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**3.79** Mr Brown from the Victims of Crime Assistance League acknowledged that privileges allow correctional staff to acknowledge good behaviour and reprimand bad behaviour:

You have to be able to control these people but you have to do it in such a way that you do not put your prison officers at risk. If you grant them a small privilege, and it may just be a sandwich maker, and they do something [wrong] ... you say, 'Well, bye-bye sandwich maker.' It gives you a capacity to control them. That is what it has to be about.<sup>167</sup>

**3.80** The Victims of Crime Assistance League reflected that although it may appear objectionable to provide lifers with privileges, it serves the important goal of protecting correctional staff:

As unpalatable as it may be to the victims of some of the States' most heinous crimes, consideration has to be given as to how we manage such prisoners, even if the only persons who benefit appear to be the prisoners. I would argue however, that if we are serious in ensuring the protection of custodial officers, and I for one am such an advocate, we must provide them with such tools.<sup>168</sup>

### **Inmate perspective**

**3.81** The inmate advocacy group Justice Action argued that all inmates can benefit from and should be entitled to access rehabilitation programs, as these programs enable offenders to recognise the harm they have caused and the ramifications of their actions, which can improve how offenders interact with prison staff and other inmates.<sup>169</sup>

**3.82** Justice Action also noted that rehabilitation programs provide ways of enriching the cultural, social and spiritual lives of inmates, regardless of their sentence or classification. Various benefits include an enhanced cognitive and mental state, development of social skills, reduced substance abuse, personal development and self-expression.<sup>170</sup>

**3.83** Further, Justice Action observed that due to the prerogative of mercy (outlined in chapter 1) lifers are entitled to rehabilitative opportunities as these services put inmates in a positive position to apply to be considered for a pardon.<sup>171</sup> It argued that to deny or reduce access to rehabilitative programs takes away any hope from lifers.<sup>172</sup>

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<sup>166</sup> Evidence, Ms Jabour, 23 November 2015, p 52; Evidence, Mr Connell, 23 November 2015, p 52; Submission 5, Victims of Crime Assistance League, p 3.

<sup>167</sup> Evidence, Mr Howard Brown, Vice-President, Victims of Crime Assistance League (VOCAL), 23 November 2015, p 44.

<sup>168</sup> Submission 5, Victims of Crime Assistance League, p 3.

<sup>169</sup> Submission 20, Justice Action, p 19.

<sup>170</sup> Submission 20, Justice Action, p 19.

<sup>171</sup> Submission 20, Justice Action, p 7.

<sup>172</sup> Submission 20, Justice Action, p 9.



- 3.84** Dr Serena Wright noted that while rehabilitation programs for lifers centred on change may seem futile, they offer hope and opportunities for engagement that act to support compliant and legitimate behaviour.<sup>173</sup>
- 3.85** Community Justice Coalition submitted that regardless of the severity of the crime and the likelihood of release, inmates should still have access to rehabilitative programs in order to have the opportunity to recognise and learn from the harm they committed.<sup>174</sup>
- 3.86** It also highlighted that in respect to privileges, small incentives can make a great difference to the behaviour of lifers:

If a person has no hope of ... [release], even though it may be something as simple as a toaster or television set or an extra hour per day in an exercise yard, people who have literally no hope of ever getting out can be more easily disciplined if there are incentives.<sup>175</sup>

### Other Australian jurisdictions

- 3.87** Most other Australian states have similar practices to New South Wales. Victoria stated that all inmates, regardless of sentence length, are entitled to participate in programs. Although in practice, access is prioritised on a needs basis and therefore lifers are unlikely to be prioritised ahead of others. However, the Commissioner of Corrections Victoria did note that accessing programs is considered on a case-by-case basis and lifers may be provided access to programs to address their behaviour in prison.<sup>176</sup>
- 3.88** In South Australia careful consideration is given before allowing lifers to participate in rehabilitative programs. However they may participate in vocational programs and undertake educational opportunities.<sup>177</sup>
- 3.89** Queensland provides all inmates, regardless of sentence length, with access to rehabilitative programs and educational and vocational courses that are targeted based on an inmate's assessed risk and needs.<sup>178</sup> Similarly, Tasmania does not restrict access to programs based on classification or offence. In Tasmania, inmates with an unknown release date may also participate in other activities such as education, training, sport, music or arts programs.<sup>179</sup>
- 3.90** In Western Australia rehabilitation activities are only made available to minimum security inmates. In the future, following legislative amendments that will allow lifers to be classified minimum security, such inmates may be allowed to participate in rehabilitation activities.<sup>180</sup>

<sup>173</sup> Submission 19, Dr Serena Wright, p 1.

<sup>174</sup> Submission 22, Community Justice Coalition, p 4.

<sup>175</sup> Submission 22, Community Justice Coalition, pp 3-4.

<sup>176</sup> Correspondence from Ms Shuard PSM to committee, 7 December 2015, p 2.

<sup>177</sup> Correspondence from Mr Brown to committee, 25 January 2016, p 3.

<sup>178</sup> Correspondence from Mr Rallings to committee, 17 December 2015, p 3.

<sup>179</sup> Correspondence from Mr Evans to committee, 17 November 2015, p 5.

<sup>180</sup> Correspondence from Mr McMahon DSG DSM to committee, 24 December 2015, p 3.

*Committee comment*

- 3.91** The committee supports current Corrective Services NSW practice that rehabilitation programs will not be made available to lifers unless there is an imminent risk of them harming correctional officers and other inmates. The committee considers it appropriate that programs are offered to lifers for internal management purposes in order to protect staff and other inmates and to create a benign institutional climate.
- 3.92** However, the committee agrees with victim support groups that lifers should never unduly access rehabilitation programs if it deprives other inmates who will be released from custody from the opportunity to participate.
- 3.93** The committee supports the provision of privileges to lifers as a prison management tool to elicit good behavior. While the committee understands there may be community concern about providing privileges to people that have committed such terrible crimes, the committee is satisfied there are strong prison management principles for adopting such a process.
- 3.94** The committee will consider the involvement of victims in the decision-making process regarding the provision of rehabilitation programs and privileges to lifers in chapter 4.

## Chapter 4 Victim engagement

The previous chapter discussed whether lifers should be allowed to progress through the classification system and access rehabilitation programs. This chapter will focus on what information should be made available to victims, what input (if any) they should have in the reclassification and custodial management of lifers, and what improvements can be made to the Victims Register services. While this chapter will focus on improving communication with registered victims of lifers, it will also consider the needs of victims more generally.

### Operation of the Victims Register

4.1 The Victims Register is an opt-in service maintained by the Corrective Services NSW's Victims Register section of the Restorative Justice Unit. The register is maintained in accordance with s 256 of the *Crimes (Administration of Sentences) Act 1999*. The purpose of the register is to enable Corrective Services to inform victims if the offender:

- is to be considered for a change in security classification which may result in the offender being eligible for an unescorted leave of absence (i.e. pre-release leave)
- is due for parole consideration
- is due for release
- has escaped from custody.<sup>181</sup>

4.2 Victims are able to make submissions to the Serious Offenders Review Council if it is considering reclassifying an inmate to the lowest security classification. However, lifers will never be considered for the lowest level of security classification, for unescorted pre-release leave, or released from custody. For this reason, victims of lifers are currently not notified of decisions about these inmates' security classification, or asked to make submissions.<sup>182</sup> The submission process is detailed in chapter 2 at 2.38. Victims Register staff will not routinely advise victims of changes in inmate security classification, routine transfers between correctional centres, or medical treatment.<sup>183</sup>

4.3 Victims sign up to the register by completing a form provided by Corrective Services NSW. There are two main registration forms. One is used when the inmate is a serious offender, the other is used when the inmate is serving a sentence of three years or more, but is not designated as a serious offender.<sup>184</sup> Once an applicant has been placed on the register, they receive a written letter advising them of the classification level and location of the relevant inmate<sup>185</sup> and a brochure about the register.<sup>186</sup>

<sup>181</sup> Corrective Services NSW, *Victims Register Brochure*, <http://www.correctiveservices.justice.nsw.gov.au/Pages/CorrectiveServices/support-families-community/victims.aspx>.

<sup>182</sup> Submission 24, NSW Department of Justice, p 3.

<sup>183</sup> Submission 8, Former Inspector of Custodial Services, p 12.

<sup>184</sup> Answers to questions on notice, Corrective Services NSW, 18 December 2015, p 2.

<sup>185</sup> Submission 21, Homicide Victims Support Group, p 5.

<sup>186</sup> Submission 8, Former Inspector of Custodial Services, p 12.

- 4.4 As noted in chapter 2, there are currently approximately 1,200 victims registered against 800 offenders, with about half registered in relation to a serious offender.<sup>187</sup>

#### **Criticism of communication practices**

- 4.5 Dr John Paget, former Inspector of Custodial Services, argued that communication practices with registered victims are dated and ineffective, and as a result, some registered victims have an incomplete understanding of inmate management processes, such as classification.<sup>188</sup>
- 4.6 Dr Paget considered the brochure provided to victims to be of ‘limited utility ... as a modern means of communication’ and noted it was last updated in 2008.<sup>189</sup> He also contended that the Corrective Services NSW website gives no profile to victims, is not perceived as user-friendly and provides no sensitive acknowledgment of the respect that victims deserve.<sup>190</sup>
- 4.7 These views were shared by the Homicide Victims Support Group which argued that the ‘non-descriptive information provided to registered victims about reclassification creates confusion and potentially encourages the drawing of incorrect inferences about excessive leniency’. For the sake of clarity, it reasoned that Corrective Services NSW should provide substantive information directly to victims about the classification system.<sup>191</sup>
- 4.8 Moreover, the Homicide Victims Support Group asserted that information currently provided to victims is bureaucratic in tone with no sense of empathy:

... the current lines of communication seem to be directed towards the bare satisfaction of administrative requirements and do not convey a sense of empathy to victims. For a victim to be curtly informed that an offender has been reclassified from A2 level to the B level in a one-line letter or a short phone call without explanatory information of any kind, is meaningless. It is disempowering to receive information by way of incomprehensible bureaucratic jargon.<sup>192</sup>

- 4.9 The Department of Justice recognised that communication and engagement with registered victims should be improved and that victims need to be provided with more information about the correctional system so they can understand the context and basis for different decisions.<sup>193</sup>
- 4.10 Ms Allison Davies, Victims Support Officer, Corrective Services NSW told the committee that much work had been done in recent years to better engage with victims:

In the last four years we have been doing much better case management with victims. We are having a lot more verbal contact with them at the time of registration, so every newly registered victim will have a phone call as well as letter confirming that they are

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<sup>187</sup> Submission 24, Department of Justice, p 13.

<sup>188</sup> Submission 8, Former Inspector of Custodial Services, p 12.

<sup>189</sup> Submission 8, Former Inspector of Custodial Services, p 12.

<sup>190</sup> Submission 8, Former Inspector of Custodial Services, p 12.

<sup>191</sup> Submission 21, Homicide Victims Support Group, p 7.

<sup>192</sup> Submission 21, Homicide Victims Support Group, p 7.

