

Standing Committee on Law and Justice

Security classification and management of inmates sentenced to life imprisonment

Ordered to be printed 4 April 2016 according to Standing
Order 231

New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Council. Standing Committee on Law and Justice.

Security classification and management of inmates sentenced to life imprisonment / Standing Committee on Law and Justice. [Sydney, N.S.W.] : the Committee, 2016. – [xii, 82] pages ; 30 cm. (Report ; no. 58)

Chair: Natasha Maclaren-Jones, MLC.

“April 2016”.

ISBN 9781922258144

1. New South Wales. Parliament. Legislative Council. Standing Committee on Law and Justice.
2. Prisoners—Protection—New South Wales.
3. Prisons—Security measures—New South Wales.
4. Corrections—New South Wales.
5. Life imprisonment—New South Wales..
 - I. Title
 - II. Maclaren-Jones, Natasha.
 - III. Series: New South Wales. Parliament. Legislative Council. Standing Committee on Law and Justice. Report ; no. 58

365.641 (DDC22)

How to contact the committee

Members of the Standing Committee on Law and Justice can be contacted through the committee secretariat. Written correspondence and enquiries should be directed to:

The Director

Standing Committee on Law and Justice

Legislative Council

Parliament House, Macquarie Street

Sydney New South Wales 2000

Internet www.parliament.nsw.gov.au

Email Lawandjustice@parliament.nsw.gov.au

Telephone 02 9230 2898

Facsimile 02 9230 2981

Terms of reference

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. That in conducting its inquiry, the committee 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.

These terms of reference were referred to the committee by the Hon David Elliott MP, Minister for Corrections, on 20 August 2015.

Committee membership

The Hon Natasha Maclaren-Jones MLC	Liberal Party	<i>Chair</i>
The Hon Lynda Voltz MLC	Australian Labor Party	<i>Deputy Chair</i>
The Hon David Clarke MLC	Liberal Party	
The Hon Daniel Mookhey MLC	Australian Labor Party	
Mr David Shoebridge MLC	The Greens	
The Hon Bronnie Taylor MLC	The Nationals	

Table of contents

	Chair's foreword	ix
	Summary of recommendations	xi
Chapter 1	Introduction	1
	Terms of reference	1
	Conduct of the inquiry	1
	Submissions	1
	Public hearings	1
	Site visit to Long Bay Correctional Complex	2
	1989 reforms to life imprisonment	2
	Categories of life sentences	2
	Inmates serving life imprisonment for the term of their natural life	3
	Inmates serving an 'existing life sentence'	3
	Male and female lifers	6
	Prerogative of mercy	6
	Report structure	6
Chapter 2	Background	7
	Framework for the security classification and management of inmates	7
	Classification of inmates	7
	Differences between security classifications	11
	Classification of lifers	12
	Process to classify and reclassify lifers	13
	Victims register	15
	July 2015 decision to reclassify lifers	16
	Report by the Inspector of Custodial Services	17
	Veracity of July 2015 media reports	19
	Lack of communication with victims	19
Chapter 3	Security classification and custodial management of lifers	23
	Should lifers be reclassified to a level below maximum security?	23
	Safety in prisons	23
	Humane, fair and equal treatment	25
	Cost factor	25
	Should lifers be reclassified below a B classification?	26
	Consideration of a new 'lifer' classification	27
	Community expectations	28
	Other Australian jurisdictions	30

	Should lifers access rehabilitation programs and privileges?	33
	Prison management perspective	34
	Victim perspective	35
	Inmate perspective	36
	Other Australian jurisdictions	37
Chapter 4	Victim engagement	39
	Operation of the Victims Register	39
	Criticism of communication practices	40
	Other Australian jurisdictions	41
	Workshop following the reclassification of lifers in July 2015	42
	Should the Victims Register be opt-in or opt-out?	44
	What information should be provided to victims?	45
	Different needs and expectations of victims	48
	Should victims have a role in the reclassification and custodial management of lifers?	49
Chapter 5	Other matters raised regarding the correctional system	53
	Serious Offenders Review Council recommendations	53
	Government Information (Public Access) Act applications	55
	Perceived complexity of the security classification system	56
	Reviewing the classification system	56
	Classification systems in other jurisdictions	57
	Ageing prison population	58
	Security classification of aged or infirm inmates	59
	Housing for aged or infirm inmates	59
	Future plans for managing aged inmates	60
Appendix 1	Submission list	63
Appendix 2	Witnesses at hearings	65
Appendix 3	Tabled document	66
Appendix 4	Answers to questions on notice	67
Appendix 5	Minutes	68
Appendix 6	Dissenting statement	82

Figures

Figure 1	Pathway for aged inmates	60
----------	--------------------------	----

Tables

Table 1	Inmates sentenced to life imprisonment considered for this inquiry	3
Table 2	Security classifications	9

Chair's foreword

In July 2015 it became publicly known that some inmates sentenced to life imprisonment had been reclassified to a medium or minimum security level. This became a prominent matter in the media following an outcry from the public and victims' families. The Commissioner of Corrective Services subsequently reclassified these inmates from their lower security classifications to maximum security.

This inquiry was established soon afterwards to consider how lifers should be classified and whether they should have access to rehabilitation programs.

Due to the considerable community unrest regarding this matter we have recommended the establishment of a new classification for lifers, as the current security classification system does not appear to be appropriate for lifers. Inmates subject to this new 'lifer' classification would never be reclassified, and instead would be managed by the Serious Offenders Review Council which would make recommendations to the Commissioner regarding placement within the correctional system based on an assessment of risks and needs.

The committee also received evidence that the general public and victims have not been adequately informed and educated by Corrective Services about the classification system and the prison system more generally. This has created a great deal of misinformation in the community regarding the treatment and living conditions of lifers who had been classified at a level below maximum security.

This led to the committee recommending that Corrective Services develop and action a comprehensive communication strategy to educate the public on the operation of the correctional system, and that it introduce a range of measures to improve communication with victims of lifers. These measures include trialling an opt-out Victims Register, providing an information package to victims following sentencing, having staff from the register telephone or offer to meet with victims to explain the correctional system, and providing a form following sentencing that includes a list of matters that victims can nominate to receive updates about.

On behalf of the committee, I would like to thank all the participants in this inquiry, including in particular those family members of victims who shared their personal experiences. I also express my gratitude to my committee colleagues for their considered contributions to this inquiry. Finally, I thank the staff of the committee secretariat for their ongoing professional support, in particular Teresa McMichael, Director, Samuel Griffith, Principal Council Officer and Emma Rogerson, Council Officer.

I commend the report to the Government.



The Hon Natasha Maclaren-Jones MLC
Committee Chair

Summary of recommendations

- Recommendation 1** **32**
 That the NSW Government amend the Crimes (Administration of Sentences) Regulation 2014 to establish a separate classification for inmates sentenced to life imprisonment with little or no prospect of release from custody that is based on the risk they pose to the community, preserves the good order of correctional facilities and ensures the safe and effective management of the inmates.
- Recommendation 2** **32**
 That Corrective Services NSW develop and action a comprehensive communication strategy to educate the public on the operation of the New South Wales correctional system.
- Recommendation 3** **44**
 That the NSW Department of Justice consider merging the victims registers of the Mental Health Review Tribunal, Juvenile Justice and Corrective Services NSW.
- Recommendation 4** **45**
 That Corrective Services NSW trial an opt-out Victims Register for victims of inmates sentenced to life imprisonment.
- Recommendation 5** **45**
 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.
- Recommendation 6** **49**
 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.
- Recommendation 7** **49**
 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.
- Recommendation 8** **55**
 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.

Recommendation 9

62

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.

Chapter 1 Introduction

This chapter provides an overview of the inquiry process, background information regarding reforms to life imprisonment, and an explanation of the four categories of life sentences.

Terms of reference

- 1.1 The terms of reference were referred by the Hon David Elliott MP, Minister for Corrections, Minister for Emergency Services, and Minister for Veterans Affairs on 20 August 2015, with the committee establishing the inquiry on 9 September 2015.¹
- 1.2 The full terms of reference are reproduced on page iv.

Conduct of the inquiry

Submissions

- 1.3 The committee announced the inquiry and invited submissions by advertising on the committee's website, distributing a media release to New South Wales media outlets, and writing to key stakeholders. The closing date for submissions was 25 October 2015.
- 1.4 The committee received a total of 33 submissions to the inquiry. The committee also received pro forma responses from five individuals. A copy of the pro forma was published on the committee's website www.parliament.nsw.gov.au/lawandjustice.
- 1.5 The full list of submissions is set out in Appendix 1.

Public hearings

- 1.6 The committee conducted one hearing for the inquiry on Monday 23 November 2015. A full list of witnesses who appeared at this hearing is included in Appendix 2. A list of witnesses who provided answers to questions on notice during the hearing and/or supplementary questions is provided in Appendix 3 and a list of documents tabled is provided in Appendix 4.
- 1.7 The transcript of the hearing is available on the committee's website. The minutes of the proceedings of all committee meetings relating to the inquiry are included in Appendix 5.
- 1.8 The committee would like to thank everyone who participated in the inquiry for their valuable contribution.

¹ *Minutes*, Legislative Council, 10 September 2015, pp 387-388.

Site visit to Long Bay Correctional Complex

- 1.9** The committee conducted a site visit to the Long Bay Correctional Facility on Tuesday 16 February 2016. The committee visited the Kevin Waller Unit for aged and frail inmates as well as Long Bay Hospital.
- 1.10** The Commissioner of Corrective Services, Mr Peter Severin escorted the committee during the visit where committee members met and spoke with correctional officers and inmates. This was a valuable experience for the committee where it gained insights into how Corrective Services NSW manages aged inmates.
- 1.11** The committee thanks the Commissioner and his staff for facilitating the visit. The issue of the ageing prison population will be discussed in chapter 5.

1989 reforms to life imprisonment

- 1.12** In 1989 the Parliament of New South Wales passed legislation² that gave judicial officers the power to sentence a person to life in prison.³ The reforms, commonly referred to as ‘truth in sentencing’, defined ‘life’ to be an ‘offender’s natural life’.⁴
- 1.13** Before the truth in sentencing reforms, a sentence of life imprisonment was largely a symbolic punishment that rarely meant a person would be kept in prison for the rest of their life. Instead, ‘life’ was an indeterminate sentence imposed by a court.⁵
- 1.14** Inmates could be released from this sentence by the Executive Government,⁶ with the Executive Council acting on the advice of the Minister for Corrective Services. For many years it was common practice for offenders sentenced to life imprisonment to be released ‘on licence’ and returned to the community. This commonly occurred after the inmate had served 11 to 12 years in custody.⁷ The 1989 reforms abolished the Executive release procedure, with the then Minister for Police noting that it was contrary to truth in sentencing.⁸

Categories of life sentences

- 1.15** The truth in sentencing legislation created four categories of inmates sentenced to life imprisonment:
- inmates serving life imprisonment for the term of their natural life

² *Crimes (Life Sentences) Amendment Act 1989; Prisons (Serious Offenders Review Board) Amendment Act 1989; Sentencing (Life Sentences) Amendment Act 1989.*

³ Hansard, NSW Legislative Council, 7 December 1989, pp 14529-14530 (Edward Pickering).

⁴ *Crimes Act 1900*, s 19A(2).

⁵ John Anderson, ‘From marble to mud: The punishment of life imprisonment’ (1999) *History of Crime, Policing and Punishment Conference*, p 4.

⁶ *Crimes Act 1900*, s 463 (repealed).

⁷ Submission 24, NSW Department of Justice, p 5.

⁸ Hansard, NSW Legislative Council, 7 December 1989, p 14528 (Edward Pickering).

- inmates serving an ‘existing life sentence’ who are eligible to have their sentence re-determined
- inmates serving an ‘existing life sentence’ and who are subject to a non-release recommendation
- inmates with a non-parole period.

1.16 As at 13 September 2015, there were a total of 98 inmates serving life sentences under these four categories.⁹ However, the terms of reference for this inquiry (see page iv) specifically requires the committee to examine inmates serving sentences under the first three categories of life sentences; essentially inmates that are likely to spend the rest of their lives in prison. As noted below in Table 1, there are a total of 57 inmates serving sentences under these three categories.

