

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

Organisation: Inspector of Custodial Services

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**Submission to the Standing Committee on Law and Justice Inquiry into
the security classification and management of inmates sentenced to life
imprisonment**

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.

This paper is provided in response to the Standing Committee's invitation to the Inspector of Custodial Services to make a submission to the Inquiry.

Context

As the 2015 Inspector of Custodial Services report *Full House: The growth of the inmate population in NSW* demonstrates, Corrective Services NSW (CSNSW) has been assailed by the combined impact of a poverty of estate planning over the past decade, a rapid growth of the inmate population, a significantly constrained budget environment and unrelenting organisational change since 2000.¹ We are witnessing a declining quality of prison life, not just for inmates, but also for staff.

Ongoing incidents at Goulburn and Lithgow Correctional Centres indicate that the institutional climate in two of the state's maximum-security centres may be heating up, which should be of concern. A unique and unsavoury aspect of the current context is, of course, the unrelenting media attacks on the Commissioner.

A second dimension of the context in which this review takes place is that, in July of this year, there was a media-driven controversy over the access of life sentence inmates to other than maximum-security classifications. Attention was further directed at the regression of a particular group of life-sentence inmates who had moved within the classification system, back to maximum security, and the inconsistency of that regression with the provisions of the *Crimes (Administration of Sentences) Regulation 2014*. A further aspect of this controversy concerned the role of victims in the inmate classification process and the nature of their relationship with CSNSW.

Response to Terms of Reference

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.

To respond to this section of the Terms of Reference it is necessary to first clarify the term 'classification'. The Terms of Reference refers only to security classification, but classification serves a broad array of functions, not just security.

Classification refers to either the division of inmates into groups according to some system or principle, or to the placement of inmates into groups according to some pre-determined rules.²

Classification is widely regarded as pivotal to the effective and efficient management of prison operations.³ For inmates, it is central to their custodial experience and is

¹ Inspector of Custodial Services, *Full House: The growth of the inmate population in NSW*, 2015, <http://www.custodialinspector.justice.nsw.gov.au/Documents/Full%20House%20-%20Final%20report%20April%202015.pdf>.

² Inspector of Custodial Services (Western Australia), *Report into the Review of Assessment and Classification within the Department of Corrective Services*, Technical Report, 2008. p.T8.

thus a process to which they should contribute. Classification systems are part and parcel of the risk management architecture of modern correctional jurisdictions and serve a four-fold purpose:

- (1) From a security perspective, these systems are directed at minimising the risk of correctional centre escape, violence and other institutional misconduct.
- (2) An effective classification system contributes to inmate behaviour management by providing incentives to promote appropriate behaviour and performance and, hence, a benign institutional climate. Where these are absent, staff are placed at risk by inmates who cannot see any meaningful future.⁴
- (3) From a rehabilitation perspective, the classification system, together with placement arrangements, assists in ensuring the sequencing and timely completion of programs to meet the expectations of releasing authorities.⁵
- (4) From a resource management perspective, classification systems inform estate planning and specifically encourage a degree of congruence between the security classification of the estate's individual centres with those of inmates. As documented in the Inspector of Custodial Services second report, *Full House: The growth of the inmate population in NSW*, at present 54.5 percent of NSW inmates are classified as minimum security, but only approximately 36 percent of beds are minimum security.⁶

³ See Bench, L. L., and Allen, T. D., 'Investigating the Stigma of Prison Classification: An experimental design,' *The Prison Journal*, 2003, vol. 83, p. 371.

⁴ While not part of its prisoner classification (categorisation) system, in 1995 the UK National Offender Management System (NOMS) introduced an Incentives and Earned Privileges scheme, based on the theory that favourable behaviour will be repeated if it is reinforced by rewards and unacceptable behaviour will not be repeated if it leads to a negative response. The aims of the scheme include "to create a more disciplined, better controlled and safer environment for prisoners and staff". See Prison Reform Trust, *Incentives and Earned Privileges*, <http://www.prisonreformtrust.org.uk/Portals/0/Documents/IEP%20Briefing%20Prison%20Reform%20Trust.pdf>, accessed 24 July 2015.