<sup>193</sup> Submission 24, NSW Department of Justice, p 3.

on the register. At that time, we will explain to the person the information we have to tell them and at what time. We will then explain the classification system, to a degree, and advise victims that if an offender was due to be considered for a classification which would allow them to participate in external leave, we will advise them at that time and they will have an opportunity to put forward a submission.<sup>194</sup>

- 4.11** However she noted that some victims of lifers may not have experienced these modern practices as many have been on the register for some time.<sup>195</sup>
- 4.12** Mr Peter Severin, Commissioner, Corrective Services NSW advised that the practice of the Victims Register is consistent with other Australian jurisdictions.<sup>196</sup> However, he noted that Corrective Services NSW is not bound by law to the current practices and could increase engagement if need be.<sup>197</sup>

### **Other Australian jurisdictions**

- 4.13** All Australian states operate a register for victims. In Victoria, victims of lifers may only be informed about the length of the inmate's sentence, whether the inmate is transferred to another jurisdiction or if the inmate dies.<sup>198</sup> In Tasmania, victims of lifers may be notified of the sentence imposed by the court, the location and security classification of the lifer, or if they escape or die. A victim can enquire about the offender's location at any time.<sup>199</sup>
- 4.14** Queensland notifies victims of lifers regarding the inmate's current location and of any transfers between centres, security classification, or their death, escape or other exceptional events.<sup>200</sup> Western Australia informs victims of lifers about the offender's sentence, any escapes from custody and recapture, or any appeals against the sentence. Victims are notified in writing of any changes, usually within five days.<sup>201</sup> South Australia informs victims of lifers about the sentence, location and transfer or escape of the offender.<sup>202</sup>

<sup>194</sup> Evidence, Ms Allison Davies, Victims Support Officer, Corrective Services NSW, 23 November 2015, p 60.

<sup>195</sup> Evidence, Ms Davies, 23 November 2015, p 61.

<sup>196</sup> Evidence, Mr Peter Severin, Commissioner, Corrective Services NSW, 23 November 2015, p 65.

<sup>197</sup> Evidence, Mr Severin, 23 November 2015, p 65.

<sup>198</sup> Correspondence from Ms Jan Shuard PSM, Commissioner, Victorian Department of Justice and Regulation to committee, 7 December 2015, p 3.

<sup>199</sup> Correspondence from Mr Nick Evans, Deputy Secretary, Tasmanian Department of Justice to committee, 17 November 2015, p 6.

<sup>200</sup> Correspondence from Mr Mark Rallings, Commissioner, Queensland Corrective Services to committee, 17 December 2015, p 4.

<sup>201</sup> Government of Western Australia, Department of Corrective Services, *Victim Notification Register*, <http://www.correctiveservices.wa.gov.au/victim-services/victim-notification-register.aspx>.

<sup>202</sup> Correspondence from Mr David Brown, Chief Executive, South Australian Department for Corrective Services to committee, 25 January 2016, p 3.

### Workshop following the reclassification of lifers in July 2015

- 4.15** In August 2015, following the incident in July (see chapter 2 at 2.42 – 2.65 for details), Corrective Services NSW held a workshop with registered victims of lifers and victim support groups to discuss how improvements could be made to the Victims Register process. Agreed areas for action included:
- improvements to the existing forms so victims can specify how they wish to engage and what they would like to know
  - greater time and assistance provided to prepare submissions for the Serious Offenders Review Council or the State Parole Authority, either directly or through a partner victim support organisation
  - biannual meetings with registered victims to maintain engagement and provide specific information
  - information that explains the security classification system and its impact on inmates
  - programs provided by Corrective Services NSW targeting offending behaviour.<sup>203</sup>
- 4.16** The Homicide Victims' Support Group Australia Inc. considered the workshop to be very helpful for victims. It identified a number of other issues and suggestions that victims raised during the workshop, primarily that there should be more interaction between government agencies and that the victims registers of the Mental Health Review Tribunal (Forensic Patients Victims Register) and Juvenile Justice (Victims Register) should be merged with the Corrective Services NSW Victims Register. Currently, there is no integration between the different registers which presents challenges to victims when obtaining information.<sup>204</sup>
- 4.17** The Homicide Victims' Support Group reasoned that there should be a central point of contact with family members, noting that it is onerous for victims to be registered on all three registers. It claimed that dealing with different government departments creates confusion as there is too much inconsistency. It also argued that more improvements need to be made with exchanging information across the justice sector, including courts, police, juvenile justice, corrective services and victims' services.<sup>205</sup>
- 4.18** Mr Howard Brown, Vice-President, Victims of Crime Assistance League expressed the view that the Commissioner failed to give an adequate explanation during the workshop as to what A and B classifications involve for inmates.<sup>206</sup> He said that greater understanding would ensure reclassification is not as confronting for victims as they will know what it entails (see chapter 2 for further comments regarding the importance of victim education).<sup>207</sup> Mr Brown suggested that there is a veil of secrecy surrounding the current process which has heightened victims' concerns.<sup>208</sup>

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<sup>203</sup> Submission 24, NSW Department of Justice, p 3.

<sup>204</sup> Submission 21, Homicide Victims Support Group, p 8.

<sup>205</sup> Answers to questions on notice, Homicide Victims' Support Group Australia Inc., 18 December 2015, p 1.

<sup>206</sup> Evidence, Mr Howard Brown, Vice-President, Victims of Crime Assistance League (VOCAL), 23 November 2015, p 43.

<sup>207</sup> Evidence, Mr Brown, 23 November 2015, p 45.

<sup>208</sup> Evidence, Mr Brown, 23 November 2015, p 43.

- 4.19** Dr Paget advised the committee that the Department of Justice is currently considering the future management of the different victims' registers. Additionally, he suggested that the Corrective Services NSW website should be more 'victim-friendly', and noted that this has been raised with the Department of Justice for discussion.<sup>209</sup>
- 4.20** Commissioner Severin stated that following the dialogue with victims, he understood the need for greater direct engagement with victims.<sup>210</sup> He commented that Corrective Services NSW should have more telephone contact, and ensure that written forms are less formal.<sup>211</sup>
- 4.21** The Commissioner appreciated that Corrective Services NSW needed to specifically engage more with the victims of lifers, but that this had not previously happened as there was no policy requirement for the Victims Register to interact with these victims because lifers will never be released.<sup>212</sup>
- 4.22** Dr Anne-Marie Martin, Assistant Commissioner, Offender Management and Programs, Corrective Services NSW indicated that work had been undertaken to improve the content of the department's forms in consultation with victim support groups.<sup>213</sup>
- 4.23** The Commissioner observed that victims ideally want a one-stop-shop. They do not want to deal with the victims' section in the courts, police and then in Corrective Services. He noted that this may not be immediately achievable; however, these services could better align the way they communicate their message and engage with victims.<sup>214</sup>
- 4.24** The Department of Justice advised that Corrective Services NSW will undertake these improvements in a manner consistent with the Inspector of Custodial Services' recommendation in his September 2015 report *Lifers: classification and regression* regarding improved communication with victims (noted in chapter 2 at 2.51).<sup>215</sup>

***Committee comment***

- 4.25** The committee is pleased that Corrective Services NSW has increased engagement with victims and is working with them to find better and more meaningful ways to communicate. While the committee appreciates the amount of work that has recently been done in this area, we encourage the Department of Corrective Services NSW to facilitate a greater exchange of information across the justice sector to better assist victims.
- 4.26** The committee supports the suggestion of the Homicide Victims' Support Group to merge the victims registers of the Mental Health Review Tribunal, Juvenile Justice and Corrective Services NSW to create a one-stop-shop for victims, as it would make the system more user

<sup>209</sup> Submission 8, Former Inspector of Custodial Services, pp 13-14.

<sup>210</sup> Evidence, Mr Severin, 23 November 2015, p 65.

<sup>211</sup> Evidence, Mr Severin, 23 November 2015, p 72.

<sup>212</sup> Evidence, Mr Severin, 23 November 2015, p 61.

<sup>213</sup> Evidence, Dr Anne-Marie Martin, Assistant Commissioner, Offender Management and Programs, Corrective Services NSW, 23 November 2015, p 72.

<sup>214</sup> Evidence, Mr Severin, 23 November 2015, pp 63-64.

<sup>215</sup> Submission 24, NSW Department of Justice, pp 3-4.

friendly for victims. We recommend that the Department of Justice consider implementing this proposal.

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**Recommendation 3**

That the NSW Department of Justice consider merging the victims registers of the Mental Health Review Tribunal, Juvenile Justice and Corrective Services NSW.

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**Should the Victims Register be opt-in or opt-out?**

- 4.27** The issue of whether the Victims Register should be opt-in or opt-out was raised by a number of victims and victim support groups.
- 4.28** The Homicide Victims Support Group recommended that the NSW Government amend the Crimes (Administration of Sentences) Regulation 2014 so that victims of homicide-related offences are automatically placed on the register unless they request otherwise.<sup>216</sup>
- 4.29** Mr Garry Connell, the son of a murder victim and member of the Homicide Victims' Support Group Australia Inc. and Mr Peter Rolfe, President, Support After Murder Inc., both shared the view that the Victims Register should be opt-out. They suggested that many victims are not in the right frame of mind initially to proactively make a decision about joining the register.<sup>217</sup> In fact Mr Rolfe advised that he had only just recently joined the register, 21 years after his partner was murdered. He said that at the time of the murder he was in no emotional state to contemplate joining. If it had been an opt-out scheme he would have been on the register automatically.<sup>218</sup>
- 4.30** Ms Davies advised that Corrective Services NSW is currently looking at the feasibility of an opt-out system, in particular for victims of serious offenders and lifers.<sup>219</sup>

***Committee comment***

- 4.31** The committee supports the views of victims calling for the register to be 'opt-out'. For victims of lifers, proactively seeking and joining the register may be too emotionally difficult in a time of great distress. Corrective Services NSW should consider ways to make this process as smooth as possible. Making the register an 'opt-out' system means that this will be an automatic process and one less thing the victim needs to consider. The committee therefore recommends that Corrective Services trial an opt-out register for victims of lifers. Correctives Services should ensure that staff administering the opt-out trial be appropriately trained and

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<sup>216</sup> Submission 21, Homicide Victims Support Group, p 7.

<sup>217</sup> Evidence, Mr Garry Connell, Member, Homicide Victims' Support Group Australia Inc., 23 November 2015, p 51; Evidence, Mr Peter Rolfe, President, Support After Murder Inc., 23 November 2015, p 54.

<sup>218</sup> Evidence, Mr Rolfe, 23 November 2015, p 54.

<sup>219</sup> Evidence, Ms Davies, 23 November 2015, p 63.



that the Commissioner of Victims Rights, victims and victims groups are consulted before the trial is conducted.

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#### **Recommendation 4**

That Corrective Services NSW trial an opt-out Victims Register for victims of inmates sentenced to life imprisonment.

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- 4.32** Further to recommendation 4, the committee notes that victims who choose to opt-out of the Victims Register may change their mind at a later date. The committee therefore recommends that the Victims Register conduct a one-off follow up of victims of inmates sentenced to life imprisonment who have opted out, to ask if they would like to reconsider joining the register. This could occur, for example, two years after the decision to opt-out has been made. Victims should be informed of this policy when they initially make the decision to opt-out.

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#### **Recommendation 5**

That, as part of the opt-out system at recommendation 4, Corrective Services NSW establish a policy whereby the Victims Register conduct a one-off follow up of victims of inmates sentenced to life imprisonment who have opted-out of the register to ask if the victim would like to reconsider joining the register, and that victims be informed of this policy when they initially make the decision to opt-out.

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### **What information should be provided to victims?**

- 4.33** This section will examine what information should be provided to victims and when. Given the number of victims on the Victims Register, Dr Paget suggested that there is a clear need to come to a mutually agreed position on what information a registered victim might reasonably expect and what Corrective Services NSW might reasonably provide.<sup>220</sup> He emphasised that providing registered victims with more information will require careful consideration. Factors to be considered include:
- establishing how registered victims might use information provided and what accountabilities might be attached
  - determining how far into the inmate assessment and classification processes it is appropriate for victims to be engaged
  - balancing communication with victims and their participation rights.<sup>221</sup>
- 4.34** As explained at the beginning of this chapter, registered victims are only informed when an inmate is to be considered for a change in security classification which may result in the offender being eligible for an unescorted leave of absence. However, the Homicide Victims'

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<sup>220</sup> Submission 8, Former Inspector of Custodial Services, p 12.