Table 1 Inmates sentenced to life imprisonment considered for this inquiry

Inmates serving a sentence of life imprisonment for the term of their natural lives	42
Inmates serving sentences of life imprisonment imposed before 1990 who are subject to non-release recommendations made by the original sentencing court	10
Inmates serving sentences of life imprisonment imposed before 1990 who are still eligible to have their life sentence redetermined by the Supreme Court	5
Total:	57

Inmates serving life imprisonment for the term of their natural life

- 1.17** Natural lifers refer to the category of inmates sentenced to life imprisonment after 12 January 1990 when the 1989 legislative reforms commenced.
- 1.18** These inmates will remain in prison for the term of their natural lives and are not eligible for release on parole or for a redetermination of their sentence. A person can be sentenced to life imprisonment for the term of their natural life according to s 19A(2) of the *Crimes Act 1900*.
- 1.19** As noted above in Table 1 there are currently 42 natural lifers. These inmates fall under terms of reference paragraph 1(a).

Inmates serving an ‘existing life sentence’

- 1.20** Persons who had already received a life sentence prior to the 1989 legislative amendments, or were sentenced to life imprisonment in a trial that was already underway when the reforms commenced on 12 January 1990, are said to be serving an ‘existing life sentence’. This

⁹ Submission 24, NSW Department of Justice, p 5.

provision has been refined on multiple occasions over the past 20 years¹⁰ and is currently contained in Schedule 1 of the *Crimes (Sentencing Procedure) Act 1999*, which defines this sentence as:

... a sentence of imprisonment for life imposed before, on or after 12 January 1990 (the date on which the *Crimes (Life Sentences) Amendment Act 1989* commenced), but does not include a sentence for the term of a person's natural life under section 19A [murder], 61JA [aggravated sexual assault in company] or 66A (2) [sexual intercourse with a child under the age of 10] of the *Crimes Act 1900* or section 33A of the *Drug Misuse and Trafficking Act 1985*.¹¹

Inmates eligible to have their sentence re-determined

- 1.21** The 1989 legislative reforms provided that persons serving an existing life sentence could apply to the Supreme Court to bring their sentence into line with current practices.¹² As it now stands, an inmate sentenced to an existing life sentence, without a non-release recommendation, may, after serving at least eight years of the sentence, apply to the Supreme Court for the determination of a specified term and a non-parole period for the sentence.¹³
- 1.22** The Supreme Court may then either:
- set a specified term and a non-parole period
 - set a non-parole period but decline to set a specified term
 - decline to set a specified term and a non-parole period.¹⁴
- 1.23** If the Supreme Court declines to set a specified term or a non-parole period, it may choose to prohibit a further application from an inmate, or state a specified period of time before another application can be made.¹⁵
- 1.24** Inmates who are still eligible to apply for this determination fall under terms of reference paragraph 1(c). As noted above in Table 1, only five inmates come under this category.

Inmates subject to a non-release recommendation

- 1.25** While a sentence of life imprisonment prior to the 1989 reforms did not necessarily mean life, sentencing judges, in response to some extreme and heinous crimes, recommended that an inmate's file be marked 'never to be released'. This is now referred to as a non-release recommendation.

¹⁰ *Sentencing Legislation Further Amendment Act 1997; Crimes Legislation Amendment (Existing Life Sentences) Act 2001; Crimes Amendment (Aggravated Sexual Assault in Company) Act 2001; Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Act 2005; Crimes (Sentencing Procedure) Amendment (Life Sentences) Act 2008; Crimes Amendment (Sexual Offences) Act 2008.*

¹¹ *Crimes (Sentencing Procedure) Act 1999*, sch 1, cl 1.

¹² Hansard, NSW Legislative Council, 7 December 1989, p 14530 (Edward Pickering).

¹³ *Crimes (Sentencing Procedure) Act 1999*, sch 1, cl 2.

¹⁴ *Crimes (Sentencing Procedure) Act 1999*, sch 1, cl 4(1).

¹⁵ *Crimes (Sentencing Procedure) Act 1999*, sch 1, cl 6(1).

- 1.26 Inmates serving an existing life sentence subject to a non-release recommendation by the sentencing judge are subject to much stricter release procedures.
- 1.27 While a non-release recommendation was initially only a recommendation from the sentencing judge, it now has the following legal definition that is contained in Schedule 1 of the *Crimes (Sentencing Procedure) Act*:
- non-release recommendation***, in relation to an offender serving an existing life sentence, means a recommendation or observation, or an expression of opinion, by the sentencing court that (or to the effect that) the offender should never be released from imprisonment, and includes any such recommendation, observation or expression of opinion that (before, on or after the date of assent to the *Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Act 2005*) has been quashed, set aside or called into question.¹⁶
- 1.28 According to the Act, inmates subject to a non-release recommendation must wait at least 30 years following sentencing for a determination by the Supreme Court¹⁷ and even then can only have a non-parole period set. The Supreme Court does not have jurisdiction to set a specified term.¹⁸
- 1.29 According to s 154A(3) of the *Crimes (Administration of Sentences) Act* the Parole Authority may only order the release of an inmate with a non-release recommendation on parole if the inmate is about to die or is incapacitated and is not a risk to the community:
- (a) is satisfied (on the basis of a report prepared by the Chief Executive Officer, Justice Health) that the offender:
- (i) is in imminent danger of dying, or is incapacitated to the extent that he or she no longer has the physical ability to do harm to any person, and
- (ii) has demonstrated that he or she does not pose a risk to the community...¹⁹
- 1.30 There are currently 10 inmates subject to a non-release recommendation. These inmates fall under terms of reference paragraph 1(b).

Inmates with a non-parole period

- 1.31 There are another 41 inmates in prison who were sentenced to 'life' prior to the 1989 reforms and have applied to the Supreme Court and had a specified non-parole period set. At the expiry of this period these offenders become eligible for release on parole. If they are released they will be supervised during the remainder of their life sentence.²⁰
- 1.32 Inmates serving a sentence under this category of life imprisonment are not part of the inquiry's terms of reference.

¹⁶ *Crimes (Sentencing Procedure) Act 1999*, sch 1, cl 1.

¹⁷ *Crimes (Sentencing Procedure) Act 1999*, sch 1, cl 2(2)(b).

¹⁸ *Crimes (Sentencing Procedure) Act 1999*, sch 1, cl 4(3).

¹⁹ *Crimes (Administration of Sentences) Act 1999*, s 154A(3).

²⁰ Annual Report for the year ended 31 December 2014, *Serious Offenders Review Council*, p 21.

Male and female lifers

- 1.33** As only one of the 57 lifers this inquiry is investigating is female, this report will primarily refer to the male classification levels. Both the male and female classifications are set out in chapter 2. The one female lifer is classified category 4.²¹

Prerogative of mercy

- 1.34** Although under the current legislation ‘life’ means life, every individual is legally entitled to the prospect of being released, even if they are serving a life sentence. This entitlement is the ‘prerogative of mercy’ where the offender has the power to request release according to s 114 of the *Crimes (Appeal and Review) Act 2001*. The Governor, on advice of the Premier, may exercise this power. Justice Action noted that ‘individuals serving a life sentence are entitled to apply for a review of their sentence if they can argue, for example, that they have paid sufficient penalty, are no longer a public risk, or have changed as a person and should be given conditional liberty’.²²

Report structure

- 1.35** Chapter 2 provides a background to the inquiry by describing the security classification system in New South Wales, the legal framework underpinning the security classification and management of lifers and the incident in July 2015 that caused 12 lifers to be reclassified from lower security classifications to maximum security.
- 1.36** Chapter 3 will examine whether lifers should be permitted to be reclassified to lower security classifications than maximum security and whether they should be permitted to access rehabilitation programs and privileges. The chapter will also address community expectations regarding the classification of lifers and whether a new ‘lifer’ classification should be established.
- 1.37** Chapter 4 focuses on victims. It considers what information should be made available to victims, what role (if any) they should have in decisions regarding the reclassification and custodial management of lifers, and methods to improve Victims Register services.
- 1.38** The final chapter brings together some other matters raised during the inquiry, such as the complexity of the current classification system, the non-mandatory nature of classification recommendations of the Serious Offenders Review Council, and the impact on the prison system of the ageing prison population.

²¹ Answers to questions on notice, Corrective Services NSW, 18 December 2015, p 9.

²² Submission 20, Justice Action, p 7.

Chapter 2 Background

This chapter provides a background to the inquiry by describing the security classification system in New South Wales, the legal framework underpinning the security classification and management of lifers, the role of the Victims Register, and the incident in July 2015 that triggered this inquiry where 12 lifers were reclassified from lower security classifications to maximum security.

Framework for the security classification and management of inmates

- 2.1 The *Crimes (Administration of Sentences) Act 1999*, the Crimes (Administration of Sentences) Regulation 2014 and the Corrective Services NSW Offender Classification and Case Management Policy and Procedures Manual²³ provide the framework for the security classification and management of all inmates, including those sentenced to life imprisonment.
- 2.2 The Crimes (Administration of Sentences) Regulation outlines the security classifications and management of inmates, such as their placement in a correctional facility, provision of case plans, description of programs, work and routine, and punishment by the withdrawal of privileges.
- 2.3 The *Crimes (Administration of Sentences) Act* establishes the Victims Register and the Serious Offenders Review Council and discusses the classification of serious offenders, while the Offender Classification and Case Management Policy and Procedures Manual draws together information from the legislation and regulation and sets out specific policies regarding the classification and management of inmates.

Classification of inmates

- 2.4 Since the 1980s, many countries including Australia, New Zealand, the United Kingdom, Canada and the United States have operated ‘objective’ prisoner classification systems. The early evolution of New South Wales’ current system can be traced to the Nagle Royal Commission and the Martin review of classification.²⁴
- 2.5 In 1976, the Hon J. F. Nagle, was appointed Royal Commissioner to inquire into New South Wales prisons. He recommended that the primary objective of any classification should be security and a detailed personal assessment of each prisoner should be made.²⁵ Nagle further stated:

[The Royal Commission] accepts the aims of imprisonment as punishment, retribution, deterrence and the protection of society, but emphasises that the loss of liberty is the extent of the punishment. Whilst in prison a prisoner should be treated justly and humanely and an attempt should be made at rehabilitation. Imprisonment

²³ Corrective Services NSW, *Offender Classification and Case Management Policy and Procedures Manual*, Accessed at: <http://www.correctiveservices.justice.nsw.gov.au/Pages/CorrectiveServices/related-links/publications-and-policies/policies-defined-gipa-act/csnsw-policy-documents/csnsw-policy-documents.aspx>.

²⁴ Submission 24, Department of Justice, p 11.

²⁵ Submission 24, Department of Justice, p 11.

should be a last resort and those imprisoned should be kept in the lowest appropriate security.²⁶

2.6 In 1986, His Honour T. J. Martin QC was appointed to inquire into the prisoner classification system. Mr Martin made 58 recommendations, including: 'That the principle be adopted that security classification is not to be used as a method of punishment'.²⁷ He observed that inmates who have nothing to hope for are less likely to behave in a constructive and law abiding manner and are likely to make difficulties for themselves, other prisoners and prison staff.²⁸

2.7 The Standard Guidelines for Corrections in Australia currently describe how each jurisdiction should provide for a classification system based on an objective assessment of risk, primarily centered on the safety of prisoners, staff and the community:

The Administering Department should provide a well-structured and transparent system of classification and placement of prisoners which has as its central aim; the safety of prisoners, staff and the community, while ensuring placement of prisoners at their lowest level of security appropriate for their circumstances to ensure maximum opportunities for rehabilitation.

The security classification of prisoners should be based on an objective assessment of risk and a risk management strategy that takes into consideration the nature of their crime, risk to the community, risk of escape and their behaviour in custody.²⁹

2.8 New South Wales prescribes to these guidelines and states that the purpose of its security classification system is to manage inmates at the level of control, supervision and security commensurate with the risk that they pose. This is in order to:

- promote good order and discipline within correctional centres
- avoid wasting public resources in cases where the extra security is unnecessary
- create an incentive for inmates to behave well in custody to protect correctional staff and other inmates
- ensure that inmates are managed humanely
- facilitate access to appropriate rehabilitation programs, work, education and leave necessary to reduce an inmate's risk of reoffending and prepare the inmate for reintegration into the community.³⁰

2.9 As such, the purpose of the classification system is to manage inmates, not reward or punish them.³¹

²⁶ Submission 24, Department of Justice, p 11.

²⁷ Submission 24, Department of Justice, p 11.

²⁸ Submission 24, Department of Justice, p 12.

