offender becomes subject to the jurisdiction of the Adult Parole Board, as if the period of detention served had been a minimum term fixed under the provisions of Section 190.

196. If the parole period elapses without the making by the Adult Parole Board of an order cancelling the prisoner's parole or the commission by the prisoner, whether in Victoria or elsewhere, of any offence for which he is sentenced to imprisonment for more than three months (whether during or after the parole period) the prisoner shall be regarded as having served his term of imprisonment and shall ipso facto be wholly discharged therefrom; but until the parole period so elapses or until he is otherwise discharged from his sentence of imprisonment, a person released on parole shall be regarded as being still under sentence and as not having suffered the punishment to which he was sentenced.

197. (1) (a) Where a prisoner is released on parole as aforesaid the Adult Parole Board may in its discretion at any time before the expiration of the parole period vary the parole order or by order cancel his parole.

(b) and (c) not transcribed.

(2) Where the prisoner is sentenced to another term of imprisonment for more than three months in respect of any offence committed during the parole period, whether in Victoria or elsewhere, his parole shall ipso facto be cancelled notwithstanding that the parole period may already have elapsed.

(3) (a) Where a prisoner is convicted for an offence committed during the parole period and the prisoner is a young person any sentence of detention in a youth training centre that is imposed upon him shall be deemed to be a sentence of imprisonment for the like term in respect of which he may at any time be released on parole under this Part by the Adult Parole Board.

(b) The provisions of sub-section (2) shall apply to sentences referred to in paragraph (a).

(4) - not transcribed.

(5) Where a prisoner's parole is so cancelled the original warrant of commitment or other authority for his imprisonment shall again be in force and no part of the time between his release on parole and his recommencing to serve the unexpired portion of his term of imprisonment shall be regarded as time served in respect of that term.

198. (1) The Adult Parole Board may again release a prisoner on parole, notwithstanding that his parole has been cancelled on any prior occasion or occasions under the foregoing provisions of this Division in respect of the same term of imprisonment: Provided that where he has been sentenced to another term of imprisonment he shall not in any case be so released until he has served the minimum term or, where no minimum term is fixed, the term thereof.

3. Remissions

203: The Governor in Council may make regulations for or with respect to—

(l) the mitigation or remission conditional or otherwise of any sentence of imprisonment or of imprisonment or detention with hard labour or of any sentence of detention in a youth training centre for any indictable offence or offence punishable on summary conviction (including any sentence in respect of which a minimum term is fixed and the minimum term thereof) as an incentive to or reward either for good conduct or for special industry in the performance of any work or labour allotted to an offender whilst he is imprisoned or detained under such sentence and may mitigate or remit the term of punishment accordingly;

Community Welfare Services Regulations:

Division III, Part XIII.

Regulation 97A: For the purpose of assessing remission on a sentence or sentences regard shall be given to a prisoner's good conduct, industry and diligence, his response to the treatment programme and his performance and application.

Regulation 97D(1): In respect of any sentence or sentences including any sentence or sentences in respect of which a minimum term is fixed and the minimum term thereof the Director-General may grant remission not exceeding 15 days for each complete calendar month of the sentence actually served with pro rata remission for portion of a calendar month provided that when the total sentence is three months or less the Director-General may grant remission not exceeding one-third of the sentence.

(2) Where a minimum term is fixed in respect of a sentence the remission granted on the sentence during the period of the service of the minimum term shall be regarded as being remission on the minimum term for the purpose of assessing the date upon which it is expected the person will become eligible for release on parole .....

Division II, Part XIVA.

Regulation 107A: In respect of any sentence or sentences of detention in a youth training centre considered to be inappropriate for parole by the Youth Parole Board, and subject to good progress and response of a trainee to the treatment programme, the Director-General may grant remission not exceeding one-quarter of the total sentence.

Regulation 107B: In respect of any sentence of detention in a youth training centre served in lieu of a fine, and subject to good progress and response of a trainee to the treatment programme, the Director-General may grant remission not exceeding one-quarter of that sentence.

4. Youth Parole

156. (1) There shall be a Youth Parole Board constituted as hereafter in this section provided.