<sup>221</sup> Submission 8, Former Inspector of Custodial Services, p 15.

Support Group wished for victims to be automatically informed of *any* reclassification of lifers. It explained that victims expect a degree of permanency in relation to lifers and either do not think to request updates, or find it psychologically confronting to do so.<sup>222</sup>

- 4.35** Mr Connell illustrated why it is so important to victims of lifers that they be informed of reclassification decisions and the location of the inmates:

Why do I have an interest in reclassification? Why would a victim want to know? I think one of the really important things is that the last memory you have of your loved ones, unfortunately, is the moment they were killed; and that will always then be linked to the offender. As a result, for many years after that ... I would hear the word "mother" and immediately think of my mum and her death, and then I would think, "What is that mongrel doing now? Where is he? What is life like for him?" To be honest I would picture almost killing him. Obviously time moves on et cetera, but I think that link is always there.<sup>223</sup>

- 4.36** Mr Connell expressed to the committee that knowing this sort of information was part of the healing process:

As I said at the beginning, unfortunately you lie awake for hours and hours thinking about that person because they are the link. It is that fear of not knowing and wondering about what is happening. It is part of the healing process for the victim to know that that person is in Goulburn or Long Bay, although I do not know the difference between them. It is about knowing they are at that venue or that venue. That helps me.<sup>224</sup>

- 4.37** The Homicide Victims' Support Group asserted that registered victims should have more choice as to the information they are provided by Corrective Services NSW.<sup>225</sup> It suggested that the application form for the register include an option for victims to nominate whether, when and how they are contacted by Corrective Services NSW, and what information, within prescribed limits, they wish to be provided.<sup>226</sup>

- 4.38** It recommended that the Crimes (Administration of Sentences) Regulation 2014 be amended to include a requirement that Corrective Services NSW provide information to a registered victim about the impact of classification on the day-to-day life of inmates, and suggested that any notice of proposed re-classification should detail reasons and its effect on the inmate.<sup>227</sup>

- 4.39** Ms Martha Jabour, Executive Director, Homicide Victims' Support Group Australia Inc. pointed out that for family members of murder victims, sentencing is not the final part of the process, it is the start of another process. She recommended that family members be provided with an information package as soon as possible after sentencing that explains the day-to-day life of inmates, including an explanation of the classification system.<sup>228</sup>

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<sup>222</sup> Submission 21, Homicide Victims Support Group, p 6.

<sup>223</sup> Evidence, Mr Connell, 23 November 2015, p 48.

<sup>224</sup> Evidence, Mr Connell, 23 November 2015, p 53.

<sup>225</sup> Submission 21, Homicide Victims Support Group, p 6.

<sup>226</sup> Submission 21, Homicide Victims Support Group, p 7.

<sup>227</sup> Submission 21, Homicide Victims Support Group, p 5.

<sup>228</sup> Evidence, Ms Martha Jabour, Executive Director, Homicide Victims' Support Group Australia Inc., 23 November 2015, p 50.

The sentence is the beginning of another process. If there was an information package at that point after sentence that gave family members an idea of the day-to-day: what the different classification categories mean; what they are entitled to within those categories; what a jail looks like; where they might sleep; what are the facilities that they will be able to partake in; and, the activities. At the start that is information that would be helpful for the families.<sup>229</sup>

- 4.40** Both Mr Connell and Mr Rolfe were also supportive of an education package being provided to victims at this stage, so that even if victims do not join the Victims Register, they have information available that would make it easy to join at a later date if they decide to engage.<sup>230</sup>
- 4.41** Mr Connell noted that in the case of his family's personal tragedy, his father would not have been ready to talk, but if he had an information pack he could have put it under the bed and engaged later when he was ready.<sup>231</sup>
- 4.42** Mr Brown asserted that victims should know exactly what is going on with the inmate, although conceded that it did not necessarily have to be every time a 'sandwich toaster is removed or granted or removed or granted'.<sup>232</sup> Nonetheless, Mr Brown said 'at some point there has to be a process and a protocol developed so that victims can remain informed because they need to know exactly where they are just for their own emotional safety'.<sup>233</sup> In addition, he submitted that victims should not have the right to say where a lifer ought to be located, but they should have the right to at least be informed of where the inmate is situated.<sup>234</sup>
- 4.43** Ms Mahashini Krishna, Commissioner of Victims Rights, Victims Services suggested that Corrective Services NSW could introduce an optional notification process for victims to inform them of all changes to security classification and case plans of an inmate, accompanied by descriptions of the classifications and reasons for the changes.<sup>235</sup> She proposed that this service could also include information about the inmate's behaviour and attitude, their willingness to participate in rehabilitative programs, their access to programs and the operational needs of Corrective Services NSW, as well as information about available support services for victims.<sup>236</sup>
- 4.44** Corrective Services NSW reiterated that there is currently no requirement to notify registered victims of any change to the security classification of lifers, and it did not consider it necessary that this should be a requirement given that any change would only be for internal management purposes and would never have any bearing on possible community implications.<sup>237</sup>

<sup>229</sup> Evidence, Ms Jabour, 23 November 2015, p 50.

<sup>230</sup> Evidence, Mr Connell, 23 November 2015, p 51; Evidence, Mr Rolfe, 23 November 2015, p 54.

<sup>231</sup> Evidence, Mr Connell, 23 November 2015, p 52.

<sup>232</sup> Evidence, Mr Brown, 23 November 2015, p 43.

<sup>233</sup> Evidence, Mr Brown, 23 November 2015, p 45.

<sup>234</sup> Evidence, Mr Connell, 23 November 2015, p 49.

<sup>235</sup> Submission 33, Victims Service, Department of Justice, p 5.

<sup>236</sup> Submission 33, Victims Service, Department of Justice, pp 7-8.

<sup>237</sup> Answers to questions on notice, Corrective Services NSW, p 10.

### **Different needs and expectations of victims**

- 4.45** Many inquiry participants emphasised that victims have different reactions and needs, so there is no ‘one size fits all’ model for engagement and information.
- 4.46** Mr Brown pointed out that often victims will say immediately after a court process that they do not want to become a registered victim. However down the track they will want to engage and be placed on the register.<sup>238</sup>
- 4.47** Mr Connell explained the different reactions within his own family to their tragedy and their different levels of engagement:

I think everyone reacts differently. I have three sisters still alive. One of them has spent most of her life on the other side of the world and not on any social media, because she just wants to be away from it all. At the age of 17, would I have gone on a victims’ register if I had had the opportunity? My dad cried nearly every day for a year so he would not have wanted to go on a victims’ register. I would have been too young to. But now I am interested. Now I do want to know.<sup>239</sup>

- 4.48** Commissioner Severin noted that some victims simply want to be on the register, but others like to actively hear more from the system, not necessarily in relation to the particular offender, but in relation to the classification system in general.<sup>240</sup>
- 4.49** Dr Paget recognised that victims have very disparate views and requirements and argued that generalised recommendations about what victims can and cannot access would be unhelpful.<sup>241</sup> To illustrate his point he noted the wide range of views at the August 2015 workshop:

The expressions from people in that meeting were quite diverse. Some wanted to minimise their dealings with the department totally; others expressed views about the dangers of being vengeful and how that was self-destructive; and others expressed contrary views about what sort of classification lifers should enjoy over the totality of their sentences. There was quite a range of views expressed.<sup>242</sup>

### ***Committee comment***

- 4.50** The committee believes it is important for the Victims Register to communicate with victims of lifers as soon as possible following sentencing. Victims should be properly informed about the Victims Register and what will happen to the lifer. As such, the committee recommends that Corrective Services NSW establish a policy whereby, shortly after sentencing, the Victims Register provides an information package to victims of lifers and offers to telephone or meet with them to explain the correctional system, custodial management practices and the day-to-day life of an inmate and that it consider doing this in the presence of a counsellor.

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<sup>238</sup> Evidence, Mr Brown, 23 November 2015, p 45.

<sup>239</sup> Evidence, Mr Connell, 23 November 2015, pp 48-49.

<sup>240</sup> Evidence, Mr Severin, 23 November 2015, p 61.

<sup>241</sup> Evidence, Dr John Paget, Former Inspector of Custodial Services, 23 November 2015, p 15.

<sup>242</sup> Evidence, Dr Paget, 23 November 2015, p 16.

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### **Recommendation 6**

That Corrective Services NSW establish a policy whereby, as soon as possible following sentencing, the Victims Register provide an information package to victims of inmates sentenced to life imprisonment and offer to telephone or meet with them to explain the correctional system, custodial management practices and the day-to-day life of an inmate and that it consider doing this in the presence of a counsellor.

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- 4.51** The committee also respects that victims have different responses and needs. Some will want to be very involved in the future of their offender, while others will not want to be involved at all. For this reason the committee suggests that Corrective Services NSW adopt a flexible and tailored approach regarding what victims of lifers may be informed about.
- 4.52** The committee recommends that Corrective Services NSW consult with victim support groups to develop a form for victims of lifers to complete following sentencing that includes a list of matters that victims can nominate to receive updates about. These services must be both practical for Corrective Services NSW to provide and be of use to victims. The committee also recommends that this form be made available to current victims of lifers. Further, victims should also be able to amend this form at any time, in keeping with the view that victims' needs are likely to change over time.
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### **Recommendation 7**

That Corrective Services NSW develop, in consultation with victim support groups and the Commissioner of Victims Rights, a form to be provided to victims of inmates sentenced to life imprisonment following sentencing that includes a list of matters that victims can nominate to receive updates about, and that this form also be made available to current victims of inmates sentenced to life imprisonment.

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## **Should victims have a role in the reclassification and custodial management of lifers?**

- 4.53** Victims had differing views regarding the extent they should be involved in decisions regarding the reclassification and custodial management of lifers.
- 4.54** Some inquiry participants, such as Justice Action, Community Justice Coalition, Law Society of New South Wales, Ombudsman NSW, Women in Prison Advocacy Network and Legal Aid NSW considered that victims should not play a role in these decisions as they are internal prison management matters.<sup>243</sup>
- 4.55** Ms Jabour did not think victims should be permitted to make submissions regarding the change in a lifer's classification, stating:

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<sup>243</sup> Evidence, Mr Brett Collins, Coordinator, Justice Action, 23 November 2015, p 24; Evidence, the Hon John Dowd AO QC, President, Community Justice Coalition, 23 November 2015, p 35 and p 39; Submission 7, The Law Society of New South Wales, p 3; Submission 6, Ombudsman NSW, p 3; Submission 12, WIPAN, p 4; Submission 26, Legal Aid NSW, p 6.

Not in the sense that victims would be asked whether the classification should be lowered or not. I think if family members and victims were given the explanation of what classification was about from the beginning and then when the classification was going to be changed what that actually means it should be left up to the authorities within the prison system.<sup>244</sup>

- 4.56** Ms Jabour and Mr Connell shared the view that victims should not be involved in the decision-making process about reclassification, but should be informed of the decision and what it entails.<sup>245</sup>
- 4.57** Mr Rolfe also did not support victims of lifers making submissions regarding reclassification. He believed the matter should be left to the prison management, but that victims should be notified of any change by phone, email or letter.<sup>246</sup>
- 4.58** In regard to privileges, the Victims of Crime Assistance League asserted that victims should be invited to provide submissions either in writing or verbally as to why they would oppose the granting of privileges, following receipt of all information outlining why Corrective Services NSW was seeking to grant any benefits.<sup>247</sup> Mr Brown was not suggesting that the views of victims should be seen as the ‘governing factor for the granting of privileges’, but rather as a method where ‘victims are informed of the process and provided the opportunity to be involved’.<sup>248</sup>
- 4.59** He contended that once being aware of victims’ concerns it would be far easier for Corrective Services NSW to make a decision based on the individual needs of the prisoner and provide a satisfactory response to the victim as to why privileges had been granted, despite any objections.<sup>249</sup>
- 4.60** The Commissioner of Victims Rights noted that a key goal of increased participatory and procedural rights, particularly with the Victims Register, has been to assist with the emotional recovery of a victim. However, there is a risk that increased participation can result in ongoing trauma and negatively impact the recovery and mental health of the victim.<sup>250</sup>
- 4.61** Additionally, the Commissioner of Victims Rights submitted that more research is required on the benefit of victim participation in custodial management and security classification decisions, as well as how much participation registered victims should have in the process.<sup>251</sup> She suggested that this could be done through a survey of current registered victims.<sup>252</sup>

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<sup>244</sup> Evidence, Ms Jabour, 23 November 2015, p 51.

