Proforma A

INQUIRY INTO SECURITY CLASSIFICATION AND MANAGEMENT OF INMATES SENTENCED TO LIFE IMPRISONMENT

Name: Proforma A - Principles of the justice system

Number received: 5

Submission to ‘Management of Lifers’ Legislative Council Inquiry

The classification and treatment of lifers based on anything other than security offends many principles of the justice system. This submission to the Inquiry focuses specifically on the following principles:

1. Philosophy of Hope
2. The Rule of Law
3. Reconciliation with Victims and the Community
4. Prospect of release
5. The Right to Development
6. Right to Privacy
7. Security Classification

1. Philosophy of Hope

At the core of both the criminal justice system and religious beliefs lie the notions of human dignity, the ability to atone for past mistakes and forgiveness. For example, Jesus preached the ethic of forgiveness, reconciliation and love for each human individual, whilst Allah is the Forgiving, the Merciful.

Such religious notions emphasise the importance of rehabilitation and just punishment in facilitating a safer, more moral society. The notion of “an eye for an eye” represents a restraint on revenge or retaliation. This principle is based on the idea that human beings were created by God, and thus will always exist in relation to God, regardless of their actions.

For this reason, those who commit crimes should be punished, but their punishment should never deny their dignity or humanity. This highlights the role of hope and rehabilitation as without these ideas, total life prisoners would become the living dead. They would have no opportunity or resources to develop spiritually and individually. Instead, they would simply remain in the form in which they were convicted, awaiting their impending death.

2. The Rule of Law

The Australian justice system is based upon the Rule of Law. According to A V Dicey (The Law of the Institution (1885)), the Rule of Law embodied the notion that there should be the existence of regular law or rules as opposed to the arbitrary wishes of people. John Finnis (Natural Law and Natural

Rights, 1980) further elaborated on the principle of the rule of law determining it requires clear prospective laws which are not open to a number of interpretations.

In so doing, rules must be coherent and sufficiently stable to allow people to be guided by their knowledge of the content of the rules. The people with authority to make, administer and apply the rules must be accountable and actually administering the law consistently and in accordance with its tenor. It follows that victims cannot be involved in sentencing or post sentencing processes as they lack the ability to view the case objectively.

Victims and their experiences are acknowledged through Victim Impact Statements (VIS). According to section 28 of the Crimes (Sentencing Procedure) Act 1999, a VIS can be read out and considered at any point after conviction but before sentencing. Victims' involvement may result in offenders being treated inconsistently, which undermines the notion of all individuals being equal in the eyes of the law. Victim interference in the sentencing brings the threat of introducing subjective considerations into this process.

As part of the Rule of Law, it is the judiciary who determines an offender's sentence. The sentence is objectively determined based on considerations of proportionality to the harm caused by the crime, thus drawing on the idea of retributive justice. It is this objectivity of the court in making these assessments that secures the equality of treatment before the law and ensuring the rule of law. Any attempts by victims or politicians to alter or increase punishment undermine the fundamental principles of our criminal justice system.

In contrast, the use of VIS in the reclassification of prisoners is not legislated and is provided for only under guidelines that have been written by the Serious Offenders Review Council. The use of VIS is applied in an ad hoc manner. The usage of VIS in reclassification is a breach of the Rule of Law as there is no accountability in the application of VIS and no guarantee all persons will be treated in the same manner and the policy not arbitrarily enforced in circumstances where a particularly vocal victim exists.

3. Reconciliation with Victims and the Community

Rehabilitation of offenders, irrespective of sentence or security classification, enables prisoners to reconcile with themselves, the victims and the community. Part of this process of reconciliation involves reflecting upon and attempting to make sense of what has occurred. Specifically for prisoners it is an opportunity to interpret their actions and understand the harm they have caused. As a result, access to rehabilitative programs and services should not be dependent on the prospect of release.

The prisoner's deeper insight into the impact of their actions can have a positive impact on the experiences of victims. This provides victims with a means to come to terms with what has occurred and attempt to move forward. A prisoners' greater remorse for their actions and empathy for the victims' experiences allows for victims' greater closure and could provide a certain amount of comfort.

Even if the victim does not currently wish to engage with the offender, the rehabilitation of the prisoner remains critical as it creates the potential for reconciliation and for victims to seek closure in the future if they later wish to do so.

4. Prospect of release

Every individual is legally entitled to the prospect of being released, even if they are serving a total life sentence. This entitlement is the Royal Prerogative of Mercy where the offender has the power to request release under section 114 of the Crimes (Appeal and Review) Act 2001.

Individuals who are serving a sentence of total life 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, are changed as a person and should be given conditional liberty.

Prisoners are therefore entitled to rehabilitative opportunities as these services prepare prisoners and by putting them in a positive position to apply to be considered for release. This reaffirms the importance of rehabilitative services and necessitates their availability.

5. The right to development

The right to development is recognised by the United Nations as a human right:

"The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized." - Article 1.1, Declaration on the Right to Development

Educational and rehabilitative programs provide ways of enriching the cultural, social and spiritual lives of people in prison. All prisoners regardless of sentence, have the right to access prison programs and services for personal development as they do not have any alternative supplier for development services while in prison.

6. The right to privacy

With high profile cases, the media is easily able to exploit public interest for commercial gain. Before a trial there are already significant restrictions on reporting. There is a need to also create privacy rights for victims of crime after the trial. This needs to also apply to prisoners as they are the other part of the relationship. Registered victims should only be notified of changes to a prisoner's management if it relates to safety concerns.

Once the trial is over and the offender has been sentenced, the offender should have the right to serve the court's sentence without interference from the media, the victim or politicians. This right is inherent in the controlled environment of a prison managed by the state, and the current legal obligation of staff not to use their trusted access to sell information to the media. Any other position only disturbs the victim and interferes with the public policy of rehabilitation of the prisoner.

7. Security Classification as a punishment

The only consideration when deciding the security classification of any prisoner should be the prevention of prison escapes. Any attempt to deliberately punish certain prisoners through administrative means outside the sentencing court's decision is an interference with the authority of the court. Changes to sentences would require a statutory change, not the personal assessment of a minister for political purposes.

Reassessment of security classifications is an expert and informed matter for which there are very significant structures involving Committees with additional checks. The opinions of victims, media or politicians is irrelevant, and their inclusion is neither just nor efficient for the stated public purposes of imprisonment.

Removing the possibility of reclassification and hope creates an extremely dangerous environment for staff and other prisoners. It removes any incentive for lifers to behave well and refrain from harming themselves or others.

To deliberately deprive lifers of the right to personal development would be removing their humanity - defined as torture – and places greater burdens on taxpayers and correctional facilities management. The idea of being deliberately destructive degrades us as a community.

Lifers invest decades of effort in the hope of better treatment in the future, access to rehabilitation, education programs, employment and possible freedom. It is extremely unlikely that lifers would attempt to escape, as it is counter-productive to their review for potential release. After such a period of institutionalisation, prison becomes their home isolated from the outside world.