²⁹ Standard Guidelines for Corrections in Australia Revised, 2012, p 19.

³⁰ Submission 24, Department of Justice, pp 1-2.

³¹ Submission 24, Department of Justice, p 1.

2.10 This principle was emphasised by Mr Peter Severin, Commissioner, Corrective Services NSW who explained that the classification system serves a number of purposes:

It first and foremost serves the purpose of moving people through the system to prepare them for release, and does that commensurate with the level of risk that they are posing as they progress through the system. It also is clearly aimed at controlling a person within the system, so this is not about their needs, it is about their risks.³²

2.11 The security classification levels in New South Wales for both males and females are set out in Part 3, Division 1 of the Crimes (Administration of Sentences) Regulation 2014 and outlined below in Table 2.

Table 2 Security classifications³³

Security level	Security classifications	
	Male	Female
Maximum	AA	Category 5
	Inmates who represent a special risk to national security and should at all times be confined in special facilities within a secure physical barrier that includes towers or electronic surveillance equipment.	
	A1	
	Inmates who represent a special risk to good order and security and should at all times be confined in special facilities within a secure physical barrier that includes towers or electronic surveillance equipment.	
	A2	
	Inmates who should at all times be confined by a secure physical barrier that includes towers, other highly secure perimeter structures or electronic surveillance equipment.	

³² Evidence, Mr Peter Severin, Commissioner, Corrective Services NSW, 23 November 2015, p 67.

³³ *Crimes (Administration of Sentences) Regulation 2014*, ss 12-14.

	<p>E1 (for inmates with an escape history)</p> <p>Inmates who represent a special risk to security and should at all times be confined in special facilities within a secure physical barrier that includes towers or electronic surveillance equipment, or by a secure physical barrier that includes towers, other highly secure perimeter structures or electronic surveillance equipment.</p>	<p>E1 (for inmates with an escape history)</p> <p>Inmates who represent a special risk to security and should at all times be confined in special facilities within a secure physical barrier that includes towers or electronic surveillance equipment, or by a secure physical barrier that includes towers, other highly secure perimeter structures or electronic surveillance equipment.</p>
Medium	<p>B</p> <p>Inmates who should at all times be confined by a secure physical barrier.</p>	<p>Category 4</p> <p>Inmates who should at all times be confined by a secure physical barrier that includes electronic surveillance equipment.</p>
	<p>E2 (for inmates with an escape history)</p> <p>Inmates who should at all times be confined by a secure physical barrier.</p>	<p>E2 (for inmates with an escape history)</p> <p>Inmates who should at all times be confined by a secure physical barrier.</p>
Minimum	<p>C1</p> <p>Inmates who should be confined by a physical barrier unless in the company of a correctional officer or some other person authorised by the Commissioner.</p>	<p>Category 3</p> <p>Inmates who should be confined by a physical barrier unless in the company of a correctional officer or some other person authorised by the Commissioner.</p>
	<p>C2</p> <p>Inmates who need not be confined by a physical barrier at all times but who need some level of supervision by a correctional officer or some other person authorised by the Commissioner.</p>	<p>Category 2</p> <p>Inmates who need not be confined by a physical barrier at all times but who need some level of supervision by a correctional officer or some other person authorised by the Commissioner.</p>
	<p>C3</p> <p>Inmates who need not be confined by a physical barrier at all times and who need not be supervised.</p>	<p>Category 1</p> <p>Inmates who need not be confined by a physical barrier at all times and who need not be supervised.</p>

Differences between security classifications

- 2.12** This section will explain the differences between security classification levels, in particular the physical security setting, inmate access to rehabilitation programs and daily routine.
- 2.13** The physical security settings for A1, A2 (maximum security) and B (medium security) classifications are almost identical.³⁴ The only variance is that A classifications require an inmate to be placed in a facility with towers, while the B classification does not have this requirement.³⁵ Both classifications require inmates to be located in a secure facility where there is at least one delay (e.g. locks) and either two or three detection barriers between the inmate and the outside world.³⁶ Three officers are required for these classifications while on escort unless being transferred in a transport truck and handcuffs and ankle cuffs must be used at all times.³⁷
- 2.14** Most facilities that are maximum security also house medium security inmates, although there are a number of dedicated medium security facilities where the physical security setting is slightly less restrictive.³⁸ A2 inmates may be placed at Goulburn, Lithgow, Wellington, South Coast and Mid North Coast correctional centres, while B inmates may also be placed at Junee, Cooma, Broken Hill, Bathurst and Cessnock correctional centres.³⁹
- 2.15** The difference between A and B is primarily the level of supervision and control that an inmate needs to be subjected to within a secure environment. An inmate's daily routine at maximum security is highly regulated and very strictly monitored. Both classifications provide access to rehabilitation programs; however, a medium security classification may provide access to programs which generally would not apply to lifers as they do not participate in programs to address offending behaviour as they will not be released from custody (this will be discussed in more detail in chapter 3).⁴⁰ The average time out of cells for both maximum and medium security inmates in 2013/14 was 6.9 hours per day.⁴¹
- 2.16** All inmates must work, regardless of the security classification assigned to them. Corrective Services NSW advised that it wants inmates to be meaningfully engaged and 'earn their keep', so work is not simply a privilege, it is an obligation.⁴² The type of work undertaken depends on the security classification. Maximum security inmates are more restricted and may not be allowed to work in certain workshops where there are dangerous tools and other pieces of equipment, while medium security inmates have access to a slightly larger range of work assignments.⁴³

³⁴ Evidence, The Hon Reginald Blanch, Chairperson, Serious Offenders Review Council, 23 November 2015, p 7.

³⁵ Evidence, The Hon Blanch, 23 November 2015, p 2.

³⁶ Evidence, Mr Severin, 23 November 2015, p 60.

³⁷ Tabled document, Corrective Services NSW, *Re: Classification of male offenders*, 17 November 2015, p 1.

³⁸ Evidence, Mr Severin, 23 November 2015, p 66.

³⁹ Tabled document, *Re: Classification of male offenders*, p 1.

⁴⁰ Answers to questions on notice, Corrective Services NSW, 18 December 2015, p 3.

⁴¹ Answers to questions on notice, Corrective Services NSW, p 3.

⁴² Evidence, Mr Severin, 23 November 2015, p 66.

⁴³ Evidence, Mr Severin, 23 November 2015, p 66.

- 2.17** Both the A and B classifications are unrelated to privileges for inmates. The difference between these high classification levels is the placement and management of inmates, not their treatment.⁴⁴ Privileges will be examined in chapter 3.
- 2.18** There are three levels of C (minimum security) classifications. C classifications are significantly different from A and B levels and allow inmates to be in environments with reduced levels of physical security.
- 2.19** C1 is still a supervised environment where inmates are confined by a physical barrier unless being escorted by a correctional officer. One officer must accompany these inmates while on escort unless being transferred in a transport truck and handcuffs and ankle cuffs are not required unless there are security concerns.⁴⁵
- 2.20** There is a larger range of correctional facilities that C1 inmates may be sent to, although many are still housed in maximum security prisons. The C1 classification allows inmates to come and go through the main gate to work in a facility within the outer perimeter of the prison.⁴⁶ No lifer has ever been classified below a C1.
- 2.21** C2 inmates can work in any workshop inside the perimeter, regardless of the type of work that is undertaken. They can also work in physical environments that are outside the prison, and are escorted to these secure workshops.⁴⁷ Work within the broader prison boundaries, but not necessarily in the prison itself, is referred to as an on-privilege, while work outside of the prison boundaries is referred to as an off-privilege.⁴⁸
- 2.22** C3 involves a minimal level of supervision where inmates can access external leave programs, including day leave and work release.⁴⁹ This level of classification is for preparing an inmate for reintegration into the community.
- 2.23** The average time out of cells for minimum security inmates in 2013/14 was 10.5 hours per day.⁵⁰

Classification of lifers

- 2.24** Corrective Services NSW policy is that lifers must ‘always be classified at a level that requires them to be held in secure custody, regardless of the security risk posed by the inmate’.⁵¹ This is in recognition of the fact that lifers do not need preparing for reintegration into society as they will remain in prison for the rest of their lives.⁵²

⁴⁴ Evidence, The Hon Blanch, 23 November 2015, pp 2 and 10.

⁴⁵ Tabled document, *Re: Classification of male offenders*, p 2.

⁴⁶ Evidence, The Hon Blanch, 23 November 2015, p 4.

⁴⁷ Evidence, Mr Severin, 23 November 2015, p 66.

⁴⁸ Evidence, The Hon Blanch, 23 November 2015, p 4.

⁴⁹ Evidence, Mr Severin, 23 November 2015, p 60.

⁵⁰ Answers to questions on notice, Corrective Services NSW, p 4.

⁵¹ Submission 24, Department of Justice, p 2.

⁵² Submission 24, Department of Justice, p 2.

2.25 However, Commissioner Severin noted there is some flexibility in this process so that the principle of risk management can be considered:

It is slightly different with lifers because they will never progress past a secure custody environment. But within that there is certainly room to say, 'Now risk is still a relevant principle' and if somebody does not require the level of control that somebody else requires then they should not, as a matter of principle, just say 'This is the level of control we are always going to exercise over you while you are in custody'.⁵³

2.26 According to a previous Commissioner's direction from 2005, inmates serving natural life sentences or serving life sentences and subject to non-release recommendations are not to be considered for classification at a level below B, other than in exceptional circumstances.⁵⁴ The term 'exceptional circumstances' has not been defined and is at the Commissioner's discretion.⁵⁵

2.27 Due to the nature of their crimes all lifers are considered serious offenders.

Process to classify and reclassify lifers

2.28 As soon as practicable after an inmate is sentenced, an initial security classification is assigned by the Manager of Classification and Placement, who considers:

- the nature and profile of the offence
- length of minimum period of custody/sentence
- assessed risk/need factors and the safety and security of correctional centre
- criminal history and previous episodes and conduct in custody
- escape history and breach reports
- history of mental health
- legal orders.⁵⁶

2.29 As lifers are considered serious offenders they will initially receive an A2 classification. This classification is reviewed at least once every 12 months and at any other time the Commissioner determines.⁵⁷

2.30 The Serious Offenders Review Council (Review Council) is responsible for advising and making recommendations to the Commissioner regarding lifers' security classification, placement and access to developmental programs. The Review Council consists of Corrective

⁵³ Evidence, Mr Severin, 23 November 2015, p 67.

⁵⁴ Submission 24, Department of Justice, p 10.

⁵⁵ New South Wales Department of Justice, Inspector of Custodial Services, *Lifers: Classification and Regression*, 2015, p 15.

⁵⁶ Submission 24, Department of Justice, p 8.

⁵⁷ Corrective Services NSW, *Offender Classification and Case Management Policy and Procedures Manual*, Chapter 14.1, p 8.

Services NSW officers, judicially qualified persons and community members.⁵⁸ The current chairperson of the Review Council is the Hon Reginald Blanch AM.

2.31 When considering a serious offender's progression in classification, careful attention is paid to their behaviour, attitude, conduct and the extent to which they have satisfied the requirements of their case plan. Before any progression to the next classification level, inmates must have demonstrated a period of stability at their existing level.⁵⁹

2.32 A case management team within the correctional centre provides recommendations to the Review Council about an inmate's security classification along with any relevant comments from the correctional centre management and the Manager of Classification and Placement. A sub-committee of the Review Council then interviews the inmate, although lifers are generally not interviewed every year as part of the annual classification review process.⁶⁰

2.33 The Review Council will then convene and consider this information along with:

- case notes
- psychological and psychiatric reports
- program participation and treatment reports
- offences in custody and urinalysis results
- inmate correspondence.⁶¹

2.34 In addition, the Act prescribes that the Review Council must consider the public interest as well as:

- (a) the protection of the public, which is to be paramount
- (b) the nature and circumstances of the offence
- (c) the reasons and recommendations of the sentencing court
- (d) the criminal history and family background of the offender
- (e) the time the offender has served in custody and the time the offender has yet to serve in custody
- (f) the offender's conduct while in custody, including the offender's conduct during previous imprisonment, if applicable
- (g) the attitude of the offender
- (h) the position of and consequences to any victim of the offender, including the victim's family
- (i) the need to maintain public confidence in the administration of criminal justice
- (j) the need to reassure the community that serious offenders are in secure custody as long as it is appropriate
- (k) the rehabilitation of the offender and the re-entry of the offender into the community as a law-abiding citizen
- (l) the availability to the offender of family, departmental and other support
- (m) such other factors as are prescribed by the regulations.⁶²

⁵⁸ *Crimes (Administration of Sentences) Act 1999*, s 195.