<sup>245</sup> Evidence, Ms Jabour, 23 November 2015, p 51; Evidence, Mr Connell, 23 November 2015, p 51.

<sup>246</sup> Evidence, Mr Rolfe, 23 November 2015, p 55.

<sup>247</sup> Submission 5, Victims of Crime Assistance League, p 4.

<sup>248</sup> Correspondence from Mr Howard Brown, Vice-President, Victims of Crime Assistance League to committee, 2 March 2016.

<sup>249</sup> Correspondence from Mr Brown to committee, 2 March 2016.

<sup>250</sup> Submission 33, Victims Service, Department of Justice, p 5.

<sup>251</sup> Submission 33, Victims Service, Department of Justice, p 5.

<sup>252</sup> Submission 33, Victims Service, Department of Justice, p 8.

**4.62** It should be noted that no Australian state allows victims to have input into decisions regarding the reclassification or custodial management of lifers.<sup>253</sup>

*Committee comment*

**4.63** The committee understands why some victims of lifers may want to be involved in the process of reclassification or the granting of privileges. However, concerns regarding the reclassification of lifers will not be an issue if the committee's recommendation 1 is adopted, where lifers will be subject to a new 'lifer' classification and cannot be reclassified.

**4.64** More generally, the committee does not believe that victims should be involved in these decision-making processes because they are matters for the internal management of prisons. In addition, we note that New South Wales practice is in line with all other Australian jurisdictions which do not allow victims to have input into decisions regarding the reclassification or custodial management of lifers.

**4.65** This is not to suggest that the views of victims of crime are any less worthy of consideration when the perpetrator has been given a life sentence. It reflects the fact that decisions about the custodial management of life prisoners, unlike non-life prisoners, will never be considering options for the release of a life prisoner. Given the prisoner will never be released there is no systemic role for victims to play in reviewing the custody management of life prisoners.

**4.66** Instead, the committee concludes that the onus is on Corrective Services NSW to educate and regularly communicate with victims of lifers to ensure they understand enough about the classification system and custodial management practices to understand the rationale behind any decisions relating to these processes. The key for Corrective Services NSW is to keep victims informed (if they wish to be) and to do this in a respectful way. This is why we have recommended that the Victims Register be opt-out for victims of lifers (recommendation 4) and that Corrective Services NSW provide these victims with an information package and offer to speak with them to provide information about the correctional system (recommendation 6).

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<sup>253</sup> See for example: Correspondence from Mr Evans to committee, 17 November 2015, p 5; Correspondence from Mr Rallings to committee, 17 December 2015, p 4; Correspondence from Ms Shuard PSM to committee, 7 December 2015, p 3.





## Chapter 5 Other matters raised regarding the correctional system

This chapter discusses a range of other matters raised during the inquiry, such as the non-mandatory nature of security classification recommendations of the Serious Offenders Review Council, whether the current classification system is too complex and the impact of the ageing prison population on the prison system.

### Serious Offenders Review Council recommendations

- 5.1** The Commissioner of Corrective Services NSW has the discretion to not implement recommendations of the Serious Offenders Review Council (Review Council). Inquiry participants discussed the negative impact on inmates of the Commissioner's decisions to not implement the recommendations of the Review Council to reclassify serious offenders or provide them with work permits.
- 5.2** During the 2014-2015 financial year the Review Council made 1,034 recommendations to the Commissioner in relation to serious offenders' security classifications. All 700 recommendations that a security classification 'stay as is' were approved. Of the 334 recommendations that a serious offender's security classification and/or access to work permits be changed:
- 256 were approved (76 per cent)
  - 11 were approved with amendments (3 per cent)
  - 67 were not approved (21 per cent).<sup>254</sup>
- 5.3** The Commissioner or Acting Commissioner provided comments and/or reasons for not approving 65 of the 67 recommendations. The two with no comments related to the granting of work permits.<sup>255</sup>
- 5.4** The Hon Reginald Blanch AM, Chairperson, Serious Offenders Review Council noted the detailed process that the Review Council undertakes before making recommendations to the Commissioner (see chapter 2 for details). He explained that there is a very high rate of consensus within the prison system regarding the recommendations, as the Review Council widely engages before reaching its decision. Mr Blanch considered that people working with inmates in prison, such as psychologists and other experts, have the greatest knowledge and understanding of inmates and what their classifications should be. However, the Review Council's recommendations are not always approved by the Commissioner, who may disagree with its assessment.<sup>256</sup>
- 5.5** Mr William Hutchens, Solicitor in Charge, Legal Aid NSW agreed that the Commissioner should have the final say on classification, but was of the view that the Commissioner should

<sup>254</sup> Answers to questions on notice, Serious Offenders Review Council, 14 December 2015, p 3.

<sup>255</sup> Answers to questions on notice, Corrective Services NSW, received 18 December 2015, p 7.

<sup>256</sup> Evidence, The Hon Reginald Blanch AM, Chairperson, Serious Offenders Review Council, 23 November 2015, p 8.

uphold the recommendations of the Review Council unless there was a very good reason not to. This is because the Review Council 'is the body on the ground' that meets with experts and 'deals with the inmates face to face'.<sup>257</sup>

- 5.6** He argued that the *Crimes (Administration of Sentences) Act 1999* should be amended to state that, except in 'unusual circumstances', the Commissioner should adopt the recommendations of the Review Council and suggested that the Commissioner should give detailed reasons when he (or she) does not approve a recommendation. Mr Hutchens told the committee that often the Commissioner will only provide a short phrase when rejecting a recommendation and may not provide a detailed explanation.<sup>258</sup>
- 5.7** Further Mr Hutchens noted that there is no appeal process to the Commissioner's decision. The only option is to consider whether the Commissioner has made an error of law and to take the matter to the Supreme Court, 'which is a very expensive and cumbersome exercise'.<sup>259</sup>
- 5.8** The Hon John Dowd AO QC, President, Community Justice Coalition, argued that the Commissioner should be obliged to set-out detailed reasons for rejecting the recommendations of the Review Council and that there should be an appeal mechanism.<sup>260</sup>
- 5.9** Mr John Killick, a former inmate, told the committee about a personal example of where the Commissioner had rejected a recommendation of the Review Council to grant parole:

My release date was 3 March 2013, after a 14-year non-parole period. Serious Offenders Review Council recommended parole, and also the intention to grant parole by the parole authority, but then the commissioner stepped forward and opposed it. He knocked it back and I had to do another 12 months, because he wanted me to do external leave. He then said, 'I can't let you out until you do weekend leave,' but he would not give me weekend leave because I faced extradition to Queensland. So I found I was in a terrible position where I could not get parole because I could not get weekend leave and I could not get weekend leave because I had an extradition order.<sup>261</sup>

- 5.10** Mr Killick considered that the Serious Offenders Review Council is the body best placed to make decisions about the reclassification of inmates, not the Commissioner:

What I have always felt ... particularly with serious offenders when you have an organisation such as the Serious Offenders Review Council which is dealing with you for 15 or 20 years they get to know you. They know everything about you. They have all the reports. Then somebody like the Commissioner comes along, and I know he has a lot of pressure on him from the media and everybody else, and overrides a lot of reasonable people. It is one arbitrary decision overriding all these people who have dealt with you for 15 to 20 years.<sup>262</sup>

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<sup>257</sup> Evidence, Mr William Hutchens, Solicitor in Charge, Legal Aid NSW, 23 November 2015, p 30.

<sup>258</sup> Evidence, Mr Hutchens, 23 November 2015, pp 30-31.

<sup>259</sup> Evidence, Mr Hutchens, 23 November 2015, p 32.

<sup>260</sup> Evidence, The Hon John Dowd AO QC, President, Community Justice Coalition, 23 November 2015, p 37.

<sup>261</sup> Evidence, Mr John Killick, former inmate, 23 November 2015, p 24.

<sup>262</sup> Evidence, Mr Killick, 23 November 2015, p 25.

### **Government Information (Public Access) Act applications**

- 5.11** Mr Hutchens informed the committee that if an inmate complains to Legal Aid NSW that they did not progress following a classification review then Legal Aid must apply under the *Government Information (Public Access) Act 2009* (GIPA) to obtain a copy of the documentation. The granting of this request takes approximately one month and allows Legal Aid to see the Review Council's recommendation and the Commissioner's response.<sup>263</sup>
- 5.12** Mr Dowd expressed concern about this process, pointing out that the GIPA process is 'time-consuming, laborious and expensive'.<sup>264</sup>
- 5.13** In explaining the process, Corrective Services NSW noted that the letter sent to the inmate following the review includes both the Review Council recommendations and the decision. In cases where the recommendation has not been approved, reasons are included where appropriate. The only information not included are points noted by the Review Council when making recommendations. This information can vary depending on the inmate and may contain personal information about third parties and security or intelligence information. Documents containing sensitive information would not be available to the inmate or their legal representative without first being considered through a GIPA application and this information deleted.<sup>265</sup>

### ***Committee comment***

- 5.14** The Serious Offenders Review Council has the important role of recommending to the Commissioner the most appropriate course of action regarding the management of serious offenders and makes these recommendations based on extensive consultation with prison management and health professionals.
- 5.15** The committee notes the evidence received during the inquiry that the Commissioner sometimes only makes short statements when not implementing these recommendations. As such the committee recommends that the Government amend the Crimes (Administration of Sentences) Regulation 2014 to state that the Commissioner must provide reasons for not adopting the recommendations of the Review Council.

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### **Recommendation 8**

That the NSW Government amend the Crimes (Administration of Sentences) Regulation 2014 to state that, in cases where the Commissioner for Corrective Services does not adopt the recommendations of the Serious Offenders Review Council, reasons as to why the recommendations were not adopted must be provided.

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<sup>263</sup> Evidence, Mr Hutchens, 23 November 2015, p 31.

<sup>264</sup> Evidence, Mr Dowd, 23 November 2015, p 37.

<sup>265</sup> Answers to questions on notice, Corrective Services NSW, p 6.

## Perceived complexity of the security classification system

- 5.16** The committee heard differing views regarding the structure of the security classification system. Some participants thought the classification system was too complex and should be simplified, while others thought it was adequate.

### Reviewing the classification system

- 5.17** As noted in chapter 2, the New South Wales security classification system consists of three levels (maximum, medium and minimum security) with nine sub-classifications for male inmates and five sub-classifications for female inmates.