⁵ See the observations made by Williams J.A. in *Butler v Queensland Community Corrections Board [2001] QCA 323; (2001) 123 A Crim R 246 at [6]-[7]* regarding the need for an offender to have sufficient time between sentence and the parole eligibility date to practicably reach the necessary security classification for parole to be granted.

⁶ Inspector of Custodial Services, *Full House: The growth of the inmate population in NSW*, 2015, <http://www.custodialinspector.justice.nsw.gov.au/Documents/Full%20House%20-%20Final%20report%20April%202015.pdf>.

High-security prisons are very expensive to run, and every inmate housed in accommodation rated higher than his or security needs represents the inefficient use of public funds.

These risk considerations are expressed well in the United Kingdom National Offender Management System (NOMS), which defines the purpose of classification (categorisation) as being to assess the risks posed by a prisoner in terms of:

- likelihood of escape or abscond;
- the risk of harm to the public in the event of an escape or abscond;
- any control issues that impact on the security and good order of the prison and the safety of those within it;

and then to assign to the prisoner the lowest security category consistent with managing those risks.⁷

The desired outcomes sought from this system are to ensure that:

- all prisoners have assigned to them the lowest security category consistent with managing their needs in terms of security and control at all stages of their sentence;
- categorisation and recategorisation decisions are in line with current policy; and
- these decisions are reached without bias in respect of race, age, religion, nationality, disability, sexual orientation or any other factor irrelevant to the categorisation process.

A central purpose of the classification system to assign prisoners the lowest necessary security classification to accommodate their risks and needs is a consistent theme in Australian correctional jurisdictions. It is clearly expressed in the *Standard Guidelines for Corrections in Australia Revised 2012*.⁸ Guiding Principle 6 for the Management of Prisoners is that they are held at a level of security that is commensurate with the level of risk posed by that prisoner. This operational issue is appropriately determined in the professional, rather than political, domain.

This is repeated in the Classification and Placement section of the *Standard Guidelines*, which provides that:

1.39. The Administering Department should provide a well-structured and transparent system of classification and placement of prisoners which has as

⁷ United Kingdom National Offender Management System (NOMS), *The Categorisation and Re-categorisation of Adult Male Inmates*, PSI 40/2011, August 2011.

⁸ *Standard Guidelines for Corrections in Australia Revised*, 2012, http://www.aic.gov.au/media_library/aic/research/corrections/standards/aust-stand_2012.pdf, accessed September 2015.

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.

1.40. 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.

The notion of an inmate being assigned the lowest necessary security classification to manage the identified risks carries with it the idea of *progression* within the custodial setting and within the classification schema. The Council of Europe has, in fact, listed progression as one of the general principles for the management of life-sentence inmates. In this context:

... [the] progression principle refers to the importance of trying to secure a beneficial movement through the prison system for all life sentence and long term prisoners. During the prison period, progression may be an important antidote to mental deterioration by providing specific goals that can be achieved within foreseeable period of time.⁹

Over the past two decades, objective prison classification systems have replaced subjective systems in many western, including Australian, correctional jurisdictions. As a result of these endeavours, criteria for custody decisions have been validated, custody decisions are more consistent, over-classification has been reduced, prisoner program needs are assessed more systematically, institutional misconduct has declined and escapes reduced.¹⁰

Nevertheless, the effective operation of an objective classification system is undermined where there is overuse of discretionary overrides or the creation of override categories of inmates.

Two core, distinguishing features of an objective classification system are its accuracy, or *validity*, and its consistency, or *reliability*. Validity refers to the accuracy of the classification system in predicting a prisoner's behaviour and assigning him or her to an appropriate risk level. Reliability considers whether the same decision would be rendered if the assessment was repeated by the same or a different staff member.