⁵⁹ Answers to questions on notice, Corrective Services NSW, p 4.

⁶⁰ Submission 24, Department of Justice, p 8.

⁶¹ Submission 24, Department of Justice, pp 8-9.

⁶² *Crimes (Administration of Sentences) Act 1999*, s 198.

- 2.35** The Commissioner may then accept or reject the recommendations of the Review Council⁶³ (the ability to do the latter is discussed further in chapter 5).
- 2.36** The Commissioner may also vary the classification of serious offenders, including lifers, at any other time, but must first seek and consider recommendations of the Review Council.⁶⁴

Victims register

- 2.37** Corrective Services NSW maintains a Victims Register according to s 256 of the *Crimes (Administration of Sentences) Act*. The primary purpose of this register is to inform victims of crime, who have requested to be notified, of the possible parole of the offender concerned. The definition of a victim includes a family representative if the victim is dead or incapacitated.⁶⁵
- 2.38** If the Review Council intends to recommend that an inmate is reclassified to the lowest security classification (C3) it must notify the registered victim and afford them an opportunity to make a submission. The Review Council must consider this submission in making its recommendation. The Victims Register provides advice to registered victims about the rationale, purpose, formatting and content of submissions and provides practical assistance to help registered victims draft written submissions.⁶⁶
- 2.39** In addition, the Victims Register informs registered victims if the inmate dies in custody or has escaped. However it does not routinely notify victims when an offender is moved between correctional centres or when an inmate's classification changes, unless it may result in eligibility for unescorted leave in the community.⁶⁷
- 2.40** Lifers will never be considered for the lowest level of security classification, or for unescorted pre-release leave. As such, registered victims of lifers are currently not notified of decisions about these inmates' security classification.⁶⁸
- 2.41** There are currently approximately 1,200 victims registered against 800 offenders, with about half registered in relation to a serious offender.⁶⁹

⁶³ Evidence, The Hon Blanch, 23 November 2015, p 8.

⁶⁴ Crimes (Administration of Sentences) Regulation 2014, cl 17.

⁶⁵ *Crimes (Administration of Sentences) Act 1999*, s 256.

⁶⁶ Submission 24, Department of Justice, p 13.

⁶⁷ Submission 24, Department of Justice, p 13.

⁶⁸ Submission 24, Department of Justice, p 3.

⁶⁹ Submission 24, Department of Justice, p 13.

July 2015 decision to reclassify lifers

- 2.42** A series of news stories in July 2015 reported concerns that a group of lifers had their security classification downgraded from maximum security and were receiving ‘soft treatment’ and ‘privileges’. The media reported the distress that some of the victims’ families had experienced upon learning of these matters.⁷⁰
- 2.43** In particular, it was widely reported that Andrew Garforth, who in 1992 was sentenced to life imprisonment for murdering a nine year old girl, had just been reclassified from A2 to B and was receiving ‘privileges’. An online petition was launched on Change.org by the victim’s mother titled ‘NSW Premier: my 9 year old daughter was raped and killed – don’t allow her murderer insulting new privileges’. The petition received the support of over 30,000 people in less than 24 hours.⁷¹
- 2.44** Shortly afterwards, Commissioner Severin wrote to the Serious Offenders Review Council to inform it that lifers who were classified below maximum security, including Mr Garforth, would have their security classification regressed to A2, effective immediately.⁷²
- 2.45** The Commissioner stated that it was his decision to reclassify the lifers and he had not received a direction by the Minister for Corrective Services under s 232(2) of the Act.⁷³ However, the Commissioner said that the Minister did outline ‘his concerns about the reaction of victims and the fact that [Corrective Service NSW] had not properly considered the concerns of victims in making that decision to reclassify downwards’.⁷⁴
- 2.46** The Commissioner wrote to the lifers in late July to advise that his decision was ‘based on significant concerns expressed by victims of crime and other members of the community in relation to the current classification policy for inmates serving a life sentence’.⁷⁵ He noted that the decision did not relate to the behaviour of the inmates, and that the system would be reviewed:

This system will now be reviewed to ensure that the policy and our practices meet the expectations of the broader community whilst ensuring appropriate inmate management.

⁷⁰ See for example ‘Security restrictions on notorious killers Kevin Crump, Michael Murphy and Daryl Suckling eased’, *The Daily Telegraph*, 16 July 2015; Janet Fife-Yeomans, ‘NSW’s most sadistic killers shown mercy with prison privileges’, *The Daily Telegraph*, 18 July 2015; Matthew Bennis, ‘Softer jail conditions to end for 10 life-term prisoners after Daily Telegraph blew whistle on change to minimum security’, *The Daily Telegraph*, 20 July 2015.

⁷¹ Change.org, *NSW Premier: my 9 year old daughter was raped and killed – don’t allow her murderer insulting new privileges*, www.change.org/p/nsw-premier-my-9-year-old-daughter-was-raped-and-killed-don-t-allow-her-murderer-insulting-new-privileges#f13dd6b0983f0d7.

⁷² Answers to questions on notice, Serious Offenders Review Council, 14 December 2015, p 1.

⁷³ Section 232(3) of the *Crimes (Administration of Sentences) Act 1999* states that the Commissioner is subject to the direction and control of the Minister in exercising his functions.

⁷⁴ Evidence, Mr Severin, 23 November 2015, p 64.

⁷⁵ New South Wales Department of Justice, Inspector of Custodial Services, *Lifers: Classification and Regression*, 2015, p 16.

Once this review is completed you will be advised of the outcomes and any impact on your security classification.

I would also like to confirm that this decision is not as a result of your conduct and behaviour in custody and all our records will record this accordingly as the decision is not based on any disciplinary issue.⁷⁶

- 2.47** Commissioner Severin noted that classification is a judgement call made by him as the decision-maker and he was content that on this occasion, based on the concern expressed by the community and victims, he had made the appropriate decision:

[There is no] ... hard-and-fast rule in the context of what constitutes sufficient community concern. It is a judgement. Classification essentially is guided by the judgement of the decision-maker. In this particular instance at that time I was comfortable with making the decision that, based on the concerns expressed by the community and the concerns expressed by victims of crime, it was sufficient for me to say that we would regress. ... It was based on those particular criteria, which are very important under the relevant section of the legislation.⁷⁷

- 2.48** Before having their classifications regressed, nine of these twelve lifers were classified B and three were classified C1. In addition, a number of these lifers had been in these lower classifications for well over a decade and only three of the inmates had been reclassified to their lower levels by the current Commissioner.⁷⁸

Report by the Inspector of Custodial Services

- 2.49** Following the announcement by the Commissioner, the then Inspector of Custodial Services, Dr John Paget, spoke with the Commissioner before releasing a report in September 2015, *Lifers: Classification and Regression*. The report noted that in regressing the classifications of the 12 lifers, the Commissioner did not act in accordance with cl 17 of the Crimes (Administration of Sentences) Regulation 2014, as he did not seek the views of the Serious Offenders Review Council before he made his decision.⁷⁹
- 2.50** Further, Dr Paget noted that there is no provision under cl 17 of the regulation for classification decisions to be based on the concerns of victims of crime or the community. Section 198 of the *Crimes (Administration of Sentences) Act* requires the public interest to be considered in relation to serious offenders, but this is a matter for the Review Council to consider, not the Commissioner.⁸⁰

⁷⁶ New South Wales Department of Justice, Inspector of Custodial Services, *Lifers: Classification and Regression*, 2015, p 16.

⁷⁷ Evidence, Mr Severin, 23 November 2015, pp 69-70.

⁷⁸ New South Wales Department of Justice, Inspector of Custodial Services, *Lifers: Classification and Regression*, 2015, p 16; Answers to questions on notice, Corrective Services NSW, p 4.

⁷⁹ New South Wales Department of Justice, Inspector of Custodial Services, *Lifers: Classification and Regression*, 2015, p 17.

⁸⁰ New South Wales Department of Justice, Inspector of Custodial Services, *Lifers: Classification and Regression*, 2015, p 17.

2.51 The then Inspector made the following four recommendations to Corrective Services NSW:

1. The Inspector recommends that Corrective Services NSW classification system review does not compromise the objectivity and integrity of the classification system.
2. The Inspector recommends that Corrective Services NSW should, in regressing inmates managed by the Serious Offenders Review Council, act in accordance with the Crimes (Administration of Sentences) Regulation 2014.
3. The Inspector recommends that Corrective Services NSW should review the regression of the 12 inmates who are the subject of this report to ensure compliance with the Crimes (Administration of Sentences) Regulation 2014.
4. The Inspector recommends that Corrective Services NSW develop its communication strategies to enable an improved understanding of the correctional system for victims.⁸¹

Response to Inspector's report

2.52 Prior to the release of the Inspector's report, the Commissioner acknowledged his error in not seeking the views of the Serious Offenders Review Council. He retrospectively sought the Council's advice on 18 August 2015 by requesting it to provide him with recommendations regarding the classification of the lifers.⁸²

2.53 The Review Council responded by recommending that the lifers be reinstated to the lower classifications assigned to them before their regression. The Commissioner did not agree to these recommendations and commented that the inmates' classifications should again be reviewed in six months.⁸³

2.54 Following the release of the Inspector's report, the Acting Commissioner responded to the four recommendations by supporting recommendations 1, 2 and 4 and noting recommendation 3.

2.55 In regard to recommendation 3, the Acting Commissioner stated that the classification of the 12 lifers would only be reviewed after this committee's inquiry has been completed. The Commissioner reiterated this position while giving evidence to this inquiry, stating that further consideration of the lifers' classifications would, in part, be guided by the committee's recommendations.⁸⁴

2.56 On 18 August 2015 the Department of Justice wrote to the Chair of the Review Council proposing an amendment to cl 17 of the Crimes (Administration of Sentences) Regulation 2014. Following feedback from the Review Council, the section was amended in October 2015 as part of the Crimes (Administration of Sentences) Amendment (National Security Interest Inmates) Regulation 2015. The regulation amended cl 17 to state that the

⁸¹ New South Wales Department of Justice, Inspector of Custodial Services, *Lifers: Classification and Regression*, 2015, p 7.

⁸² Answers to questions on notice, Serious Offenders Review Council, p 2.

⁸³ Further answers to questions on notice, Corrective Services NSW, 3 March 2016, p 3.

⁸⁴ Evidence, Mr Severin, 23 November 2015, p 68.

Commissioner may, in exceptional circumstances, change the classification of a serious offender without seeking the recommendations of the Review Council, but must notify the Review Council of this decision. The Review Council may then recommend that the Commissioner reconsider his decision.⁸⁵

Veracity of July 2015 media reports

2.57 While it is true that Mr Garforth and others had been reclassified below A2, the reports that he was receiving ‘privileges’ were incorrect.

2.58 Mr Blanch from the Review Council explained that there was an ‘enormous amount of misinformation’ about Mr Garforth’s reclassification.⁸⁶ He emphasised that there is virtually no difference between A and B classifications and Garforth’s reclassification had nothing to do with privileges:

There was never any suggestion that he be moved from the cell or the jail he was in, or that he get any extra privileges. It was just that he be classified as a B prisoner because it was no longer necessary for him to be held in one of those jails. However, he could – and there was no suggestion at that stage that he would – be moved to another jail. However, in future he could have been moved to one of the other jails that can house B prisoners, but with exactly the same security as previously.⁸⁷

Lack of communication with victims

2.59 Inquiry participants submitted that Corrective Services NSW has not properly informed or educated victims and the community on the classification system, which has generated misinformation about its purpose and application.

2.60 Mr Howard Brown, Vice-President, Victims of Crime Assistance League observed that the majority of victims had no idea about the difference between A and B classifications. He stated that in the case of Andrew Garforth, for example, the victim’s mother wanted to ensure Mr Garforth was punished for what he did and perceived that lowering his classification would result in a reduction in punishment.⁸⁸

2.61 This view was shared by Mr Garry Connell, the son of a murder victim and member of the Homicide Victims’ Support Group Australia Inc., who did not understand the difference between classifications when he was approached by *The Daily Telegraph* in July 2015 for his opinion on the matter:

I think part of what I experienced the other day when I heard those things from the Daily Telegraph was that I wondered: What is C1 classification and what is A1? When I hear ‘minimum security’ I think of a hobby farm where he is milking cows and

⁸⁵ Answers to questions on notice, Serious Offenders Review Council, pp 1-2.