- 5.18** The now former Inspector of Custodial Services, Dr John Paget, recommended in his April 2015 report, *Full House: The growth of the inmate population in NSW* that Corrective Services NSW ‘review the complexity of the current classification system without compromising the objectivity and integrity of the system’.<sup>266</sup>

- 5.19** In response, Corrective Services NSW agreed to conduct a review of the classification system, which is anticipated to be finalised in April 2016.<sup>267</sup>

- 5.20** Dr Paget noted that the United States National Institute of Corrections recommended that classification systems should be reviewed regularly ‘to ensure they are not being overly restrictive’.<sup>268</sup>

... some classification systems are simply punitive and may automatically classify inmates who are convicted of certain offences (for example, murder) to maximum security in spite of evidence that the type of offence is a relatively weak predictor of disciplinary involvement or escape risk.<sup>269</sup>

- 5.21** The Law Society of New South Wales expressed the view that the current system should be reformed as it was overly complex due to the numerous sub-classifications.<sup>270</sup>

- 5.22** Mr Blanch from the Serious Offenders Review Council said the New South Wales system, on face value, was ‘complex’ with the sub-classifications of A1, A2 and B displaying so small a difference that ‘there is virtually no difference at all’.<sup>271</sup> He argued a ‘simpler system of classification of just 1, 2 and 3 or A, B and C would be an easier and simpler process to administer’.<sup>272</sup>

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<sup>266</sup> Submission 8, Inspector of Custodial Services, p 9.

<sup>267</sup> Submission 8, Inspector of Custodial Services, p 9.

<sup>268</sup> Submission 8, Inspector of Custodial Services, p 10.

<sup>269</sup> Submission 8, Inspector of Custodial Services, p 10.

<sup>270</sup> Submission 7, The Law Society of New South Wales, p 1.

<sup>271</sup> Evidence, Mr Blanch, 23 November 2015, p 7.

<sup>272</sup> Evidence, Mr Blanch, 23 November 2015, p 9.

- 5.23** The NSW Ombudsman considered a simplified classification system to be ‘beneficial’ especially if it removed the sub-classifications.<sup>273</sup> It asserted that a simplified system would allow ‘victims and the wider community to better understand the process as it relates to all inmates, and especially those of public interest’.<sup>274</sup>
- 5.24** Former inmate Mr Killick was also of the view that the system had become complex. He said that during his earlier experiences in prison, medium and maximum security were very different, but now the two levels are ‘encroaching into each other’.<sup>275</sup> Mr Killick contended that the primary reason for this was overcrowding.<sup>276</sup>
- 5.25** On the other hand, Mr Dowd was of the opinion that the current classification system works very well, ‘considering the nature of the different sorts of prisoners and the complex issues involved’.<sup>277</sup>
- 5.26** Similarly, Mr Hutchins noted that while the current system appears to be complex, in his view the sub-classifications within the classification system have value.<sup>278</sup>
- 5.27** Equally, the Commissioner for Corrective Services, Mr Peter Severin, while agreeing that the sub-classifications were quite complex, still deemed them to be beneficial as they ‘deal with people who require different levels of protection’.<sup>279</sup>
- 5.28** The Commissioner also stated that he was open to identifying opportunities that would meet both the requirements of the legislation and give the prison system an opportunity to dynamically manage inmates in the context of full community confidence.<sup>280</sup>

### **Classification systems in other jurisdictions**

- 5.29** Commissioner Severin advised the committee that Corrective Services NSW is considering streamlining the classification system and is ‘looking at what other jurisdictions are doing and identifying if there are opportunities to improve’.<sup>281</sup>
- 5.30** Dr Paget noted in his September 2015 report *Lifers: Classification and regression* that the New South Wales classification system was more complex than other Australian correctional

<sup>273</sup> Submission 6, NSW Ombudsman, pp 1-2.

<sup>274</sup> Submission 6, NSW Ombudsman, pp 1-2.

<sup>275</sup> Evidence, Mr Killick, 23 November 2015, p 27.

<sup>276</sup> Evidence, Mr Killick, 23 November 2015, p 27.

<sup>277</sup> Evidence, Mr Dowd, 23 November 2015, p 39.

<sup>278</sup> Evidence, Mr Hutchins, 23 November 2015, pp 29-30.

<sup>279</sup> Evidence, Mr Peter Severin, Commissioner, Corrective Services NSW, 23 November 2015, p 73.

<sup>280</sup> Evidence, Mr Severin, 23 November 2015, p 67.

<sup>281</sup> Evidence, Mr Severin, 23 November 2015, p 73.

jurisdictions.<sup>282</sup> This is illustrated by South Australian and Queensland Correctional Centres which use a simple three tier classification system.<sup>283</sup>

- 5.31** However, Mr Killick told the committee that from his experience, the Queensland classification system was a ‘mess’ due to the three tier system.<sup>284</sup> He therefore thought sub-classifications were necessary for the management and placement of inmates.<sup>285</sup>

### *Committee comment*

- 5.32** The committee notes the complexity of the security classification system, but recognises the value of having distinct sub-classifications. The committee welcomes the review of the system currently being conducted by Corrective Services NSW and looks forward to seeing the outcome of that review.

## **Ageing prison population**

- 5.33** The ability of the prison system to manage and care for aged inmates, including lifers, was raised by a number of inquiry participants. In particular, concerns were raised regarding the suitability of facilities and resources to accommodate aged inmates, especially those with high security classifications.
- 5.34** In September 2015, Dr Paget released the report *Old and inside: Managing aged offenders in custody* which examined ‘the management and care of aged inmates in New South Wales correctional centres’.<sup>286</sup> He noted that as at March 2015, aged inmates represented 9.7 per cent of the total inmate population.<sup>287</sup>
- 5.35** Dr Paget predicted that the number of aged inmates in prison will continue to grow as a result of the ‘accelerated ageing of some offenders’, such as lifers, and an increase in convictions of aged offenders.<sup>288</sup> Consequently, Corrective Services NSW will need to provide ‘aged-care services to a growing cohort of aged, frail and chronically ill inmates’.<sup>289</sup>

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<sup>282</sup> Submission 8, Inspector of Custodial Services, p 9.

<sup>283</sup> Correspondence, Mr David Brown, Chief Executive, South Australian Department of Correctional Services, received 27 January 2016, p 2; Correspondence from Mr Mark Rallings, Commissioner, Queensland Corrective Services to committee, dated 17 December 2015, p 2.

<sup>284</sup> Evidence, Mr Killick, 23 November 2015, p 27.

<sup>285</sup> Evidence, Mr Killick, 23 November 2015, p 27.

<sup>286</sup> New South Wales Department of Justice, Inspector of Custodial Services, *Old and inside: Managing aged offenders in custody*, 2015, p 9.

<sup>287</sup> New South Wales Department of Justice, Inspector of Custodial Services, *Old and inside: Managing aged offenders in custody*, 2015, p 22.

<sup>288</sup> New South Wales Department of Justice, Inspector of Custodial Services, *Old and inside: Managing aged offenders in custody*, 2015, p 16.

<sup>289</sup> New South Wales Department of Justice, Inspector of Custodial Services, *Old and inside: Managing aged offenders in custody*, 2015, p 6.

### Security classification of aged or infirm inmates

- 5.36** There are currently no specific security classifications for aged or infirm inmates, despite the fact that many of these inmates pose little risk to security.
- 5.37** Dr Paget thought the security risk posed by Category A and B inmates as they aged was potentially lessened, and recommended that Corrective Services NSW review the classifications for aged inmates ‘in light of their risk of absconding and capacity to do harm’.<sup>290</sup>
- 5.38** Similarly, Mr Blanch from the Serious Offenders Review Council expressed the view that the longer a prisoner was ‘institutionalised ... and [the] more ill they become the less of a security risk they are within the prison system’.<sup>291</sup> Thus, Mr Blanch argued there was no need for aged inmates to be classified at high security levels.<sup>292</sup>

### Housing for aged or infirm inmates

- 5.39** The Long Bay Correctional Complex in Malabar, Sydney is the only correctional facility in the state that has specific capabilities for housing and treating aged or infirm inmates. It has three facilities that can house aged inmates depending on their health needs and security classification. Of the three facilities – Metropolitan Special Programs Centre Area 3, Long Bay Hospital and the Kevin Waller Unit – only the latter two can accommodate aged inmates with a high security classification.
- 5.40** The Long Bay Hospital, which contains the Aged Care Rehabilitation Unit and the Kevin Waller Unit, has limited resources with only 40 beds available for inmates with varying medical needs.<sup>293</sup> Dr Paget informed the committee that ‘[t]he average daily cost of keeping an inmate in Long Bay Hospital is in excess of \$1000 ... In contrast, the average cost of care in a community-based high needs aged-care facility in 2011 was \$156 per day’.<sup>294</sup>
- 5.41** For an inmate to be placed in one of the three centres, they must first be identified by Corrective Services NSW or Justice Health and Forensic Mental Health Network staff as ‘having difficulties with daily activities due to ageing, dementia, physical or mobility issues’.<sup>295</sup>

<sup>290</sup> New South Wales Department of Justice, Inspector of Custodial Services, *Old and inside: Managing aged offenders in custody*, 2015, p 14.

<sup>291</sup> Evidence, Mr Blanch, 23 November 2015, p 2.

<sup>292</sup> Evidence, Mr Blanch, 23 November 2015, p 2.

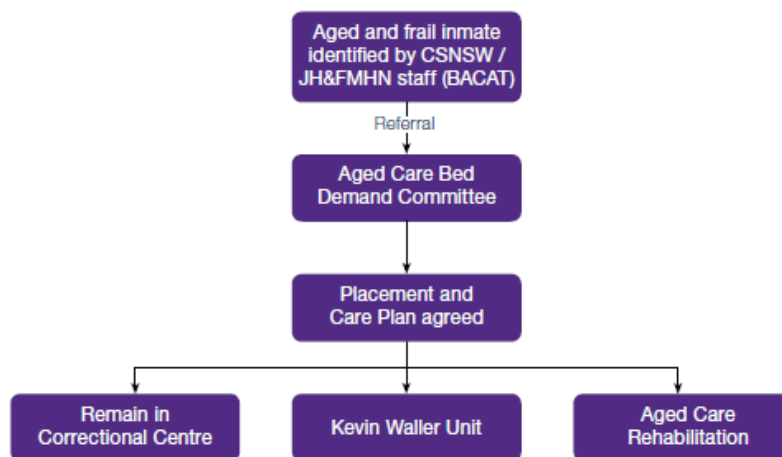
<sup>293</sup> New South Wales Department of Justice, Inspector of Custodial Services, *Old and inside: Managing aged offenders in custody*, 2015, p 19.

<sup>294</sup> New South Wales Department of Justice, Inspector of Custodial Services, *Old and inside: Managing aged offenders in custody*, 2015, p 45 Citing Grant Thornton Australia, Australian Cost of Residential Aged Care Research, Service Costs in Modern Residential Aged Care Facilities, 2012, <http://www.agedcare.org.au/news/2012-news/docuemnts/cost-of-care-study>.

<sup>295</sup> New South Wales Department of Justice, Inspector of Custodial Services, *Old and inside: Managing aged offenders in custody*, 2015, p 23.

- 5.42 Figure 1 illustrates the pathway for aged inmates into the Kevin Waller Unit and the Aged Care Rehabilitation Unit. It shows that there is a limited number of specific placement options for aged inmates with disabilities, chronic illness, or who require ongoing assistance and care.<sup>296</sup> If they cannot receive a place in either unit they will remain in a standard correctional centre, which do not have designated areas for aged and frail inmates.<sup>297</sup>

**Figure 1 Pathway for aged inmates**



Legend: BACAT Basic Aged Care Assessment Tool  
JH&FMHN Justice Health and Forensic Mental Health Network

Source: *Inspector of Custodial Services, Old and inside: Managing aged offenders in custody, 2015, p 23.*

- 5.43 As of December 2015, 14 inmates were housed in the Aged Care Rehabilitation Unit at Long Bay Hospital with all but one considered as aged or frail, while 17 of the 19 inmates housed at the Kevin Waller Unit were considered aged or frail.<sup>298</sup>

### Future plans for managing aged inmates

- 5.44 With many aged and frail inmates being housed in mainstream correctional complexes which are ill-equipped to deal with their specialised needs, some inquiry participants called for more designated centres to manage aged inmates.
- 5.45 Dr Paget argued in his report that the limited level of service provision available to aged inmates in mainstream facilities means it is increasingly difficult for them to live and function with dignity in the correctional setting.<sup>299</sup> He recommended that accommodation for aged and infirm inmates be established in the metropolitan area:

<sup>296</sup> New South Wales Department of Justice, Inspector of Custodial Services, *Old and inside: Managing aged offenders in custody, 2015, p 23.*

<sup>297</sup> New South Wales Department of Justice, Inspector of Custodial Services, *Old and inside: Managing aged offenders in custody, 2015, p 22.*

<sup>298</sup> Answers to questions on notice, Corrective Services NSW, p 3.