(2) The Youth Parole Board shall consist of—
(a) a judge of the County Court nominated with his consent by the Attorney-General either generally or for a specified term;
(b) the Director-General or an officer of the Department nominated by the Minister either generally or for a specified term; and
(c) one member appointed by the Governor in Council.

169. (1) The Youth Parole Board may by order in writing (hereafter in this Part called a 'parole order') direct that a young person detained in a youth training centre (hereafter in this Part called a 'trainee') be released on parole at the time specified in the order and he shall be released accordingly.

(2) The Youth Parole Board may revoke amend or vary a parole order before the trainee has been released thereunder and an order so amended or varied shall apply accordingly.

(3) A trainee so released shall during the period from his release until the expiration of the period of his detention (hereafter in this Part called the 'parole period') be under the supervision of a youth parole officer and shall comply with such requirements as are specified in the parole order in accordance with the regulations.

NOTE: Sections 167 and 168, which it is not considered necessary to transcribe, provide for cases where a young person who is imprisoned in a prison is transferred to a youth training centre. In such cases the young person becomes subject to the jurisdiction of the Youth Parole Board and his sentence for all purposes becomes a sentence of detention in a youth training centre.

Power to Order Detention in Youth Training Centre

Crimes Act 1958.

476A. Whenever imprisonment may by law be awarded for any indictable offence and the offender is a person under the age of twenty-one years at the date of his conviction, the Court may, having regard to the nature of the offence and to the age character and antecedents of the offender, in lieu of any sentence of imprisonment direct that the offender be detained in a youth training centre for a period of not more than three years:

Provided that where the offender has been convicted in the same proceedings of more than one such offence the Court may direct that he be detained for an aggregate period of not more than three years in respect of all such offences.

Magistrates' Courts Act 1971.

71. (1) Whenever a person under the age of 21 years is convicted before a Magistrates' Court of an indictable offence which by this Act or any other Act is authorized to be dealt with summarily or any offence under the Vagrancy Act 1966 the Court may, having regard to the nature of the offence and to the age character and antecedents of the offender, in lieu of imposing a sentence of imprisonment direct that the offender be detained in a youth training centre within the meaning of Part III. of the Social Welfare Act 1970 for a period of not more than two years.

Children's Court Act 1973.

26. (1) Where a child has been charged before a Children's Court with an indictable offence ... . or with an offence punishable summarily and the charge has been proved to the satisfaction of the court, the court may—

(a) to (e)—not transcribed.

(f) upon convicting him for an offence for which apart from this section a sentence of imprisonment may be imposed otherwise than in default of payment of a fine—

(i) if he is under the age of fifteen years at the date of conviction - admit him to the care of the Department; or

(ii) if he is of or over the age of fifteen years at the date of conviction - sentence him to be detained in a youth training centre for a specified period not exceeding two years, or if convicted by a children's court on any occasion of two or more such offences, without affecting the jurisdiction of the court to sentence him to a separate period of detention for each such offence, order in respect of all such offences, or in respect of any two or more of them, that the child be detained in a youth training centre for a period to be known as an 'aggregate period' which shall be specified but shall not exceed three years;

Schedule Three
Analysis of Sentences in Higher Criminal Courts, Victoria, 1980

Effective Sentence (Yrs.)	*Minimum Term as a Percentage of Effective Sentence*								
	<20	*20<30*	*30<40*	*40<50*	*50<60*	*60<70*	*70<80*	*80<90*	*Total*
<1	—	—	—	—	—	—	—	—	0
1<2	1	8	10	8	46	23	1	—	97
2<3	—	2	8	7	30	22	13	—	82
3<4	1	2	10	5	32	21	5	1	77
4<5	—	—	4	1	18	11	16	—	50
5<6	—	—	—	2	7	19	6	8	42
6<7	—	—	—	3	6	18	4	2	33
7<8	—	—	—	3	3	4	7	—	17
8<9	—	—	—	—	3	3	7	1	14
9<10	—	—	—	—	3	—	3	—	6
10<11	—	—	—	—	—	1	3	6	10
11<12	—	—	—	—	—	2	3	2	7
12<13	—	—	—	—	—	1	4	3	8
13<14	—	—	—	—	—	—	2	—	2
14<15	—	—	—	—	—	—	2	—	2
15<16	—	—	—	—	—	—	1	1	2
16<17	—	—	—	—	—	—	2	—	2
17<18	—	—	—	—	—	—	—	1	1
18<19	—	—	—	—	—	—	—	—	0
19<20	—	—	—	—	—	—	—	—	0
20+	—	—	—	—	—	—	—	1	1
Total	2	12	32	29	148	125	79	26	453
Percentage	0.4%	2.7%	7.1%	6.4%	32.7%	27.6%	17.4%	5.7%	100%