⁸⁶ Evidence, The Hon Blanch, 23 November 2015, p 4.

⁸⁷ Evidence, The Hon Blanch, 23 November 2015, p 4.

⁸⁸ Evidence, Mr Howard Brown, Vice-President, Victims of Crime Assistance League (VOCAL), 23 November 2015, p 43.

growing vegetables. Clearly I know that is not the case. I believe the first step is education for the victims ...⁸⁹

- 2.62** The Homicide Victims Support Group argued that communication with victims of homicide in relation to reclassification is currently ‘manifestly inadequate and that the attention recently given to reclassification in the media, whether accurate or not, was largely the outcome of poor communication with victims’.⁹⁰ It further explained the anguish experienced by victims when they assumed that the reclassification of lifers was linked to the receiving of privileges:

Given the paucity of available information, many of the victims have understood reclassification to mean that the offender would become entitled to enjoy certain privileges while serving his or her sentence. Whether or not this is an accurate understanding of the reclassification system, these circumstances cause a great deal of distress to homicide victims.⁹¹

- 2.63** In explaining the initial reaction of victims, the Homicide Victims Support Group described how victims felt when they heard lifers were being granted lower classifications:

There is a common (and reasonable perception) among the families and friends of homicide victims that a life sentence is ‘for life’ and hence the conditions of the inmate will not change significantly over time. Reclassification from a higher to a lower classification may indicate to victims that an offender will be entitled to certain special privileges whilst serving their sentence. Particularly in the case of serious offenders, low security classifications are commonly perceived by victims as being irreconcilable with the extreme severity of the offences committed.⁹²

- 2.64** Dr Anne-Marie Martin, Assistant Commissioner, Offender Management and Programs, Commissioner, Corrective Services NSW conceded there was confusion amongst victims regarding the difference between classification and privileges:

... there has ... been some confusion about the security classification system – which is a description of the security parameters including the number of fences, surveillance and static and dynamic security – as opposed to the activities within those. In that space [there is] a different principle ... around driving self-sufficiency, reducing costs within the system, reducing costs to other inmates and to staff. That is a very different model.⁹³

- 2.65** Dr Paget noted that while community concern was a major issue in the decision to regress the 12 lifers, most of these concerns were based on misconceptions which could have been avoided if Corrective Services NSW had provided comprehensive and timely information.⁹⁴

⁸⁹ Evidence, Mr Garry Connell, Member, Homicide Victims’ Support Group Australia Inc., 23 November 2015, p 49.

⁹⁰ Submission 21, Homicide Victims Support Group, p 7.

⁹¹ Submission 21, Homicide Victims Support Group, p 6.

⁹² Submission 21, Homicide Victims Support Group, p 3.

⁹³ Evidence, Dr Anne-Marie Martin, Assistant Commissioner, Offender Management and Programs, Corrective Services NSW, 23 November 2015, p 66.

⁹⁴ Evidence, Dr John Paget, Former Inspector of Custodial Services, 23 November 2015, p 20.

Committee comment

- 2.66** It is not the committee's role to comment on the security classification of specific inmates. Because of this, the committee will not be making any determination about the 12 lifers who had their security classification regressed in July 2015. Instead, a discussion and recommendations about whether lifers should progress through the classification system and access rehabilitation programs will occur in chapter 3.
- 2.67** The incident in July 2015 has, however, illustrated to the committee that the general public and victims have not been adequately informed and educated about the classification system by Corrective Services NSW. This is particularly distressing for victims' families who have lost loved ones due to horrific acts by individuals and must live with this pain for the rest of their lives.
- 2.68** As such, a discussion and recommendations on the effective provision of information to victims will form the basis of chapter 4. The matter of community expectations will be addressed in chapter 3.

Chapter 3 Security classification and custodial management of lifers

This chapter considers whether lifers should be permitted to be reclassified to a lower security classification than maximum security and whether they should have access to rehabilitation programs and privileges. In doing so, the committee will examine the perspectives of Corrective Services NSW, correctional experts, victim support groups, lifers and the community.

Should lifers be reclassified to a level below maximum security?

- 3.1** The question of whether lifers should be permitted to be reclassified to a level below A2 is one of the main issues this inquiry is addressing.
- 3.2** The majority of inquiry participants, including correctional experts,⁹⁵ inmate advocacy services,⁹⁶ victim support groups⁹⁷ and some members of the community⁹⁸ argued that lifers should be able to be reclassified below A2, although there were differing views about whether lifers should be reclassified below a B classification.
- 3.3** Conversely, the victims' support group, Support After Murder Inc, argued that there should be no change to the classification of lifers. Nonetheless, the support group asserted that if lifers are to be reclassified, registered victims should be informed by phone, email or letter.⁹⁹ The provision of information to victims will be discussed in the next chapter.
- 3.4** This section will outline the reasons why the vast majority of inquiry participants agreed that lifers should be permitted to be classified below A2. The section will then discuss whether lifers should progress below a B classification, before considering whether a new 'lifer' classification should be implemented, the role of community expectations in the classification process and outlining the processes in other Australian jurisdictions.

Safety in prisons

- 3.5** The Department of Justice advised that from a prison management perspective, it is important that lifers be classified and placed at a secure correctional centre appropriate to the risk they pose to security. Classifying lifers at a level appropriate to their risk creates an incentive for good behaviour, as they must be able to demonstrate they are a reduced risk in order to

⁹⁵ Submission 8, Former Inspector of Custodial Services; Submission 1, Serious Offenders Review Council; Submission 6, NSW Ombudsman; Submission 19, Dr Serena Wright.

⁹⁶ Submission 20, Justice Action; Submission 22, Community Justice Coalition; Submission 26, Legal Aid NSW.

⁹⁷ Submission 5, Victims of Crime Assistance League; Submission 21, Homicide Victims Support Group.

⁹⁸ Submission 3, Name suppressed; Submission 18, Name suppressed; Submission 23, Enough is Enough.

⁹⁹ Correspondence from Mr Peter Rolfe, President, Support After Murder Inc., to committee, 1 March 2016.

progress through the classification system and to stay at that reduced level. This is critical for the safety of correctional staff, as well as other inmates.¹⁰⁰

3.6 Dr John Paget, former Inspector of Custodial Services, explained that classification is multi-faceted; it is not merely about security, but is about placement, access to programs and behaviour management.¹⁰¹ An effective classification system provides incentives to promote appropriate behaviour and performance and this contributes to a benign institutional climate. However, if there are no incentives, staff are placed at risk by inmates who cannot see any meaningful future.¹⁰²

3.7 This was supported by a current lifer who argued that the possibility of progression gives them a reason to be well-behaved as well as a reason to live:

Our punishment was to be locked away from our family, friends, and society for life. Giving hope gives us a reason to be well behaved, and also to not cause harm to other inmates, staff or ourselves. The chance of advancement gives us something to work towards. It gives us a reason to live.¹⁰³

3.8 Similarly, the Hon John Dowd AO QC, President, Community Justice Coalition, explained that the classification system is an administrative tool to elicit better behaviour from inmates, and should be applied consistently, regardless of the length of sentence:

Classification of prisoners is not just for the benefit of prisoners. It is a ... tool for the administration of the prison system and to offer incentives for better behaviour or for rehabilitation and it applies to everybody. Whether that person is never to be released or will die in prison is in a sense irrelevant, because they are within a community made up of warders and other prisoners. This is for the benefit of those warders and others prisoners. Killings and injuries do occur in the prison system. So it is not just for the benefit of the prisoner but for the benefit of everybody.¹⁰⁴

3.9 The Victims of Crime Assistance League recognised the need to ‘provide management tools to custodial officers in order that they can maintain discipline and ensure not only their safety but of all persons in prison, whether inmates or visitors’.¹⁰⁵

3.10 The Serious Offenders Review Council (Review Council) also observed that just because lifers may have committed the most heinous crimes it does not necessarily mean that they continue to pose the greatest threat:

The classification of prisoners is significantly a matter for the administrators of the prisons and a priority for them must be to ensure that dangerous prisoners and those likely to escape are properly guarded so that the community is protected. It does not automatically follow that a prisoner sentenced to life imprisonment should receive the most restrictive classification. It is certainly true that these prisoners have committed

¹⁰⁰ Submission 24, Department of Justice, p 2.

¹⁰¹ Evidence, Dr John Paget, Former Inspector of Custodial Services, 23 November 2015, p 13.

¹⁰² Submission 8, Former Inspector of Custodial Services, p 18.

¹⁰³ Submission 25, Name suppressed, p 1.

¹⁰⁴ Evidence, The Hon John Dowd AO QC, President, Community Justice Coalition, 23 November 2015, p 35.

¹⁰⁵ Submission 5, Victims of Crime Assistance League, p 2.

the most terrible crimes but that does not mean they necessarily continue to be a threat to the community particularly if they are imprisoned in maximum or medium security prison conditions.¹⁰⁶

Humane, fair and equal treatment

- 3.11** The Department of Justice noted that Corrective Services NSW has a responsibility to manage all inmates humanely. Depriving inmates of liberty and imprisoning them is the punishment that has been imposed by the sentencing court.¹⁰⁷ As such inmates are imprisoned *as* punishment, not *for* punishment.¹⁰⁸
- 3.12** This principle was supported by the NSW Ombudsman which stated that the proper amount of discretion should be provided to correctional administrators to ‘ensure the system of managing offenders represents sound penal practice and basic human rights and does not simply respond to public cries for harsher inmate management’.¹⁰⁹
- 3.13** The Community Justice Coalition noted that rule 27 of the United Nations Standard Minimum Rules for the Treatment of Prisoners states that: ‘Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life’.¹¹⁰ It therefore argued that if the community is safe when a lifer is in medium security, further restricting the inmate by placing them in maximum security does not comply with this rule.¹¹¹
- 3.14** In addition, Legal Aid NSW highlighted article 10 of the United Nations International Covenant on Civil and Political Rights, which provides that: ‘All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person ...’.¹¹²

Cost factor

- 3.15** The Department of Justice reasoned that another factor to consider in regard to the reclassification of lifers is that the maximum security environment is significantly more expensive than other secure environments. It stated that classifying lifers at a higher level than is warranted by their risk is an ineffective way of spending of public resources.¹¹³

¹⁰⁶ Submission 1, Serious Offenders Review Council, p 1.

¹⁰⁷ Submission 24, Department of Justice, p 2.

¹⁰⁸ Submission 1, Serious Offenders Review Council, p 1.

¹⁰⁹ Submission 6, New South Wales Ombudsman, p 3.

¹¹⁰ Submission 22, Community Justice Coalition, p 3.

¹¹¹ Submission 22, Community Justice Coalition, p 3.

¹¹² Submission 26, Legal Aid NSW, p 7.

¹¹³ Submission 24, Department of Justice, p 2.

Should lifers be reclassified below a B classification?

- 3.16** The committee heard two opposing views regarding the classification of lifers: that they should be able to progress through the classification system; or that they should not progress below a B classification.
- 3.17** Corrective Services NSW policy is that lifers may be reclassified below A2, but may not be considered for classification at a level below B, unless there are exceptional circumstances (as noted in chapter 2 at 2.26, the term ‘exceptional circumstances’ has not been defined, they are at the Commissioner’s discretion).¹¹⁴
- 3.18** Prior to the regression to A2 of the 12 lifers in July 2015, three lifers had been reclassified to C1 in 1993, 2007 and May 2015. One of these inmates had progressed to C1 at an earlier date, but was later regressed.¹¹⁵
- 3.19** The Hon Reginald Blanch AM, Chairperson, Serious Offenders Review Council, was of the view that lifers should be permitted to be classified C1,¹¹⁶ but with some restrictions. He believed that lifers classified C1 should not be moved to a more open prison and questioned whether they should have access to extra privileges normally associated with that classification.¹¹⁷
- 3.20** While discussing this issue, Mr Blanch noted that the C1 classification is itself hard to define and there is no clear definition of where a C1 inmate should be located. Many C1 inmates are held in maximum or medium security prisons, while others are housed in less secure places that allow extra privileges.¹¹⁸ However, Mr Blanch did not consider placement to be a problem, as the Review Council can make recommendations about where lifers should be located and could ensure that they are placed in more secure facilities.¹¹⁹
- 3.21** The NSW Ombudsman submitted that every inmate, including lifers, ‘should be assessed using relevant assessment tools and methodology to determine their most appropriate security classification and placement as an individual and not as a class of offender’.¹²⁰ Essentially the NSW Ombudsman considered that lifers should be allowed to progress through the classification system no differently to other inmates.
- 3.22** Victim support groups did not agree with these views and considered that B should be the lowest classification lifers should be allowed to reach. The Homicide Victims Support Group argued that a C1 classification would be ‘inconsistent with the severity of their offence and potentially inconsistent with the community’s expectations of the incarceration of serious

¹¹⁴ Submission 24, Department of Justice, p 10.