<sup>299</sup> New South Wales Department of Justice, Inspector of Custodial Services, *Old and inside: Managing aged offenders in custody, 2015, p 5.*



Corrective Services NSW, in collaboration with Justice Health and Forensic Mental Health Network ... [should create] accommodation for aged and infirm inmates in the metropolitan area. This capacity could be through a new CSNSW facility or the acquisition of an existing aged-care facility in the community.<sup>300</sup>

**5.46** This recommendation was supported in principle by Justice Health and Forensic Mental Health Network which noted '[t]he implementation of this recommendation is contingent on feasibility and impact assessments and resourcing and budgetary considerations'.<sup>301</sup>

**5.47** Commissioner Severin informed the committee about possible future plans for creating designated aged care facilities for inmates:

... there are plans, which are yet to be considered by government, to have designated units and areas designed for the care of aged and frail prisoners into the future, away from the Long Bay complex. These arrangements will still be secure custody arrangements because we need to be able to accommodate anybody in those facilities.<sup>302</sup>

**5.48** The Commissioner acknowledged that facilities at Long Bay Correctional Complex 'will not be sufficient, moving forward, as the only place where we can cater for this particular cohort'.<sup>303</sup> He went on to note that Corrective Services NSW 'need to make plans and have plans under way to change and increase the ability to manage aged and frail people in custody'.<sup>304</sup>

**5.49** Commissioner Severin noted that aged and frail inmates cost more to manage as they have very high needs and require specialist care and a different profile of staff.<sup>305</sup> He explained that constructing new purpose built facilities for aged and frail inmates with high security classifications would be very expensive and that Corrective Services NSW needed to look within the current system to house these inmates, similar to locating high security aged inmates in Long Bay.<sup>306</sup>

### ***Committee comment***

**5.50** The committee recognises the growing importance of addressing the lack of appropriate facilities for aged and infirm inmates, particularly given the increasing population of this cohort of inmates.

<sup>300</sup> New South Wales Department of Justice, Inspector of Custodial Services, *Old and inside: Managing aged offenders in custody*, 2015, pp 13-14.

<sup>301</sup> New South Wales Department of Justice, *Justice Health and Forensic Mental Health Network response to recommendations in Old and Inside: Managing aged offenders in custody* (20 November 2015), p 3, <http://www.custodialinspector.justice.nsw.gov.au/Documents/JH%20and%20FMHN%20response%20to%20recommendations%20in%20Old%20and%20Inside%20Managing%20aged%20offenders%20in%20custody.pdf>.

<sup>302</sup> Evidence, Mr Severin, 23 November 2015, p 61.

<sup>303</sup> Evidence, Mr Severin, 23 November 2015, p 61.

<sup>304</sup> Evidence, Mr Severin, 23 November 2015, p 61.

<sup>305</sup> Evidence, Mr Severin, 23 November 2015, p 61.

<sup>306</sup> Evidence, Mr Severin, 23 November 2015, p 61.

- 5.51** We therefore recommend that the NSW Government consider measures to improve the capacity of the prison system to adequately house, manage and care for aged and frail inmates, including to establish designated units and areas in more correctional centres in New South Wales.

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**Recommendation 9**

That the NSW Government consider measures to improve the capacity of the prison system to adequately house, manage and care for aged and frail inmates, including to establish designated units and areas in more correctional centres in New South Wales.

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- 5.52** In addition, the committee notes that inmates who are aged and frail still retain their classification regardless of the limited security threat or risk they pose due to their age or condition. The committee therefore looks forward to the outcome of Corrective Services NSW's classification review where it is considering devising new classifications for aged and incapacitated inmates, with consideration of aged lifers.

## Appendix 1 Submission list

No	Author
1	Serious Offenders Review Council
2	Name suppressed
3	Name suppressed ( <i>partially confidential</i> )
4	Name suppressed
5	Victims of Crime Assistance League (VOCAL)
6	New South Wales Ombudsman
7	The Law Society of New South Wales
8	Inspector of Custodial Services
9	Robert Shaw Consulting
10	Mr Eric Snowball
11	Dr Martin Bibby
12	Women in Prison Advocacy Network (WIPAN)
13	Support After Murder Inc.
14	Revd Colin Sheehan ( <i>partially confidential</i> )
15	Justice Action
16	Confidential
17	Confidential
18	Name suppressed ( <i>partially confidential</i> )
19	Dr Serena Wright
20	Justice Action
21	Homicide Victims' Support Group (Australia) Inc
22	Community Justice Coalition
23	Enough is Enough
24	NSW Department of Justice
25	Name suppressed ( <i>partially confidential</i> )
25a	Confidential
26	Legal Aid NSW
27	Confidential
28	Confidential
29	Confidential
30	Confidential
31	Confidential

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<b>No</b>	<b>Author</b>
<b>32</b>	Mr Peter Breen
<b>33</b>	Victims Services, NSW Department of Justice

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## Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
<b>Monday 23 November 2015</b> <b>Macquarie Room</b> <b>Parliament House</b>	Hon Reginald Blanch AM QC	Chairperson, Serious Offenders Review Council
	Dr John Paget	Former Inspector of Custodial Services
	Mr Brett Collins	Coordinator, Justice Action
	Ms Emma Gambino	Assistant Coordinator, Justice Action
	Mr John Killick	Individual
	Mr Garry Page	Individual
	Mr Robert Veen	Individual
	Mr William Hutchins	Solicitor in Charge, Prisoners Legal Service, Legal Aid NSW
	The Hon John Dowd AO QC	President, Community Justice Coalition
	Mr Howard Brown	Vice President, Victims of Crime Assistance League (VOCAL)
	Ms Martha Jabour	Executive Director, Homicide Victims Support Group (Australia) Inc
	Mr Garry Connell	Member, Homicide Victims' Support Group (Australia) Inc
	Mr Peter Rolfe	President, Support After Murder Inc.
	Mr Peter Severin	Commissioner, Corrective Services NSW
	Ms Anne-Marie Martin	Assistant Commissioner, Offender Management and Programs, Corrective Services NSW
	Ms Allison Davies	Victims Support Officer, Corrective Services NSW
	Ms Chrissy Wagemans	A/Coordinator, Child Protection Coordination and Support Unit, Corrective Services NSW

## Appendix 3 Tabled document

**Monday 23 November 2015**

**Parliament House**

- 1 Briefing note - Classification of male offenders dated 17 November 2015, *tendered by the Hon Reginald Blanch AM QC, Chair, Serious Offenders Review Council.*

## **Appendix 4 Answers to questions on notice**

The committee received answers to questions on notice from the following:

- Serious Offenders Review Council
- Dr John Paget, Former Inspector of Custodial Services
- Justice Action
- Victims of Crime Assistance League
- Homicide Victims Support Group (Australia) Inc.
- Support after Murder Inc.
- Corrective Services NSW.

## Appendix 5 Minutes

### Minutes no. 3

Wednesday 9 September 2015

Standing Committee on Law and Justice

Waratah Room, Parliament House, 1.06 pm

#### 1. Members present

Mrs Maclaren-Jones, *Chair*

Ms Voltz, *Deputy Chair*

Mr Clarke

Mr Searle (participating)

Mr Shoebridge

Mrs Taylor

#### 2. \*\*\*

#### 3. \*\*\*

#### 4. Consideration of ministerial terms of reference

The Chair tabled the following terms of reference received from the Hon David Elliott MP, Minister for Corrections on 20 August 2015:

1. That the Standing Committee on Law and Justice inquire into and report on the security classification and management in custody of the following categories of inmates subject to sentences of life imprisonment:
  - (a) inmates serving a sentence of life imprisonment for the term of their natural lives,
  - (b) inmates serving a sentence of life imprisonment who are subject to non-release recommendations as defined in clause 1 of Schedule 1 to *the Crimes (Sentencing Procedure) Act 1999*, and
  - (c) inmates serving a sentence of life imprisonment that is an “existing life sentence”, as defined in clause 1 of Schedule 1 to the *Crimes (Sentencing Procedure) Act 1999*, who have not had a specified term and non-parole period set for the sentence under clause 4 of that Schedule.
2. In conducting its inquiry, the committee is to examine:
  - (a) whether the existing legislation, policies and procedures for determining the security classification and custodial management of such inmates are appropriate and consistent with community expectations,
  - (b) the impact of security classification and custodial management of such inmates on registered victims and the role of registered victims in the classification and management decision making process,
  - (c) communication with registered victims prior to and following a security classification and custodial management decision being made and the form that any communication should take,
  - (d) whether it is appropriate to reclassify and provide inmates sentenced to life imprisonment with access to rehabilitative programs and services if they have little or no prospect of release from custody, and
  - (e) the impact of inmate security classification and management decisions on the operation of the correctional system.



Resolved, on the motion of Mrs Taylor: That the committee adopt the terms of reference received from the Hon David Elliott MP, Minister for Corrections on 20 August 2015.

Resolved, on the motion of Mr Shoebridge: That a copy of the report by the Inspector of Custodial Services entitled, 'Full House: The growth of the inmate population in NSW', dated April 2015 be circulated to the committee.

## 5. Inquiry into the security classification and management of inmates sentenced to life imprisonment

### 5.1 Proposed timeline

Resolved, on the motion of Ms Voltz: That the committee adopt the following timeline for the administration of the inquiry:

- Closing date for submissions: Sunday 25 October 2015
- Hearings: mid/late November 2015
- Reporting date: March 2016.

### 5.2 Stakeholder list

Resolved, on the motion of Mr Shoebridge: That the secretariat circulate to members the Chairs' proposed list of stakeholders to provide them with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

### 5.3 Advertising

The committee noted that the inquiry will be advertised via twitter, stakeholder letters and a media release distributed to all media outlets in New South Wales.

### 5.4 Site visits

The committee deferred its decision to conduct site visits to prisons and whether to hear from inmates, until the secretariat had liaised with the Commissioner of Corrective Services NSW.

## 6. \*\*\*

## 7. Next meeting

The committee adjourned at 2.10 pm, *sine die*.

Teresa McMichael

**Clerk to the Committee**

## Minutes no. 4

Friday 30 October 2015

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney, 10.01 am

### 1. Members present

Mrs Maclaren-Jones, *Chair*

Ms Voltz, *Deputy Chair*

Mr Clarke

Mr Shoebridge (from 10.05 am)

Mrs Taylor

### 2. Previous minutes

Resolved, on the motion of Ms Voltz: That draft minutes no. 3 be confirmed.

### 3. Correspondence

The committee noted the following items of correspondence:

#### *Received*

- \*\*\*
- \*\*\*
- 18 September 2015 – Mr Brett Collins, Coordinator, Justice Action, requesting inmates affected by the reclassification be invited to make a submission to the inmates inquiry.

#### *Sent*

- 22 September 2015 – Chair to 12 inmates who have recently been reclassified, inviting them to make a submission to the inmates inquiry
- 28 September 2015 – Chair to 12 inmates who have recently been reclassified, clarifying the submission and inquiry process.