Schedule Four
Adult Parole Board — Full Time Member

Main Duties:

To attend meetings of the Board.

To visit all prisons and departmental offices for the purpose of ensuring that prisoners who come within the jurisdiction of the Board, prison staff and other departmental staff working in the parole field are aware of the nature of the parole scheme and its operation.

To conduct hearings for prisoners who come within the scope of the scheme.

To explain and discuss Board decisions when release on parole has been deferred for a time or when parole release has been denied.

To hear representations from prisoners and to provide information and advice when prisoners enquire with a view to having their cases further considered by the Board.

To bring cases to the attention of the Board for further consideration as necessary.

To assist in ensuring field operators both in the prisons and parole areas are informed of changes that occur from time to time in Board practice and policy.

To pass on to these servicing officers information concerning Board guidelines, followed from time to time, with a view to keeping these officers better informed as to Board thinking in various situations and to provide assistance in the handling of cases and in the preparation of reports that may be from time to time required to be furnished.

To advise as required on the interpretation and application of sentences and in the applying of the variables - remission, PSD, etc. - to provide for a consistent approach in the handling of matters.

To bring to the attention of the Chairman any matter that may require a question of law to be decided.

To be available to discuss cases with both prison and parole staff.

To be available to discuss cases and to hear representations from prisoners' families and friends and their legal representatives.

To liaise with senior departmental officers on matters affecting legislation relative to the parole scheme.

To advise the Board on a regular basis of the general activities of the Full Time Member.

To provide a means of liaison between the Board and its immediate administration and the prison and parole administration.

To monitor generally the functioning of the scheme to ensure an efficient, effective and consistent mode of operation.

Mode of Operation:

All prisons are visited on a regular basis. On average country institutions are visited three to four times per year - should circumstances warrant more frequent visits are undertaken. The three sub prisons and the two main office areas at Pentridge, the Front Office and the 'D' Division Records Office, are visited in a similar manner.

Due to numbers a different approach is applied when visiting country areas; generally details and the status of all parole type cases are briefly checked. Any discrepancies that come to notice are drawn to the attention of senior prison staff. If perchance a prisoner has not been informed of his situation he will be seen and advised. Under normal circumstances prisoners whose cases have been considered by the Board will be interviewed. In those situations where release on parole has been deferred or denied, the decision, the basis for same and other related matters will be explained and discussed. Prisoners becoming eligible for release - minimum term expiring, and those having review dates - cases previously deferred released, will be interviewed and matters pertaining to the pending determination of the individual's case by the Board, discussed. In these cases emphasis is placed on the post release situation, the general conditions and requirements of parole and the individual's obligations as a parolee.

At Pentridge, due to the larger numbers, priority is given to those requesting interviews. Over a period of time however, all cases will be checked and as occurs in the country a percentage of those due for release will be interviewed etc.

The various regional offices servicing country prisons are visited on a regular basis with either the staff as a whole or individual officers being seen and matters pertaining to the operation generally brought to attention. Any changes that may occur in practice, administrative procedure etc., are highlighted. As these offices supervise parolees, matters pertaining to the post release situation are also covered.

Close contact is maintained with the staff of the Special Supervision Unit who are responsible for the preparation of reports and the eventual supervision of the more difficult cases. The officers of this Unit are seen regularly.

Other regional offices which provide the supervisory services both in the metropolitan area and the country area are also visited from time to time. Matters relating to the post release situation are emphasised on these visits.

General access to the Full Time Member is facilitated by contact with the Board's office in Melbourne. Arrangements however can and have been made in liaison with country regional staff for relatives etc., to make contact when the Member is in country areas.

F D Atkinson Government Printer Melbourne

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