¹¹⁵ Answers to questions on notice, Corrective Services NSW, received 18 December 2015, p 5.

¹¹⁶ Evidence, The Hon Reginald Blanch AM, Chairperson, Serious Offenders Review Council, 23 November 2015, p 6.

¹¹⁷ Evidence, The Hon Blanch, 23 November 2015, pp 3-4 and 7.

¹¹⁸ Evidence, The Hon Blanch, 23 November 2015, pp 3-4 and 6.

¹¹⁹ Evidence, The Hon Blanch, 23 November 2015, p 7.

¹²⁰ Submission 6, NSW Ombudsman, p 4.

offenders'.¹²¹ The group also commented that classifications below B provide inmates with access to a greater number of rehabilitation programs that may not be appropriate for lifers.¹²²

- 3.23** Mr Garry Connell, the son of a murder victim and member of the Homicide Victims' Support Group Australia Inc., similarly asserted that he was not comfortable with lifers receiving a C classification. He understood that there is little difference between the A and B classifications, but considered that C is 'one step closer to the door', and that it also comes with more access to rehabilitation programs.¹²³ He contended that as lifers are in prison for committing the most terrible crimes they should not have the same opportunity to complete rehabilitation courses as someone who had stolen a car.¹²⁴
- 3.24** The Victims of Crime Assistance League had the same view. Based on discussions with its members it said that victims were most concerned that the downgrading in classification was a lessening of the punishment. It concluded that a balance could be reached by ensuring that the lowest classification achievable for a lifer is B, as this would respect the views of victims and still provide custodial officers with the tools they need to adequately manage lifers within the prison system.¹²⁵

Consideration of a new 'lifer' classification

- 3.25** Corrective Services NSW submitted that as lifers have no requirement to be prepared for community reintegration and will never progress past a secure custody environment, 'the current security classification system is not appropriate for this cohort'.¹²⁶ Instead it commented that a 'new security classification category for inmates sentenced to life imprisonment should be given consideration'.¹²⁷
- 3.26** Corrective Services NSW suggested that under a 'lifer' classification inmates would remain on the new security classification category and would never be subject to reclassification. The Review Council would still be responsible for managing arrangements for lifers within this secure custody environment and would make recommendations to the Commissioner regarding placement within the correctional system based on an assessment of risks and needs. The final decision for placement would still be made by the Commissioner. The department saw no 'identifiable disadvantages' in creating such a classification.¹²⁸
- 3.27** Corrective Services NSW stated that this flexible management practice, based on risk to the correctional system, would enable lifers to be placed in secure centres that offer a variety of

¹²¹ Submission 21, Homicide Victims Support Group, p 2.

¹²² Submission 21, Homicide Victims Support Group, p 2.

¹²³ Evidence, Mr Garry Connell, Member, Homicide Victims' Support Group Australia Inc., 23 November 2015, p 52.

¹²⁴ Evidence, Mr Connell, 23 November 2015, p 53.

¹²⁵ Submission 5, Victims of Crime Assistance League, p 4.

¹²⁶ Further answers to questions on notice, Corrective Services NSW, 3 March 2016, p 2.

¹²⁷ Further answers to questions on notice, Corrective Services NSW, p 2.

¹²⁸ Further answers to questions on notice, Corrective Services NSW, p 2.

activities, including work options. It noted that engagement in work contributes to the cost of incarceration.¹²⁹

Community expectations

- 3.28** Community expectations constitute an important aspect of the reclassification process. When reclassifying serious offenders, the Serious Offenders Review Council must consider the public interest, the protection of the public, the need to maintain public confidence in the administration of criminal justice and the need to reassure the community that serious offenders are in secure custody. The full list of matters the Review Council must consider is set out in the *Crimes (Administration of Sentences) Act 1999*¹³⁰ and is reproduced in chapter 2.
- 3.29** The community outrage in July 2015 that was sparked by the reclassification of Andrew Garforth from A2 to B illustrates that many people in the community expect lifers to remain in maximum security facilities for the rest of their life.
- 3.30** 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.
- 3.31** The issue of how lifers are treated in custody clearly produces strong views among members of the public. For example, one inquiry participant declared ‘prison is not supposed to be a resort is it?’, and argued that lifers should suffer while in prison and not have a moment of comfort:

We, the public will fight any changes in reform to allow these animals one minute of peace, comfort or luxury... even near death. I don't care if they are not a threat to the victims' families or to society because they are now somehow incapacitated or depressed. I want them to suffer, I want them to be miserable, bored, lonely, cold, hungry, hated and forgotten. They deserve nothing less. If you allow any changes in the way they are treated for the better, you are being disrespectful to the victim, her family and to us who trust in you to do what's just. Justice is not for the murderers, it's for [the victims]. Do what's right by them. Leave these whiners to suffer, to think about the choices they made to choose this life for themselves. Who cares how much they whinge, they do not deserve the time to even discuss their woes. They didn't care about the suffering they inflicted on the victims and we do not care what they think is fair or unfair.¹³¹

Issues with taking community expectations into account

- 3.32** Although it is important to consider community expectations, many inquiry participants discussed the difficulty of taking the public interest into account, as there is a significant lack of education and understanding in the community regarding the criminal justice and

¹²⁹ Further answers to questions on notice, Corrective Services NSW, p 2.

¹³⁰ *Crimes (Administration of Sentences) Act 1999*, s 198.

¹³¹ Submission 34, Ms Donna Garland, p 1.

correctional systems (this issue was touched upon in chapter 2 at 2.59-2.65 in regard to lack of communication with victims).

- 3.33** Mr Blanch stated that ‘if you are talking about community expectation, you must talk about a community that is educated in what the system actually does and how it works’.¹³²
- 3.34** Dr Paget noted that ‘the majority of New South Wales residents possess poor knowledge of crime and justice issues and have significant misperceptions about trends in crime, conviction, imprisonment rates and inmate management’.¹³³
- 3.35** He asserted that the key to determining whether classification and inmate management meet community expectations is to ensure that Corrective Services NSW provides comprehensive, up-to-date and accessible information on the prison system which is regularly reviewed to meet the needs of the community. He argued that failing to do so would ‘cede the public’s sourcing of information to the sound bites of theatrical populism typical of talkback radio and the tabloid press’.¹³⁴
- 3.36** Dr Paget contended that Corrective Services NSW’s lack of communication has meant the media has filled the void with negative commentary about the prison system:

Against this background, where and when Corrective Services NSW is less than successful in communicating with the public, and to victims in particular, aspects of correctional administration in which they have legitimate interests, the media will fill the void. In doing so ‘any suggestion of prisoners being treated with respect or dignity – or even having access to goods, services and rights that the wider population takes entirely for granted – is conveyed to the public in terms of outrage and derision by the popular press’.¹³⁵

- 3.37** Mr Howard Brown, Vice-President, Victims of Crime Assistance League expressed the view that Corrective Services NSW has been ‘quite remiss in not publicising what the life of a prisoner is really like’ as such publicity may dispel some of the myths around incarceration.¹³⁶
- 3.38** Mr Dowd from the Community Justice Coalition recognised there is a stigma associated with inmates, but contended that if the community was better informed they would want a just and reasonable prison system.¹³⁷ For example he stated that the Australian community expects its prison system to be in the top 10 per cent in the world, even though it may not be ‘thrilled’ when it hears specific examples regarding lifers being reclassified or receiving privileges such as a toaster. He commented that overall the community expects Australia to be a just and humane society; and ‘humanity is for every human being’.¹³⁸

¹³² Evidence, The Hon Blanch, 23 November 2015, p 5.

¹³³ Submission 8, Former Inspector of Custodial Services, p 11.

¹³⁴ Submission 8, Former Inspector of Custodial Services, p 11.

¹³⁵ Submission 8, Former Inspector of Custodial Services, p 13 citing Jewkes, Y., ‘Prisons and the media,’ in Handbook on Prisons, Y. Jewkes (Ed.), Willan Publishing, Cullompton: 2007, p. 456.

¹³⁶ Submission 5, Victims of Crime Assistance League, p 3.

¹³⁷ Evidence, The Hon Dowd AO QC, 23 November 2015, p 39.

¹³⁸ Evidence, The Hon Dowd AO QC, 23 November 2015, p 39.

- 3.39** Mr Peter Severin, Commissioner, Corrective Services NSW agreed with the opinions of other participants and noted that the prison system has traditionally been very much out-of-sight, out-of-mind for the community and only attracts media headlines when something goes wrong. He stated that one of Corrective Service's strategies is to communicate more within the criminal justice system and with the broader community on its activities and policies and on the reality of prison life.¹³⁹
- 3.40** Corrective Services NSW advised it has recently updated a series of fact sheets available on its website, on topics including:
- the New South Wales prison system
 - offender programs
 - the classification and placement of inmates.
- 3.41** The Corrective Services NSW website also contains links to policy documents such as the Offender Classification and Case Management Policy and Procedures Manual.¹⁴⁰
- 3.42** Commissioner Severin noted that it is very important that prisons do not define themselves as a closed shop, but are part of mainstream human service delivery. He pointed out that unlike other government departments, Corrective Services NSW must deal with all aspects of persons under their charge, such as health, education, mental health, drug and alcohol issues and housing when inmates are released.¹⁴¹

Other Australian jurisdictions

- 3.43** Similar to New South Wales, other Australian jurisdictions operate objective security classification systems based on the risk inmates pose to the safety of the community and the good order of the correctional centre.
- 3.44** Victorian legislation provides no specific laws in relation to the classification of lifers, however policy dictates that 'special category prisoners', which includes lifers, are not eligible for a minimum security classification if they have more than five years remaining on their sentence. This policy automatically precludes lifers from being classified to minimum security.¹⁴²
- 3.45** In Queensland there is also no legislative guidance regarding placement decisions for lifers. All classification decisions are considered on a case-by-case basis regardless of sentence length.¹⁴³ However, lifers are not considered suitable for low security placement due to their risk to the community.¹⁴⁴

¹³⁹ Evidence, Mr Peter Severin, Commissioner, Corrective Services NSW, 23 November 2015, p 66.

¹⁴⁰ Answers to questions on notice, Corrective Services NSW, p 10.

¹⁴¹ Evidence, Mr Severin, 23 November 2015, p 66.

¹⁴² Correspondence from Ms Jan Shuard PSM, Commissioner, Victorian Department of Justice and Regulation, to committee, 7 December 2015, p 2.

¹⁴³ Correspondence from Mr Mark Rallings, Commissioner, Queensland Corrective Services to committee, 17 December 2015, p 3.

¹⁴⁴ Correspondence from Mr Rallings to committee, 17 December 2015, p 2.

- 3.46** In South Australia, all lifers are subject to high level oversight by that state's version of the Serious Offenders Review Council, and 'some prisoners convicted of serious offences and child sex offenders are ineligible for the lowest security classifications [Low 1 and Low 2]'.¹⁴⁵
- 3.47** In Western Australia lifers are currently managed under repealed legislation which prevents them from being reclassified as minimum security. However, the Western Australian Commissioner for Corrective Services advised that legislative amendments are underway to transition these inmates to new legislation where, under tightly controlled conditions, they will be allowed to progress to minimum security.¹⁴⁶
- 3.48** In Tasmania, all inmates, including those declared 'dangerous criminals' by the sentencing court are classified in the same manner, based on their best interests and the risk they pose to the safety, security and good order of the facility and the safety of the community.¹⁴⁷

Committee comment

- 3.49** The committee acknowledges that some inquiry participants expressed the view that lifers should be permitted to be reclassified to a lower security classification than maximum security, as this is important for the safety and good management of correctional facilities as it provides a reason for lifers to be well-behaved towards staff and other inmates.
- 3.50** However, there remains considerable community unrest regarding this matter and we note that one victim support group strongly opposed lifers being reclassified below maximum security. In addition, other victim support groups recommended that lifers should not be classified lower than medium security because they believed that it is inconsistent with the community's expectations and minimum security inmates have access to certain rehabilitation programs that are unsuitable for lifers, who will never be released.
- 3.51** The committee notes the view of Corrective Services NSW that the current security classification system is not appropriate for this cohort of inmates. Further, we note that there is an alternate option which was supported by the department, which is to create a new classification for lifers. Corrective Services suggested that the inmates in this new category would never be subject to reclassification, and that the Review Council would be responsible for managing secure custody arrangements for these inmates and would make recommendations to the Commissioner regarding placement within the correctional system based on an assessment of risks and needs.
- 3.52** The committee supports this option. We therefore recommend that the NSW Government introduce this new classification for all inmates serving a sentence of life imprisonment for the term of their natural lives or serving an existing life sentence and subject to non-release recommendations as defined in cl 1, sch 1 of the *Crimes (Sentencing Procedure) Act 1999* and that

¹⁴⁵ Correspondence from Mr David Brown, Chief Executive, South Australian Department for Corrective Services to committee, 25 January 2016, p 2.