### 4. Inquiry into the security classification and management of inmates sentenced to life imprisonment

#### 4.1 Submissions by inmates

Resolved, on the motion of Ms Voltz: That the committee withhold the names of all inmates making a submission to the inquiry.

Resolved, on the motion of Ms Voltz: That the committee authorise the publication of submission nos 2, 4 and 25 with the exception of identifying and/or sensitive information which are to remain confidential.

#### 4.2 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of an earlier resolution: submission nos 1, 5-13, 15, 19-24 and 26.

#### 4.3 Partially confidential submissions

Resolved, on the motion of Mr Clarke: That the committee keep the following information confidential, as per the request of the authors: names and identifying and sensitive information in submissions nos. 3 and 18.

#### 4.4 Confidential submissions

Resolved, on the motion of Mr Clarke: That the committee keep the following submission confidential, as per the recommendation of the secretariat: sensitive information in submission no. 14.

Resolved, on the motion of Mrs Taylor: That the committee keep submission nos 16 and 17 confidential, as per the recommendation of the secretariat, as they contain sensitive information or are not relevant to the inquiry.

5. \*\*\*

6. \*\*\*

### 7. Adjournment

The committee adjourned at 5.13 pm until Monday 16 November 2015 (privacy hearing).

Vanessa Viaggio

**Clerk to the Committee**

**Minutes no. 5**

Monday 16 October 2015

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney, 9.15 am

**1. Members present**Mrs Maclaren-Jones, *Chair*Ms Voltz, *Deputy Chair*

Mr Clarke (from 9.18 am)

Mr Mookhey (from 9.18 am)

Mr Shoebridge (from 9.19 am)

Mrs Taylor

**2. Previous minutes**

Resolved, on the motion of Ms Voltz: That draft minutes no. 4 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received***

- 26 October 2015 – Lloyd Babb SC, Director, Office of Public Prosecutions, advising that he will not be making a submission to the inquiry into the security classification and management of inmates sentenced to life imprisonment

- \*\*\*

- \*\*\*

***Sent***

- \*\*\*

- \*\*\*

\*\*\*

**4. Inquiry into the security classification and management of inmates sentenced to life imprisonment****4.1 Public submission**

Resolved, on the motion of Mrs Taylor: That the committee authorise the publication of submission no. 32.

**4.2 Confidential submissions**

Resolved, on the motion of Ms Voltz: That the committee keep submission nos 25a and 27-31 confidential, as per the request of the authors.

**4.3 Confidential attachments**

Resolved, on the motion of Ms Voltz:

- That the committee keep the attachments to submission nos 25a, 28, 30 and 31 confidential, as per the request of the authors
- That, with the exception of the Hansard excerpt, the committee keep the attachments to submission no. 32 confidential, as per the recommendation of the secretariat, as they contain identifying and/or sensitive information.

**4.5 Pro forma submissions**

The committee noted that it had received pro forma submissions from five inquiry participants.

Resolved, on the motion of Mrs Taylor: That the committee publish one copy of pro forma submission A on its website, noting the number of copies that have been received.

5. \*\*\*

6. \*\*\*

7. \*\*\*

8. **Adjournment**

The committee adjourned at 3.11 pm until Monday 23 November 2015 (inmates hearing).

Vanessa Viaggio

**Clerk to the Committee**

**Minutes no. 6**

Monday 23 November 2015

Standing Committee on Law and Justice

Macquarie Room, Parliament House, 9.16 am

1. **Members present**

Mrs Maclaren-Jones (*Chair*)

Ms Voltz (*Deputy Chair*) (9.16 am to 10.00 am and from 1.45 pm)

Mr Clarke

Mr Mookhey (9.25 am to 3.00 pm)

Mr Primrose (substituting for Mr Mookhey from 3.00 pm)

Mr Searle (substituting for Ms Voltz 10.00 am to 1.45 pm)

Mr Shoebridge

Mrs Taylor

2. **Substitutions**

The Chair advised that the following members would be substituting during the hearing:

- Mr Primrose for Mr Mookhey (from 1.45 pm)
- Mr Searle for Ms Voltz (from 10.00 am to 1.45 pm).

3. **Previous minutes**

Resolved, on the motion of Mr Shoebridge: That draft minutes no. 5 be confirmed.

4. **Correspondence**

The committee noted the following items of correspondence:

***Received***

- 26 October 2015 – Justice Action to the committee, providing a summary of a letter by an inmate serving life imprisonment
- 25 October 2015 – Justice Action to the committee, providing a summary of a letter by an inmate serving life imprisonment
- 12 November 2015 – Author of submission no. 30 to the inmates inquiry, to the committee, providing additional information
- \*\*\*

**Sent**

- 11 November 2015 – Letters from the Chair to the heads of Corrective Services in other Australian states requesting information on their jurisdiction’s current legislation, policies and practices concerning inmates sentenced to life imprisonment

Resolved, on the motion of Mr Shoebridge:

- That the committee keep the correspondence from Justice Action to the committee providing summaries of letters by inmates serving life imprisonment, dated 25 and 26 October 2015, confidential, as per the request of the author, as they contain identifying and sensitive information
- That the committee keep the correspondence from the author of submission no. 30 to the inmates inquiry to the committee providing additional information, dated 12 November 2015, confidential, as per the recommendation of the secretariat, as it contains sensitive information
- \*\*\*

5. \*\*\*

6. **Inquiry into the security classification and management of inmates sentenced to life imprisonment**

**6.1 Public submission**

The committee noted that the following submission was published by the committee clerk under the authorisation of a resolution establishing the committee: submission. 33.

**6.2 Report deliberative**

Resolved, on the motion of Ms Voltz: That the committee hold its report deliberative for the inquiry into the security classification and management of inmates sentenced to life imprisonment on Thursday 24 March 2016.

7. \*\*\*

8. **Inquiry into the security classification and management of inmates sentenced to life imprisonment**

**8.1 Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- The Hon Reginald Blanch AM QC, Chair, Serious Offenders Review Council.

Justice Blanch tendered the following documents:

- Briefing note - Classification of male offenders dated 17 November 2015
- List of the four categories of life sentences and life sentenced inmates.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Dr John Paget, Former Inspector of Custodial Services.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Brett Collins, Coordinator, Justice Action

- Ms Emma Gambino, Assistant Coordinator, Justice Action
- Mr John Killick, private citizen
- Mr Gary Page, private citizen
- Mr Robert Veen, private citizen.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr William Hutchins, Solicitor in Charge, Prisoners Legal Service, Legal Aid NSW.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- The Hon John Dowd AO QC, President, Community Justice Coalition.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Howard Brown, Vice President, Victims of Crime Assistance League (VOCAL).

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Martha Jabour, Executive Director, Homicide Victims' Support Group (Australia) Inc
- Mr Garry Connell, Member, Homicide Victims' Support Group (Australia) Inc.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Peter Rolfe, President, Support After Murder Inc.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Peter Severin, Commissioner, Corrective Services NSW
- Ms Anne-Marie Martin, Assistant Commissioner, Offender Management and Programs, Corrective Services NSW
- Ms Allison Davies, Victims Support Officer, Corrective Services NSW
- Ms Chrissy Wagermans, A/Coordinator, Child Protection Coordination and Support Unit, Corrective Services NSW.

The evidence concluded and the witness withdrew.

The public hearing concluded at 4.30 pm.

The public and media withdrew.

## **8.2 Tendered documents**

Resolved, on the motion of Ms Voltz: That the committee accept and publish the following document tendered during the public hearing:

- Briefing note - Classification of male offenders dated 17 November 2015, tendered by the Hon Reginald Blanch AM QC, Chair, Serious Offenders Review Council.

Resolved, on the motion of Ms Voltz: That the committee keep confidential the following document tendered during the public hearing:

- List of the four categories of life sentences and life sentenced inmates, tendered by the Hon Reginald Blanch AM QC, Chair, Serious Offenders Review Council.

Resolved, on the motion of Mr Shoebridge: That the statement by Mr Shoebridge where he quoted from the briefing note tendered by Justice Blanch be redacted from the transcript of evidence.

### 8.3 Site visit

Resolved, on the motion of Mr Shoebridge: That the committee secretariat canvass dates with members to organise a site visit to Long Bay Hospital, Long Bay Correctional Complex.

## 9. Adjournment

The committee adjourned at 4.36 pm until Friday 26 February 2016 (privacy report deliberative).

Samuel Griffith  
**Clerk to the Committee**

### Minutes no. 7

Tuesday 16 February 2016  
 Standing Committee on Law and Justice  
 Long Bay Correctional Complex, 1.30 pm

#### 1. Members present

Mrs Maclaren-Jones (*Chair*)  
 Ms Voltz (*Deputy Chair*)  
 Mr Shoebridge (from 1.40 pm)  
 Mrs Taylor

#### 2. Apologies

Mr Clarke  
 Mr Mookey

#### 3. Security classification and management of inmates sentenced to life imprisonment

##### 3.1 Site visit to Long Bay Correctional Complex

The committee conducted a site visit of Long Bay Correctional Complex, visiting the Kevin Waller Unit and Long Bay Hospital.

#### 4. Adjournment

The committee adjourned at 3.05 pm until Wednesday 24 February 2016 at 1.00 pm in Room 1254 (oversight briefing).

Samuel Griffith  
**Clerk to the Committee**

**Minutes no. 9**

Friday 26 February 2016

Standing Committee on Law and Justice

Room 1136, Parliament House, 9:07 am

**1. Members present**Mrs Maclaren-Jones, *Chair*Ms Voltz, *Deputy Chair*

Mr Clarke

Mr Mookhey

Mr Shoebridge

Mrs Taylor

**2. Draft minutes**

Resolved, on the motion of Mrs Taylor: That draft minutes nos. 6 and 7 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received***

- 17 November 2015 – Mr Nick Evans, Deputy Secretary, Tasmanian Department of Justice to committee in relation to the security classification and management of inmates sentenced to life imprisonment
- \*\*\*
- 7 December 2015 – Ms Jan Shuard PSM, Commissioner, Victorian Department of Justice and Regulation to committee in relation to the security classification and management of inmates sentenced to life imprisonment
- 17 December 2015 – Mr Mark Rallings, Commissioner, Queensland Corrective Services to committee in relation to the security classification and management of inmates sentenced to life imprisonment
- 24 December 2015 – Mr James McMahon DSG DSM, Commissioner, Western Australian Department of Corrective Services to committee in relation to the security classification and management of inmates sentenced to life imprisonment
- 27 January 2016 – Ms Danica Duong, Governance & Executive Support, Department for Correctional Services South Australia to committee providing information requested by committee in relation to the security classification and management of inmates sentenced to life imprisonment
- 11 February 2016 – The Hon Adele Farina MLC, Deputy President of the Legislative Council to committee, inviting members to Australia-New Zealand Scrutiny of Legislation Conference, Perth, 11 to 14 July 2016
- \*\*\*
- 12 February 2016 – Mr Bob Carr, former Premier, to committee, advising he will not be making a submission to the inquiry

***Sent***

- \*\*\*
- \*\*\*
- 15 December 2015 – Chair to Mr Brett Collins, Justice Action regarding proposal for online counselling to the inmates inquiry
- 8 February 2016 – Chair to the Hon Bob Carr inviting him to make a submission to the inmates inquiry.