The use of reliable and valid criteria to assess a prisoner's custody level is one of the core distinguishing features of an objective classification system.

⁹ Council of Europe, *Management by Prison Administrations of Life-Sentence and Other Long-Term Prisoners*, COE, Strasbourg, 2003, p. 20.

¹⁰ Austin, J., and Hardyman, P. L., *Objective Prison Classification: A Guide for Correctional Agencies*, National Institute of Corrections, U.S. Department of Justice, Washington, 2004, p. ix.

In NSW, the legislative framework for inmate classification is detailed in Part 2 Division 7 of the *Crimes (Administration of Sentences) Act 1999*, which provides for victim input to the decision-making of the Serious Offender Review Council (SORC). This is a communication rather than a consultation process.

The detail of classification is appropriately located in the *Crimes (Administration of Sentences) Regulation 2014*, Part 3 Division 1. Clause 13 defines the classification categories for female inmates; Clause 12 defines the classification categories for male inmates, as follows:

Classification of male inmates

(1) Each male inmate is to be classified in one of the following categories for the purposes of security and the provision of appropriate development programs:

Category AA, being the category of inmates who, in the opinion of the Commissioner, represent a special risk to national security (for example, because of a perceived risk that they may engage in, or incite other persons to engage in, terrorist activities) and should at all times be confined in special facilities within a secure physical barrier that includes towers or electronic surveillance equipment.

Category A1, being the category of inmates who, in the opinion of the Commissioner, 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.

Category A2, being the category of inmates who, in the opinion of the Commissioner, should at all times be confined by a secure physical barrier that includes towers, other highly secure perimeter structures or electronic surveillance equipment.

Category B, being the category of inmates who, in the opinion of the Commissioner, should at all times be confined by a secure physical barrier.

Category C1, being the category of inmates who, in the opinion of the Commissioner, should be confined by a physical barrier unless in the company of a correctional officer or some other person authorised by the Commissioner.

Category C2, being the category of inmates who, in the opinion of the Commissioner, 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.

Category C3, being the category of inmates who, in the opinion of the Commissioner, need not be confined by a physical barrier at all times and who need not be supervised.

(2) Subject to clause 27, the Commissioner may at any time vary or revoke a classification under clause 12.

(3) Male inmates who are classified in Category AA are prescribed to be serious offenders, as referred to in paragraph (f) of the definition of **serious offender** in section 3 (1) of the Act.

Clauses 16 and 17 of the *Regulation* establish the balance between judicial and bureaucratic powers with respect to classification of inmates being managed by SORC.

Clause 16 empowers the Commissioner to make decisions with respect to the placement, movement, security arrangements, case plan and other matters for high security, extreme high security and extreme high restricted inmates. These powers of the Commissioner are subject to a caveat at Clause 17, which provides that where inmates are managed by SORC the Commissioner must not change the security classification of these inmates without seeking and considering a SORC recommendation.

In both the *Act* and *Regulation*, with respect to inmate classification and placement, the Minister's role is limited to the receipt of advice and reports and to receive recommendations in relation to the transfer of juvenile detainees to adult correctional centres. These provisions are largely repeated, in an abbreviated format, in the *Corrective Services NSW Offender Classification and Case Management Policy and Procedures Manual*.¹¹

CSNSW is required to review an inmate's classification, placement and case plan at least once every 12 months. An early review may also occur within the 12-month period for varying reasons. An inmate has the right to appeal their classification within 14 days of being notified of that decision, but this is only if new and relevant information is available that was not taken into account during the initial review process and may have had an impact on the classification decision.¹² These are reasonable provisions.

CSNSW's quest for an objective classification system is challenged by the use of overrides, as noted previously. In principle, there is nothing inherently inappropriate about professional overrides; such are provided for in many inmate assessment instruments. It would be of concern, however, if the history of professional overrides

¹¹ CSNSW, *Offender Classification and Case Management Policy and Procedures Manual*, section 21.1, Classification of Male Inmates V1.3, March 2013.