¹⁴⁶ Correspondence from Mr James McMahon DSG DSM, Commissioner, Western Australian Department of Corrective Services to committee, 24 December 2015, p 1.

¹⁴⁷ Correspondence from Mr Nick Evans, Deputy Secretary, Tasmanian Department of Justice to committee, 17 November 2015, p 4.

it be based on the risk they pose to the community, preserves the good order of correctional facilities and ensures the safe and effective management of the inmates.

- 3.53** 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.
-

Recommendation 1

That the NSW Government amend the Crimes (Administration of Sentences) Regulation 2014 to establish a separate classification for inmates sentenced to life imprisonment with little or no prospect of release from custody that is based on the risk they pose to the community, preserves the good order of correctional facilities and ensures the safe and effective management of the inmates.

- 3.54** The community must have confidence in the criminal justice system, and the committee notes that the public interest must be taken into account when reclassifying lifers.
- 3.55** However, it is clear from the evidence that there is a lack of understanding and education in the community regarding the classification system and the prison system more generally. This makes it incredibly difficult for the Serious Offenders Review Council and Corrective Services NSW to effectively balance the views of the community with sound custodial management practice.
- 3.56** The public interest is only one of many factors that the Review Council must consider when recommending the reclassification of serious offenders to the Commissioner. Although a key consideration, it must be balanced alongside other matters set out in the *Crimes (Administration of Sentences) Act* such as the safety of custodial officers and the cost of housing inmates in maximum security.
- 3.57** The committee is pleased to hear that Corrective Services NSW is considering strategies to communicate more with the public on its activities and policies, and on the reality of prison life. However, we are of the view that much more will need to be done by Corrective Services NSW to educate the public than merely updating fact sheets on the Department of Justice website. In particular, there is a need for greater engagement directly with the public.
- 3.58** Therefore the committee recommends that Corrective Services NSW develop and action a comprehensive communication strategy to educate the public on the operation of the New South Wales correctional system, which should include information about the day-to-day lives of inmates and the security classification system.
-

Recommendation 2

That Corrective Services NSW develop and action a comprehensive communication strategy to educate the public on the operation of the New South Wales correctional system.

3.59 The committee also considers that better communication with victims (which includes their family if a victim is deceased) is vital, because if victims have a good understanding of the classification system and the reasons for reclassification, this may assist to allay not only victims' concerns but also community concerns. Communication with victims will be explored in detail in chapter 4.

Should lifers access rehabilitation programs and privileges?

3.60 Another key matter this inquiry is addressing is whether lifers should be permitted to access rehabilitation programs and privileges, particularly given that they have little or no prospect of release from custody.

3.61 Current Corrective Services NSW practice is that rehabilitation programs are not made available to lifers unless there is an imminent risk of them behaving in a criminal way towards others in custody. The programs offered to lifers are only for internal management purposes and never for the purpose of being released into the community.¹⁴⁸

3.62 Since 2011, six lifers have participated in the following four rehabilitation programs:

- Managing emotions
- Getting SMART (Self-Management and Recovery Training)
- SMART recovery
- Alcoholics Anonymous.¹⁴⁹

3.63 'Privileges' on the other hand is a generic term that can incorporate a number of benefits that the general manager of a prison may provide to an inmate residing in their facility. It refers to items available in buy-ups as well as items that can be kept in an inmate's cell such as a television or toaster, or can refer to recreational activities like access to a gym or more hours out of a cell.¹⁵⁰

3.64 General managers have a very limited scope to provide privileges, but endeavour to have these schemes in place to ensure there is a balance between positive reinforcement and negative consequences or sanctions.¹⁵¹

3.65 The provision of privileges is separate from the classification system and is an internal management issue within a prison. The privileges available to inmates will vary depending on the prison.¹⁵²

¹⁴⁸ Evidence, Mr Severin, 23 November 2015, p 66.

¹⁴⁹ Answers to questions on notice, Corrective Services NSW, p 9.

¹⁵⁰ Evidence, Dr Paget, 23 November 2015, p 19.

¹⁵¹ Evidence, Dr Paget, 23 November 2015, p 19.

¹⁵² Evidence, Dr Paget, 23 November 2015, p 19.

Prison management perspective

- 3.66** The arguments in favour of providing rehabilitation programs and privileges to lifers are similar to the arguments for allowing lifers to be reclassified below A2.
- 3.67** Dr Paget explained that access to rehabilitation programs is not merely for the purpose of successful reintegration into the community and to reduce reoffending, it is also an important management tool to ensure a safe prison environment.¹⁵³ As lifers are going to be in prison for their natural life they may need access to certain programs to ensure staff are able to manage them.¹⁵⁴
- 3.68** Dr Paget continued by stating that rehabilitation programs, together with work and recreation, are all part of a meaningful structured day, which assists in establishing a benign institutional climate. Without such a structure inmates can become bored, which often leads to them engaging in activities not conducive to the maintenance of appropriate inmate behaviour.¹⁵⁵
- 3.69** In addition, lifers may require access to programs directed at addressing their offending behaviour. For example, it may become clear through an assessment that a lifer should complete a Violent Offender Treatment Program – not for post-release purposes, but to reduce the risk of violence while in prison.¹⁵⁶
- 3.70** Legal Aid NSW also noted that boredom and lack of activity contributes to friction between staff and inmates. It argued that ‘to deny lifers, who are potentially the most dangerous of offenders, meaningful activity is to exacerbate the pressures of an already charged environment and to cause risk to the safety of both inmates and those who supervise them’.¹⁵⁷
- 3.71** The Law Society of New South Wales commented that placing inmates in their cells with no prospects of rehabilitation may have a significantly detrimental effect on their mental well-being. Lifers may require specialist programs and services to assist them in dealing with mental health issues associated with lengthy custodial sentences. It advised that this is appropriate as mental deterioration in lifers not only impacts those individuals, but can also have a detrimental impact on the remaining offender population and custodial officers.¹⁵⁸
- 3.72** Mr Blanch explained that providing privileges is an important management tool, as you can reward or punish inmates for their behaviour by giving privileges or taking them away.¹⁵⁹
- 3.73** In fact the Crimes (Administration of Sentences) Regulation 2014 provides a list of privileges that can be withdrawn from inmates as a punishment for bad behaviour. These include:
- attendance at the showing of films or videos or attending concerts
 - participation or attendance at any organised leisure time activity

¹⁵³ Submission 8, Former Inspector of Custodial Services, p 17.

¹⁵⁴ Evidence, Dr Paget, 23 November 2015, p 17.

¹⁵⁵ Submission 8, Former Inspector of Custodial Services, p 17.

¹⁵⁶ Submission 8, Former Inspector of Custodial Services, p 17.

¹⁵⁷ Submission 26, Legal Aid NSW, p 7.

¹⁵⁸ Submission 7, The Law Society of New South Wales, p 3.

¹⁵⁹ Evidence, The Hon Blanch, 23 November 2015, p 7.

- access to films, video tapes, records, cassettes, CDs or DVDs
- access to a musical instrument
- use of library facilities
- ability to purchase goods
- keeping of approved personal property, including goods purchased or hired
- pursuit of a hobby
- use of a telephone.¹⁶⁰

Victim perspective

- 3.74** Victim support groups were generally of the view that lifers should have limited access to rehabilitation programs and privileges.
- 3.75** The Homicide Victims Support Group did not think that lifers should access programs that are generally offered at a C1 level, as they were of the understanding that these programs have limited available spaces and are primarily intended to upskill and prepare inmates to live in the community following release from custody. The group could see no rationale for allowing lifers to partake in these programs as they will be spending their natural lives in prison, and deemed it unsatisfactory to permit lifers to undertake rehabilitation programs if it deprived any term-limited inmates from participating.¹⁶¹
- 3.76** Instead, the Homicide Victims Support Group suggested that lifers should only participate in programs to help them rehabilitate and form a new life within the prison system.¹⁶² It recommended that rehabilitation provided to lifers be targeted so as to reflect the permanency of their imprisonment, such as:
- providing opportunities for ‘atonement’
 - managing lifers as permanent inmates
 - encouraging lifers to be role models for the prison population.¹⁶³
- 3.77** The Victims of Crime Assistance League¹⁶⁴ and Support After Murder Inc. both considered it inappropriate to provide lifers with access to rehabilitation programs, with Support After Murder Inc. contending that taxpayers’ money would be better spent on the prison system and improving victim support services.¹⁶⁵

¹⁶⁰ Crimes (Administration of Sentences) Regulation 2014, cl 163.

¹⁶¹ Submission 21, Homicide Victims Support Group, p 9.

¹⁶² Evidence, Ms Martha Jabour, Executive Director, Homicide Victims’ Support Group Australia Inc., 23 November 2015, pp 50-51.

¹⁶³ Submission 21, Homicide Victims Support Group, p 10.

¹⁶⁴ Submission 5, Victims of Crime Assistance League, p 4.

¹⁶⁵ Submission 13, Support After Murder Inc, p 2.

3.78 On the other hand, both the Homicide Victims Support Group and Victims of Crime Assistance League supported the use of privileges as a prison management tool.¹⁶⁶

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.¹⁶⁷

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.¹⁶⁸

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.¹⁶⁹

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.¹⁷⁰

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.¹⁷¹ It argued that to deny or reduce access to rehabilitative programs takes away any hope from lifers.¹⁷²

¹⁶⁶ 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.

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

¹⁶⁸ Submission 5, Victims of Crime Assistance League, p 3.

¹⁶⁹ Submission 20, Justice Action, p 19.

¹⁷⁰ Submission 20, Justice Action, p 19.

¹⁷¹ Submission 20, Justice Action, p 7.

¹⁷² 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.¹⁷³
- 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.¹⁷⁴
- 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.¹⁷⁵

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.¹⁷⁶
- 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.¹⁷⁷
- 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.¹⁷⁸ 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.¹⁷⁹
- 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.¹⁸⁰

¹⁷³ Submission 19, Dr Serena Wright, p 1.

¹⁷⁴ Submission 22, Community Justice Coalition, p 4.

¹⁷⁵ Submission 22, Community Justice Coalition, pp 3-4.

¹⁷⁶ Correspondence from Ms Shuard PSM to committee, 7 December 2015, p 2.

¹⁷⁷ Correspondence from Mr Brown to committee, 25 January 2016, p 3.

¹⁷⁸ Correspondence from Mr Rallings to committee, 17 December 2015, p 3.

¹⁷⁹ Correspondence from Mr Evans to committee, 17 November 2015, p 5.

¹⁸⁰ 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.¹⁸¹
- 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.¹⁸² 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.¹⁸³
- 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.¹⁸⁴ 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 inmate¹⁸⁵ and a brochure about the register.¹⁸⁶

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

¹⁸² Submission 24, NSW Department of Justice, p 3.

¹⁸³ Submission 8, Former Inspector of Custodial Services, p 12.

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

¹⁸⁵ Submission 21, Homicide Victims Support Group, p 5.

¹⁸⁶ 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.¹⁸⁷

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.¹⁸⁸
- 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 2008.¹⁸⁹ 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.¹⁹⁰
- 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.¹⁹¹
- 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.¹⁹²

- 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.¹⁹³
- 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

¹⁸⁷ Submission 24, Department of Justice, p 13.

¹⁸⁸ Submission 8, Former Inspector of Custodial Services, p 12.