Resolved, on the motion of Mr Clarke: That the committee authorise the publication of the covering letters of the correspondence from:



- Mr Nick Evans, Deputy Secretary, Tasmanian Department of Justice to committee in relation to the security classification and management of inmates sentenced to life imprisonment dated 17 November 2015
- Ms Jan Shuard PSM, Commissioner, Victorian Department of Justice and Regulation to committee in relation to the security classification and management of inmates sentenced to life imprisonment dated 7 December 2015
- Mr Mark Rallings, Commissioner, Queensland Corrective Services to committee in relation to the security classification and management of inmates sentenced to life imprisonment, dated 17 December 2015
- Mr James McMahon DSG DSM, Commissioner, Western Australian Department of Corrective Services to committee in relation to the security classification and management of inmates sentenced to life imprisonment, dated 24 December 2015
- Ms Danica Duong, Governance & Executive Support, Department for Correctional Services South Australia to committee providing information requested by committee in relation to the security classification and management of inmates sentenced to life imprisonment, dated 27 January 2016.

#### 4. Security classification and management of inmates sentenced to life imprisonment

Resolved, on the motion of Mrs Taylor: That the committee accepts the correspondence from Ms Donna Garland as a late submission, and that it authorise its publication.

##### 4.1 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Answers to supplementary questions from Dr John Paget, former Inspector of Custodial Services, received 2 December 2015
- Answers to questions on notice from the Hon Reginald Blanch, Chairperson, Serious Offenders Review Council, received 14 December 2015
- Answers to supplementary questions from Mr Brett Collins, Coordinator, Justice Action, received 18 December 2015
- Answers to supplementary questions from Ms Martha Jabour, Executive Director, Homicide Victims Support Group Australia Inc., received 18 December 2015
- Answers to questions on notice and supplementary questions from Mr Peter Severin, Commissioner, Corrective Services NSW, received 18 December 2015.

##### 4.2 Partially confidential answers to questions on notice

Resolved, on the motion of Mrs Taylor: That the committee keep the following information confidential, as per the recommendation of the secretariat: potential adverse mention in the answers to questions on notice from Mr Peter Rolfe, President, Support After Murder Inc., received 9 December 2015.

##### 4.3 Confidential attachments to answers to questions on notice and supplementary questions

Resolved, on the motion of Mr Clarke: That the committee keep the attachments to answers to questions on notice and supplementary questions from the following individuals confidential:

- the Hon Reginald Blanch, Chairperson, Serious Offenders Review Council, received 14 December 2015, as per the request of the author
- Mr Peter Severin, Commissioner, Corrective Services NSW, received 18 December 2015, as per the request of the author.

5. \*\*\*

6. \*\*\*

## 7. Adjournment

The committee adjourned at 9:50 am *sine die*.

Vanessa Viaggio

**Clerk to the Committee**

## Draft minutes no. 11

Tuesday 29 March 2016

Standing Committee on Law and Justice

Macquarie Room, Parliament House, at 4.04 pm

### 1. Members present

Mrs Maclaren-Jones, *Chair*

Ms Voltz, *Deputy Chair*

Mr Clarke

Mr Mookhey

Mr Shoebridge

Mrs Taylor

### 2. Previous minutes

Resolved, on the motion of Mrs Taylor: That draft minutes nos 8, 9 and 10 be confirmed.

### 3. Correspondence

The committee noted the following items of correspondence:

#### *Received*

- 1 March 2016 – Mr Peter Rolfe, President, Support After Murder Inc. to committee in response to telephone query from Principal Council Officer clarifying his evidence to the inquiry into the security classification and management of inmates sentenced to life imprisonment
- 2 March 2016 – Mr Howard Brown, Vice-President, Victims of Crime Assistance League to committee in response to telephone query from Principal Council Officer clarifying his evidence to the inquiry into the security classification and management of inmates sentenced to life imprisonment.

Resolved, on the motion of Mr Mookhey: That the committee authorise the publication of correspondence from:

- Mr Peter Rolfe, President, Support After Murder Inc. to committee in response to telephone query from Principal Council Officer clarifying his evidence to the inquiry into the security classification and management of inmates sentenced to life imprisonment dated 1 March 2016
- Mr Howard Brown, Vice-President, Victims of Crime Assistance League to committee in response to telephone query from Principal Council Officer clarifying his evidence to the inquiry into the security classification and management of inmates sentenced to life imprisonment dated 2 March 2016.

### 4. \*\*\*

## 5. Security classification and management of inmates sentenced to life imprisonment

### 5.1 Supplementary questions

The committee noted that the following answers to further supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Further answers to supplementary questions from Mr Peter Severin, Commissioner, Corrective Services NSW, received 3 March 2016.

## 5.2 Consideration of Chair's draft report

The Chair submitted her draft report entitled *Security classification and management of inmates sentenced to life imprisonment*, which, having being previously circulated, was taken as being read.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 3.29:

‘There was genuine concern expressed by parts of the community following the reporting of the reclassification of Andrew Garforth. However as noted earlier, much – but by no means all – of this concern arose from the lack of clear information the public had as to the impact of this reclassification. Some of this lack of accurate information meant that there was real confusion as to whether or not reclassification had a direct relationship with increased privileges. As is noted in chapter 2, this is not the case.’

Resolved, on the motion of Mr Shoebridge: That paragraph 3.30 be amended by inserting ‘The issue of how lifers are treated in custody clearly produces strong views among members of the public.’ before ‘For example, one inquiry participant declared’.

Mr Shoebridge moved: That the following new paragraphs be inserted after paragraph 3.51:

‘The committee is persuaded by the balance of the submissions that the prison system must be able to effectively manage life prisoners. This includes the ability to manage the security arrangements of life prisoners in both maximum and medium security facilities.

The question of whether or not any specific life prisoner can be safely imprisoned in conditions that equate to C1 classification can only be determined on close scrutiny of individual cases. Given the breadth of the views on this issue presented to the inquiry it is not appropriate for this committee to rule out this option for managing prisoners and the prison system on the basis of the evidence presented to it.

While we acknowledge that inmates are imprisoned as punishment and not for punishment, there is no question that the crimes committed by life prisoners are of the most distressing and extreme kind. This is an objective circumstance that applies across this cohort of prisoners and therefore there are compelling reasons to retain the limitation that reclassification to C1 for these prisoners should be reserved only for exceptional circumstances.’

Question put and negated.

Resolved, on the motion of Mrs Taylor: That the following new paragraph be inserted after paragraph 3.51:

‘The placement of these inmates should also take into account the extremity of these individuals’ crimes. The committee is therefore of the view that the current practice of not placing lifers in conditions that equate to a C1 classification should be maintained, unless there are exceptional circumstances.’

Ms Voltz moved: That recommendation 1 be amended by omitting ‘That the NSW Government amend the Crimes (Administration of Sentences) Regulation 2014 to establish a separate classification’ and inserting instead ‘That the NSW Government conduct a review of the Crimes (Administration of Sentences) Regulation 2014 as to whether it should be amended to establish a separate classification’.

Question put and negated.

Mr Shoebridge moved:

- a) That paragraph 3.90 be amended by omitting ‘supports current Corrective Services NSW practice’ and inserting instead ‘notes current Corrective Services NSW practice’, and
- b) That paragraph 3.91 be amended by inserting at the end: ‘However consistent with the practice in Victoria, there is no in-principle objection to seeking to rehabilitate even the worst offenders that are held in NSW prisons. To this end there is merit in the Government considering adopting the

system that applies in Victorian prisons. Clearly if this is to be effective in increasing the options for rehabilitation and offender programs available for life prisoners it will require significant additional resources being made available to Corrective Services’.

Question put.

The committee divided.

Ayes: Mr Shoebridge.

Noes: Mr Clarke, Mrs Maclaren-Jones, Mr Mookhey, Mrs Taylor, Ms Voltz.

Question resolved in the negative.

Mr Shoebridge moved: That paragraph 4.31 and recommendation 4 be amended by omitting ‘trial’ and inserting instead ‘consider trialling’.

Question put and negatived.

Mr Shoebridge moved: That the following new paragraphs be inserted after paragraph 4.31:

‘The committee also recognises that for some victims after being advised of the fact that the offender has been given a life sentence and will never be released, they may well never again want to even consider the person who so damaged their lives or the lives of their loved ones. Those victims who form this view are perfectly entitled to want nothing more to do with the offender ever again.

‘The committee only heard from those victims of crime who were willing to come forward and speak to it. This is not a criticism of either the committee structure or the victims who bravely gave their evidence, it is simply an objective fact. However we readily acknowledge that this likely skews the evidence towards those who support an opt-out system for registration. In considering whether or not to trial an opt-out system it will be necessary for Corrective Services to seek to identify views from across the spectrum of victims. We readily acknowledge this is a hard task.’

Question put and negatived.

Resolved, on the motion of Mr Mookhey: That paragraph 4.32 be amended by inserting at the end ‘Correctives Services should ensure that staff administering the opt-out trial be appropriately trained and that the Commissioner of Victims Rights, victims and victims groups are consulted before the trial is conducted.’

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 4.64:

‘This is not to suggest that the views of victims of crime are any less worthy of consideration when the perpetrator has been given a life sentence. It reflects the fact that decisions about the custodial management of life prisoners, unlike non-life prisoners, will never be considering options for the release of a life prisoner. Given the prisoner will never be released there is no systemic role for victims to play in reviewing the custody management of life prisoners.’

Mr Shoebridge moved: That paragraph 5.14 be amended by inserting at the end ‘The decisions and recommendations of the Serious Offenders Review Council should never be set aside lightly.’

Question put and negatived.

Mr Shoebridge moved: That paragraph 5.15 and recommendation 8 be amended by inserting at the end ‘and provide a copy of those reasons to the Serious Offenders Review Council’.

Question put.

The committee divided.

Ayes: Mr Shoebridge.

Noes: Mr Clarke, Mrs Maclaren-Jones, Mr Mookhey, Mrs Taylor, Ms Voltz.

Question resolved in the negative.

Mr Shoebridge moved: That paragraph 5.51 and recommendation 9 be amended by omitting ‘establish designated units and areas in more correctional centres’ and inserting instead ‘establish designated units and facilities’.

Question put and negatived.

Resolved, on the motion of Mrs Taylor: That:

The draft report as amended be the report of the committee and that the committee present the report to the House;

The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

That the report be tabled on Monday 4 April 2016.

## 6. Adjournment

The committee adjourned at 5.20 pm, *sine die*.

Teresa McMichael

**Clerk to the Committee**

## Appendix 6 Dissenting statement

### Mr David Shoebridge MLC, The Greens

While there is real merit in the great majority of the recommendations arrived at by this committee, there are a number of qualifications and concerns that The Greens wish to put on the record.

One of the concerns relates to the automatic trialling of an opt-out system for contact with victims of life prisoners. Our concern in that regard is as follows:

The committee only heard from those victims of crime who were willing to come forward and speak to it. This is not a criticism of either the committee structure or the victims who bravely gave their evidence, it is simply an objective fact. However we readily acknowledge that this likely skews the evidence towards those who support an opt-out system for registration. In considering whether or not to trial an opt-out system it will be necessary for Corrective Services to seek to identify views from across the spectrum of victims. We readily acknowledge this is a hard task.

The other significant concern is related to the ongoing policy determination of both the NSW government and the support of that by the committee of limiting the rehabilitation options available for life prisoners.

Consistent with the practice in Victoria, there is no in-principle objection to seeking to rehabilitate even the worst offenders that are held in NSW prisons. To this end there is merit in the Government considering adopting the system that applies in Victorian prisons. Clearly if this is to be effective in increasing the options for rehabilitation and offender programs available for life prisoners it will require significant additional resources being made available to Corrective Services

The balance of the recommendations however if adopted set out a positive reform path for dealing with this cohort of prisoners. Life prisoners are unique in the prison population in that regardless of the extent of rehabilitation they will never be released from prison. Therefore there is a powerful argument to have them treated as a separate classification, provided that classification at all times respect the fact that inmates are imprisoned *as* punishment and not *for* punishment.

David Shoebridge