¹² CSNSW, Fact Sheet No.9, Classification and Placement of Inmates, March 2015.

revealed a skewing in one direction. This is not the case with overrides of the CSNSW classification system: 72 percent of minimum and medium assessment scores are subject to Case Management Team (CMT) override to recommendations for medium and maximum security, while 59 percent of assessment scores to maximum security are reduced by CMT recommendation to lower security levels. 86 percent of the CMT recommended classifications are approved without the application of further overrides; in the case of remand inmates, the figure is 84 percent.¹³

It should be noted, however, that the actual utility of an objective classification system is undermined by the impact of crowding in the prison estate, which ensures primacy is accorded to bedspace management as the driving inmate placement imperative. Its utility is fundamentally compromised if the professional management of the classification system is subject to political interference.

The need for the classification system to be independent of the political domain has been recognised by previous NSW governments. In the Second Reading Speech for the *Prisons (Amendment) Bill* and *Sentencing (Amendment) Bill* on 19 May 1993, the then Minister for Justice advised Parliament that:

The Serious Offender Review Board and its predecessors have previously brought a valuable element of judicial independence to the management of indeterminate sentence inmates ... the independence and expertise of the Serious Offender Review Board will be preserved in the proposed Serious Offenders Review Council ...¹⁴

The CSNSW classification system is complex, certainly more complex than those in other state correctional jurisdictions. This militates against community understanding of its objectives and processes. The classification system has remained unchanged over the past 20 years, with a series of Commissioners approving re-classifications of life-sentence inmates down from maximum security. Some of these were the subject of media scrutiny in July 2015.

The need to reduce the complexity of the current classification system has been noted by the Inspector of Custodial Services previously in two separate reports, *Full House: The growth of the inmate population in NSW* and *Lifers: Classification and regression*.¹⁵ These reports contained recommendations for CSNSW to review the complexity of the current classification system without compromising the objectivity and integrity of the system. CSNSW responded by stating that a review of the system is underway and expected to be completed in April 2016.¹⁶

¹³ CSNSW, *Inmate Classification*, CRES Research Brief, 14 November 2014, p. 6.

¹⁴ Parliament of NSW. *Second Reading Speech Prisons (Amendment) Bill, Sentencing (Amendment) Bill*. Legislative Council, Hansard, 19 May 1993.

¹⁵ See Inspector of Custodial Services, *Lifers: Classification and regression*, 2015,

<http://www.custodialinspector.justice.nsw.gov.au/Documents/Lifers%20Classification%20and%20regression.pdf>.

¹⁶ CSNSW, *Final Report: Inspector of Custodial Services – Full House: The growth of the inmate population in NSW*, 2015,

The US National Institute of Corrections recommends that correctional jurisdictions need to constantly review their classification policies to ensure they are not being overly restrictive, observing that an example of a restrictive policy would be the requirement that the severity of the offense alone would require all such prisoners be housed in maximum security for an extensive period of time when it is clear that many such prisoners could be safely housed in a medium-security setting.¹⁷

But the reality is that 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.¹⁸

The classification system is a key component of the custodial system and centre security. While the Inspector maintains the need for CSNSW to review its inmate classification system, it does need to be recognised that the Productivity Commission's *Report on Government Services* shows that, despite its complexity, the existing system has in fact contributed to commendable security outcomes.

From the foregoing, it is clear that the legislative and policy framework for the management of inmates in general must be principle-based. A useful guide are the observations of Lord Chief Justice Woolf in his report into the 1990 British prison riots, where he noted that stability in the correctional system rests on getting the right balance between security, order and justice.

'Security' refers to the obligation of the Prison Service to prevent prisoners from escaping. 'Control' deals with the obligation of the Prison Service to prevent prisoners being disruptive. 'Justice' refers to the obligation of the Prison Service to treat prisoners with humanity and fairness, which is essential if the prison system is to be perceived as legitimate.¹⁹ Inmate compliance and cooperation with authority at the centre level is more likely to be gained if the regime is assessed to be 'just'; that is, it is fair and consistent.

