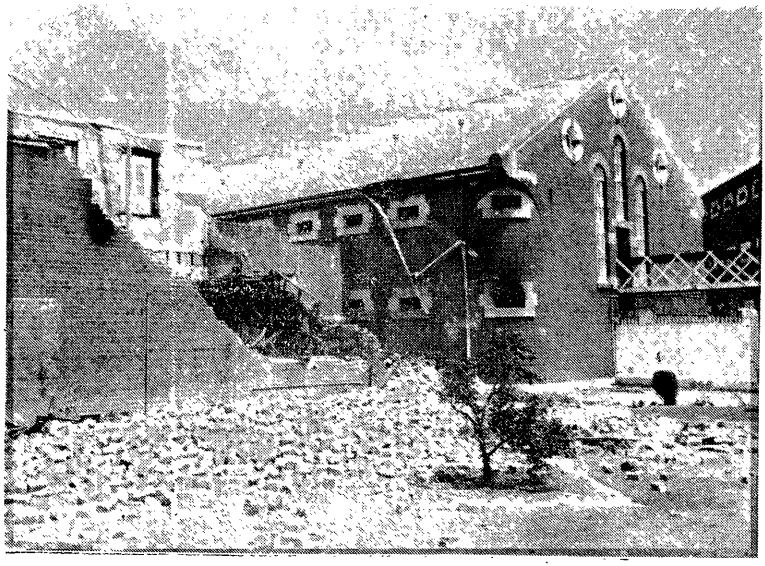

Part of burnt out Bathurst Gaol

ROYAL COMMISSION INTO N.S.W. PRISONS

The Royal Commissioners and terms of reference have been known for some time. Mr Justice Nagle (Chairman), a judge of the New South Wales Supreme Court, Professor Alexander George Mitchell, recently retired Vice-Chancellor of Macquarie University whose previous interest in penal reform has been cleverly disguised but whose interest in prosecuting university students is well-known and Sydney Derwent the recently retired Director of the Institute of Administration at the University of New South Wales (who, one supposes, participated in the decision by the Advisory Council to the Department of Corrective Services to build the new super maximum-security prison "Katingal") (with the assistance of Professor Radzinowicz, a conservative criminologist, as a consultant) were asked by the former N.S.W. government to inquire into and report upon: "... the general working of the Department of Corrective Services of New South Wales, its policies, facilities and practices in the light of contemporary penal practice and knowledge of crime and its causes, and, without restricting the generality of the foregoing, to inquire

into and report upon: (a) the custody, care and control of prisoners and the relationship between staff and prisoners; (b) the selection and training of prison officers and other staff engaged in training, correctional and rehabilitative programmes for prisoners, and to recommend any legislative and other changes desirable in consequence of its findings." The services of Messrs Radzinowicz, Mitchell & Derwent have been dispensed with by the new government. The last two are, apparently, being offered positions as consultants.

So, the Royal Commission into prisons in N.S.W. is finally under way in the sense that it exists and is poised to receive evidence on Monday, 12th July, 1976. Before the memory fades and, importantly, before it is possible to accuse anyone of sour grapes, a number of comments need to be made about the nature of the inquiry and the mechanisms which have already operated to frustrate its purpose.

It may seem ironic but it is nonetheless appropriate for those bodies who called most actively for the Royal Commission to consider seriously the threshold question of whether they should participate in the Commission, given its composition and the circumstances under which it is proposed it will be held. The real danger is, of course, that unless a very clear stand is taken at appropriate times the official record of the inquiry will reflect tacit endorsement of its findings. The Commissioners will assert that they have received the benefit of the deliberations of the following groups....and these have been carefully considered in reaching the following conclusions....

Whether a stance of anticipatory boycott is to be regarded as negative or realistic remains to be seen. The prevailing consensus amongst "penal reform/abolition" groups has been to seek leave to appear and give evidence thus acquiescing in its initial legitimacy and deciding that this will at least be a forum to ventilate the manifold grievances against the existing prison system or, if nothing else, a catalyst for change.

It is instructive to pause and consider whether that optimism has been justified so far. At the opening session the Chairman, Mr Justice Nagle indicated that it was clear that the Department of Corrective Services and representatives of the warders had a clear interest in the proceedings but that others would be required to justify their interest in seeking continual or partial leave to appear. At the same time reference was made to a "countergroup" and the desirability of various penal reform groups amalgamating for the purpose of participation in the proceedings. This approach clearly ignored the disparate philosophical perspectives which these groups wished to put to the Commission and failed to take any account of conflict of interest situations. After the various groups each sought independent leave to appear, such leave was finally granted. However the key issue as to whether legal aid will be granted has not been resolved 3 days prior to the commencement of the hearing of evidence. Meanwhile, it should be carefully noted, counsel for the Department of Corrective Services and for the prison officers have been preparing their brief for 3 months. Without it any leave to appear continuously becomes a farce. Strictly speaking the Commission has no power over legal aid and can accordingly opt out of this delicate area. The former

Attorney-General apparently originally suggested to the Commissioner for Legal Aid Services that one junior counsel be made available to the so-called "countergroup". For the reasons previously indicated this would be ludicrous tokenism. The legal aid battle remains to be fought on the eve of the commencement of the hearings! It was originally thought that the new Attorney-General, Mr Walker, flush from the recent election victory, would take a more reasonable approach. This optimism has proved ill-founded. It will be interesting to see whether Mr Justice Nagle will express his displeasure at the failure to resolve the legal aid question by granting an adjournment to the groups in question. A refusal by the Chairman will have grave implications for the Royal Commission and the seriousness with which it views its task.

But there are other mundane but important aspects of the inquiry which need to be resolved if the real evidence is to come out. It was not without considerable prompting that the existence of the Royal Commission was adequately advertised to the subject-matter of the inquiry - the prisoners! Even then the first notice got the terms of reference wrong. Thus far, no guarantees have been forthcoming about the right of all persons with total or partial leave to appear to be allowed the equivalent of legal visiting rights or to receive uncensored correspondence in relation to evidence to be put before the Commission. Nor is it clear that prisoners detained in the country centres will be brought to Long Bay for interview purposes. Intimidation and reprisal through use of the transfer system seems presently inevitable. Some lawyers have already been denied access to prisoners wishing to give evidence. These are all matters within the control of the Commissioner of Corrective Services who has no real interest in curing the defect but who risks, perhaps, the wrath of the new Government (if not the Commissioner) if he does not co-operate.

The warning lights of co-option, whitewash etc are on. It will be crucial for the Aboriginal Legal Service, the Prisoners' Action Group, the Council for Civil Liberties, Women Behind Bars and the Penal Reform Council (and for that matter any other group or person who seeks to tender evidence) to maintain continual vigilance in assessing the question whether continued participation is justified.