¹⁸⁹ Submission 8, Former Inspector of Custodial Services, p 12.

¹⁹⁰ Submission 8, Former Inspector of Custodial Services, p 12.

¹⁹¹ Submission 21, Homicide Victims Support Group, p 7.

¹⁹² Submission 21, Homicide Victims Support Group, p 7.

¹⁹³ 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.¹⁹⁴

- 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.¹⁹⁵
- 4.12** Mr Peter Severin, Commissioner, Corrective Services NSW advised that the practice of the Victims Register is consistent with other Australian jurisdictions.¹⁹⁶ However, he noted that Corrective Services NSW is not bound by law to the current practices and could increase engagement if need be.¹⁹⁷

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.¹⁹⁸ 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.¹⁹⁹
- 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.²⁰⁰ 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.²⁰¹ South Australia informs victims of lifers about the sentence, location and transfer or escape of the offender.²⁰²

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

¹⁹⁵ Evidence, Ms Davies, 23 November 2015, p 61.

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

¹⁹⁷ Evidence, Mr Severin, 23 November 2015, p 65.

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

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

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

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

²⁰² 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.²⁰³

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.²⁰⁴

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.²⁰⁵

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.²⁰⁶ 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).²⁰⁷ Mr Brown suggested that there is a veil of secrecy surrounding the current process which has heightened victims' concerns.²⁰⁸

²⁰³ Submission 24, NSW Department of Justice, p 3.

²⁰⁴ Submission 21, Homicide Victims Support Group, p 8.

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

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

²⁰⁷ Evidence, Mr Brown, 23 November 2015, p 45.

²⁰⁸ 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.²⁰⁹
- 4.20 Commissioner Severin stated that following the dialogue with victims, he understood the need for greater direct engagement with victims.²¹⁰ He commented that Corrective Services NSW should have more telephone contact, and ensure that written forms are less formal.²¹¹
- 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.²¹²
- 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.²¹³
- 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.²¹⁴
- 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).²¹⁵

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

²⁰⁹ Submission 8, Former Inspector of Custodial Services, pp 13-14.

²¹⁰ Evidence, Mr Severin, 23 November 2015, p 65.

²¹¹ Evidence, Mr Severin, 23 November 2015, p 72.

²¹² Evidence, Mr Severin, 23 November 2015, p 61.

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

²¹⁴ Evidence, Mr Severin, 23 November 2015, pp 63-64.

²¹⁵ Submission 24, NSW Department of Justice, pp 3-4.

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

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.

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.²¹⁶
- 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.²¹⁷ 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.²¹⁸
- 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.²¹⁹

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

²¹⁶ Submission 21, Homicide Victims Support Group, p 7.

²¹⁷ 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.

²¹⁸ Evidence, Mr Rolfe, 23 November 2015, p 54.

²¹⁹ 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.

Recommendation 4

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

-
- 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.

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.

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.²²⁰ 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.²²¹
- 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'

²²⁰ Submission 8, Former Inspector of Custodial Services, p 12.

²²¹ 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.²²²

- 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.²²³

- 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.²²⁴

- 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.²²⁵ 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.²²⁶

- 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.²²⁷

- 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.²²⁸

²²² Submission 21, Homicide Victims Support Group, p 6.

²²³ Evidence, Mr Connell, 23 November 2015, p 48.

²²⁴ Evidence, Mr Connell, 23 November 2015, p 53.

²²⁵ Submission 21, Homicide Victims Support Group, p 6.

²²⁶ Submission 21, Homicide Victims Support Group, p 7.

²²⁷ Submission 21, Homicide Victims Support Group, p 5.

²²⁸ 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.²²⁹

- 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.²³⁰
- 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.²³¹
- 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'.²³² 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'.²³³ 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.²³⁴
- 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.²³⁵ 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.²³⁶
- 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.²³⁷

²²⁹ Evidence, Ms Jabour, 23 November 2015, p 50.

²³⁰ Evidence, Mr Connell, 23 November 2015, p 51; Evidence, Mr Rolfe, 23 November 2015, p 54.

²³¹ Evidence, Mr Connell, 23 November 2015, p 52.

²³² Evidence, Mr Brown, 23 November 2015, p 43.

²³³ Evidence, Mr Brown, 23 November 2015, p 45.

²³⁴ Evidence, Mr Connell, 23 November 2015, p 49.

²³⁵ Submission 33, Victims Service, Department of Justice, p 5.

²³⁶ Submission 33, Victims Service, Department of Justice, pp 7-8.

²³⁷ 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.²³⁸
- 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.²³⁹

- 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.²⁴⁰
- 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.²⁴¹ 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.²⁴²

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.

²³⁸ Evidence, Mr Brown, 23 November 2015, p 45.

²³⁹ Evidence, Mr Connell, 23 November 2015, pp 48-49.

²⁴⁰ Evidence, Mr Severin, 23 November 2015, p 61.

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

²⁴² Evidence, Dr Paget, 23 November 2015, p 16.

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.

- 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.
-

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.

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.²⁴³
- 4.55** Ms Jabour did not think victims should be permitted to make submissions regarding the change in a lifer's classification, stating:

²⁴³ 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.²⁴⁴

- 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.²⁴⁵
- 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.²⁴⁶
- 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.²⁴⁷ 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’.²⁴⁸
- 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.²⁴⁹
- 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.²⁵⁰
- 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.²⁵¹ She suggested that this could be done through a survey of current registered victims.²⁵²

²⁴⁴ Evidence, Ms Jabour, 23 November 2015, p 51.

²⁴⁵ Evidence, Ms Jabour, 23 November 2015, p 51; Evidence, Mr Connell, 23 November 2015, p 51.

²⁴⁶ Evidence, Mr Rolfe, 23 November 2015, p 55.

²⁴⁷ Submission 5, Victims of Crime Assistance League, p 4.

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

²⁴⁹ Correspondence from Mr Brown to committee, 2 March 2016.

²⁵⁰ Submission 33, Victims Service, Department of Justice, p 5.

²⁵¹ Submission 33, Victims Service, Department of Justice, p 5.

²⁵² 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.²⁵³

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).

²⁵³ 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).²⁵⁴
- 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.²⁵⁵
- 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.²⁵⁶
- 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

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

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

²⁵⁶ 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'.²⁵⁷

- 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.²⁵⁸
- 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'.²⁵⁹
- 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.²⁶⁰
- 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.²⁶¹

- 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.²⁶²

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

²⁵⁸ Evidence, Mr Hutchens, 23 November 2015, pp 30-31.

²⁵⁹ Evidence, Mr Hutchens, 23 November 2015, p 32.

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

²⁶¹ Evidence, Mr John Killick, former inmate, 23 November 2015, p 24.

²⁶² 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.²⁶³
- 5.12** Mr Dowd expressed concern about this process, pointing out that the GIPA process is 'time-consuming, laborious and expensive'.²⁶⁴
- 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.²⁶⁵

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.

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.

²⁶³ Evidence, Mr Hutchens, 23 November 2015, p 31.

²⁶⁴ Evidence, Mr Dowd, 23 November 2015, p 37.

²⁶⁵ 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’.²⁶⁶

- 5.19** In response, Corrective Services NSW agreed to conduct a review of the classification system, which is anticipated to be finalised in April 2016.²⁶⁷

- 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’.²⁶⁸

... 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.²⁶⁹

- 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.²⁷⁰

- 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’.²⁷¹ 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’.²⁷²

²⁶⁶ Submission 8, Inspector of Custodial Services, p 9.

²⁶⁷ Submission 8, Inspector of Custodial Services, p 9.

²⁶⁸ Submission 8, Inspector of Custodial Services, p 10.

²⁶⁹ Submission 8, Inspector of Custodial Services, p 10.

²⁷⁰ Submission 7, The Law Society of New South Wales, p 1.

²⁷¹ Evidence, Mr Blanch, 23 November 2015, p 7.

²⁷² 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.²⁷³ 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’.²⁷⁴
- 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’.²⁷⁵ Mr Killick contended that the primary reason for this was overcrowding.²⁷⁶
- 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’.²⁷⁷
- 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.²⁷⁸
- 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’.²⁷⁹
- 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.²⁸⁰

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’.²⁸¹
- 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

²⁷³ Submission 6, NSW Ombudsman, pp 1-2.

²⁷⁴ Submission 6, NSW Ombudsman, pp 1-2.

²⁷⁵ Evidence, Mr Killick, 23 November 2015, p 27.

²⁷⁶ Evidence, Mr Killick, 23 November 2015, p 27.

²⁷⁷ Evidence, Mr Dowd, 23 November 2015, p 39.

²⁷⁸ Evidence, Mr Hutchins, 23 November 2015, pp 29-30.

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

²⁸⁰ Evidence, Mr Severin, 23 November 2015, p 67.

²⁸¹ Evidence, Mr Severin, 23 November 2015, p 73.

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

- 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.²⁸⁴ He therefore thought sub-classifications were necessary for the management and placement of inmates.²⁸⁵

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’.²⁸⁶ He noted that as at March 2015, aged inmates represented 9.7 per cent of the total inmate population.²⁸⁷
- 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.²⁸⁸ Consequently, Corrective Services NSW will need to provide ‘aged-care services to a growing cohort of aged, frail and chronically ill inmates’.²⁸⁹

²⁸² Submission 8, Inspector of Custodial Services, p 9.

²⁸³ 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.

²⁸⁴ Evidence, Mr Killick, 23 November 2015, p 27.

²⁸⁵ Evidence, Mr Killick, 23 November 2015, p 27.

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

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

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

²⁸⁹ 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’.²⁹⁰
- 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’.²⁹¹ Thus, Mr Blanch argued there was no need for aged inmates to be classified at high security levels.²⁹²

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.²⁹³ 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’.²⁹⁴
- 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’.²⁹⁵

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

²⁹¹ Evidence, Mr Blanch, 23 November 2015, p 2.

²⁹² Evidence, Mr Blanch, 23 November 2015, p 2.

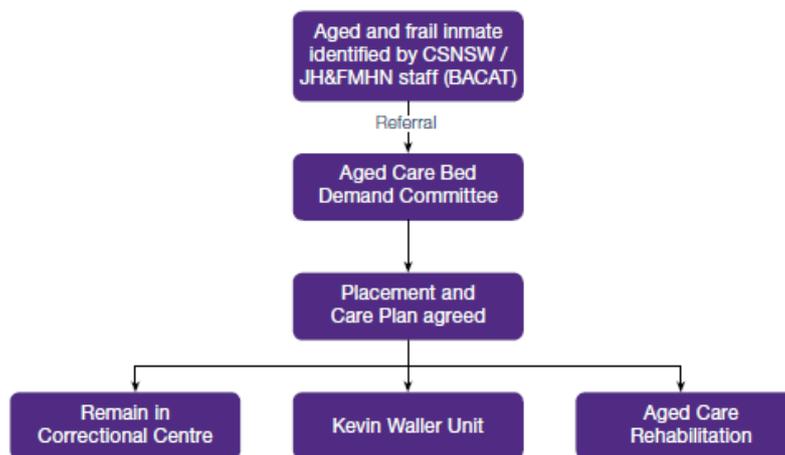
²⁹³ New South Wales Department of Justice, Inspector of Custodial Services, *Old and inside: Managing aged offenders in custody*, 2015, p 19.

²⁹⁴ 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>.

²⁹⁵ 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.²⁹⁶ 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.²⁹⁷

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.²⁹⁸

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.²⁹⁹ He recommended that accommodation for aged and infirm inmates be established in the metropolitan area:

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

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

²⁹⁸ Answers to questions on notice, Corrective Services NSW, p 3.

²⁹⁹ 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.³⁰⁰

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'.³⁰¹

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.³⁰²

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'.³⁰³ 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'.³⁰⁴

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.³⁰⁵ 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.³⁰⁶

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.

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

³⁰¹ 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>.

³⁰² Evidence, Mr Severin, 23 November 2015, p 61.

³⁰³ Evidence, Mr Severin, 23 November 2015, p 61.

³⁰⁴ Evidence, Mr Severin, 23 November 2015, p 61.

³⁰⁵ Evidence, Mr Severin, 23 November 2015, p 61.

³⁰⁶ 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.

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.

- 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

No	Author
32	Mr Peter Breen
33	Victims Services, NSW Department of Justice

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Monday 23 November 2015 Macquarie Room Parliament House	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 presentMrs 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 presentMrs 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