The Terms of Reference also refer to "community expectations", which invites the query of who is the arbiter of "community expectations".

<http://www.custodialinspector.justice.nsw.gov.au/Documents/CSNSW%20Response%20to%20Recommendation%20on%20Full%20House%20Report.pdf>.

¹⁷ Austin, J., *Findings in Prison Classification and Risk Assessment*, National Institute of Corrections, Federal Bureau of Prisons, Department of Justice, Washington, 2003, p. 5.

¹⁸ Flanagan, T. J., 'Correlates of institutional misconduct among state prisoners: A research note', *Criminology*, 1983, vol. 21, pp. 29–39.

¹⁹ Woolf, Lord Justice, and Tumin, S., *Prison Disturbances, April 1990*, (CM 1456), HMSO, London, 1991, 9.20.

Community expectations are informed by the knowledge that community members have of criminal justice and correctional systems in general, and of the management of inmates in particular. The NSW Sentencing Council has reported that primary sources of information about the criminal justice system on which the community draws are: television (73.9 percent); talkback radio (21.6 percent); and the tabloid press (34.9 percent). Lower levels of confidence in the criminal justice system are demonstrated by those who report drawing information from talkback radio, the experiences of others and television/radio.²⁰

It is not surprising, then, that the majority of NSW residents possess poor knowledge of crime and justice issues and have significant misperceptions about trends in crime, conviction, imprisonment rates and inmate management.

Yet, this does not have to be the situation. A United Kingdom Home Office study reported that, after being given information about crime and criminal justice system procedures and practices, community members were less likely to express the view that sentences were too lenient and were more confident in the effectiveness of the criminal justice system.²¹

The key issue in determining whether classification and inmate management meet community expectations is to ensure that there is comprehensive, up-to-date and accessible information. The extent to which such information and communication formats meet the needs of the community needs to be regularly reviewed. To fail to do so will cede the public's sourcing of information to the sound bites of theatrical populism typical of talkback radio and the tabloid press.

²⁰ Butler, A., and McFarlane, K., *Public Confidence in the NSW Criminal Justice System*, Monograph 2, NSW Sentencing Council, Sydney, May 2009.

²¹ Chapman, B., et al., *Improving Public Attitudes to the Criminal Justice System: The impact of information*, Home Office Research Study 245, Home Office, London, July 2002.

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.

The *Crimes (Administration of Sentences) Act 1999*, section 256, defines a victim as:

- a victim of an offence for which the offender has been sentenced or of any offence taken into account under Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999*; or
- a family representative of such a victim (if the victim is dead or under any incapacity or in such circumstances as may be prescribed in the regulations),

and includes a person who suffers actual physical harm, mental illness or nervous shock, or whose property is deliberately taken, destroyed or an act committed, or apparently committed, by the offender in the course of an offence.

CSNSW maintains a Victims Register that records the names and contact details of victims who have requested registration of their interests. There are approximately 1200 registered victims. The stated purpose of the Victims Register is to enable CSNSW to keep victims informed if the offender:

- is to be classified for a change in security classification, which may result in the offender being eligible for unescorted leave of absence (that is, pre-release leave);
- is due for parole consideration;
- is due for release;
- has escaped from custody.

Victims Register staff will not routinely advise victims of changes in inmate security classification, except as stated above, or of routine transfers between correctional centres or of medical treatment. A victim may, however, enquire at any time about an offender's location.²² Given the number of victims on the Victims Register, there is a clear need to come to a mutually agreed position on what information a registered victim might reasonably expect and what CSNSW might reasonably provide.

CSNSW provides all registered victims with a pamphlet titled *Victims Register*, which was published in 2008 and has been in use since that time. The limited utility of the pamphlet as a modern means of communication is compounded by CSNSW's website, which gives no profile to victims and is not perceived as 'user-friendly'. It provides no sensitive acknowledgment of the respect that victims deserve.

²² CSNSW Restorative Justice Unit, Victims Register, 2008.

In addition to the brochure, the CSNSW staff who manage the Victims Register have over 60 template letters that are used to provide advice to registered victims. CSNSW recognises that these letters are bureaucratic in tone, and do not convey the empathy that victims should be shown. These templates are being revised.

It is clear that the means by which CSNSW communicates with its registered victims is dated and ineffective, and as a result, some registered victims have incomplete understandings of inmate management issues, such as classification – a problem exacerbated by media misinformation and disinformation.

This problem is influenced by the wider public context in NSW in which correctional issues are dealt. This context is one where objective analysis based on sound science is drowned out by sound bites. The Inspector of Custodial Services report, *Invisibility of Correctional Officer Work*, notes:

... it is not uncommon for members of the community or the media to express a view that the custodial setting is not harsh enough and to advocate a more punitive approach to punishment. This perspective reflects a range of concerns, such as for victims, revulsion at the nature of particular offending, any perceived leniency of a sentence or media reports about apparent rewards or privileges for inmates, including Christmas meals.²³

Against this background, where and when CSNSW 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”.²⁴

This is not a new phenomenon arising under the current Commissioner. In 2008, the NSW Bureau of Crime Statistics and Research documented the lack of public confidence in the capacity of prisons in NSW to rehabilitate inmates, or to provide them with new skills to meet sentencing objectives relating to punishment.²⁵

As part of its efforts to rebuild its relationship with its registered victims, CSNSW held a meeting with victims, registered and others, on 5 August 2015, which was attended by the Inspector of Custodial Services. The focus of this meeting was on identifying

²³ Inspector of Custodial Services, *The Invisibility of Correctional Officer Work*. 2014, <http://www.custodialinspector.justice.nsw.gov.au/Documents/Accessible%20Report%20No%201%20DRAFT.pdf>

²⁴ Jewkes, Y., ‘Prisons and the media,’ in *Handbook on Prisons*, Y. Jewkes (Ed.), Willan Publishing, Cullompton: 2007, p. 456.

²⁵ See Snowball, L. and Jones, C., ‘Public confidence in the New South Wales criminal justice system: 2012 update,’ *Contemporary Issues in Crime and Justice*, No.165, Bureau of Crime Statistics and Research, November 2012; Jones, C., and Weatherburn, D., ‘Public Confidence in the NSW Criminal Justice System: A survey of the NSW public,’ *Australian and New Zealand Journal of Criminology*, 43, (3) 2010; Jones, C., Weatherburn, D., and McFarlane, K., ‘Public Confidence in the New South Wales Criminal Justice System,’ *Crime and Justice Bulletin*, No. 118, Bureau of Crime Statistics and Research, August 2008.

the expectations of victims and how they would like to craft their relationship, not just with CSNSW, but with other agencies of the criminal justice system. What is clearly evident is that such relationships must reflect acknowledgment of the long-term anguish, grief and pain that many victims endure.

Following the meeting, CSNSW responded to the numerous issues raised and specifically to those relating to improved engagement with victims, with the following initiatives:

- Improvements will be made to the existing Victims Register application forms to include detail that will assist victims assess what level and nature of ongoing communication with CSNSW they may wish to seek.
- Greater time and assistance will be made available for victims to prepare submissions for the State Parole Authority or Serious Review Council.
- The Victims Register within CSNSW is recognised as being valuable but it was felt that it should include forensic patients and juvenile offenders for consistency. CSNSW advised that the Department of Justice, of which CSNSW is one of many agencies, is currently considering the future management of the Register.
- Biannual meetings will be held to maintain engagement with victims and to provide specific information from other government agencies, as required. CSNSW will maintain a list of areas of interest to victims and gradually progress through these each year. It is anticipated that the next meeting with victims will be in February 2016.
- Information Technology systems will be established to enable timely, easy access to information. The CSNSW website is not victim-friendly in either content or ease of navigation. CSNSW recognises the need to embrace multi-media solutions for efficient and effective service delivery. Again, this will be raised with the Department of Justice for discussion of the future scope, placement and management of the register.
- Victims were and will be provided with information that explains the security classification system and the programs available to inmates. For victims, it will be important that they see inmates paying back something to society, such as in the form of work.

Some features of inmate classification, placement and management, which victims, understandably, might wish to see and draw comfort from, may give rise to other concerns. For example, life imprisonment in what victims may envisage as appropriate harsh, maximum-security conditions, without any hope of modifying those conditions, will inevitably place staff at risk. International research show that

life-sentence inmates constitute a high-risk group whose profile exhibits a higher rate of suicide than the remainder of the inmate population.²⁶

The matter of providing registered victims with information beyond that currently made available by CSNSW will require careful consideration and eventual mutual agreement. These issues, which will require resolution, include:

- Establishing how registered victims might use information provided and what accountabilities might be attached to that.
- Determining how far and how deep into the inmate assessment and classification processes it is appropriate for victims to be engaged.
- Getting the balance between communication with victims and their 'participation rights'.

²⁶ Liebling, A., 'Prison Suicide and its Prevention,' in *Handbook on Prisons*, Y. Jewkes (Ed), Routledge, Oxon, 2007.

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.

Access to information in a timely manner is important to victims.

There is little point in communicating with victims about classification decisions made by correctional management unless victims have an understanding of the system and the significance of the decision. The recent public furore over the classification of life-sentence inmates demonstrated that there was little understanding of what would be the real circumstances of an inmate who, it was proposed, would be progressed from maximum to medium security. The media filled in the knowledge gap with references to “cushy treatment”, “soft treatment” and “privileges”. These were, of course, unsupported by evidence.

Clearly, communication with victims must be timely and provide the victim with adequate time to consider the issues and respond, if he or she wishes to do so; surprises reflect a lack of respect. Notwithstanding the number of Registered Victims, communication must be personal, which means a telephone call, followed up by a letter signed by a CSNSW staff member whose position conveys the agency’s respect. This, of course, brings with it an obligation on the part of victims to keep CSNSW informed of changes to addresses and telephone numbers.

Improved communication with victims and with the general community would contribute to the Department of Justice *Strategic Plan 2014–15* outcome of “improve community understanding and confidence in the criminal justice system”.

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.

This particular element of the Terms of Reference appears to assume that access to “rehabilitative programs” is solely for the purposes of successful reintegration into the community and to reduce recidivism. Programs (together with work and recreation) are provided as part of a meaningful ‘structured day’, which assists in establishing a benign institutional climate and a centre regime that keeps inmates occupied and staff safe. If such a regime is not set in place, the result is inmate boredom, which contributes to drug use as a means of making time pass quickly. Also, inmate boredom is not conducive to the maintenance of appropriate inmate behaviours.

Life-sentence inmates may still require access to programs directed at addressing their offending behaviour, depending on the outcomes of their assessments. Such access may also contribute to the creation and maintenance of a safer centre, for both inmates and staff, than otherwise might be the case. For example, the assessment process may indicate that a life-sentence inmate should complete a Violent Offender Treatment Program; not for post-release purposes, but rather to reduce the risk and incidence of violence in a centre.

The impact of inmate security classification and management decisions on the operation of the correctional system.

The stability of any correctional system is heavily dependent upon its legitimacy in the eyes of the prisoners.

Inmates need to know where they stand, and they value fairness and consistency in the way they are treated.²⁷ This truth is reflected in Her Majesty's Prison Service (HMPS) decency agenda, which is a product of a policy to humanise UK prisons. There were several components to the quest for decency in prisons, one of which is fair and consistent treatment.

This focus on the moral aspects of prison performance has been given substance by the development of a tool to measure the quality of prison life (MQPL), which has been integrated into Her Majesty's Prison Service Standards Audit Unit methodology.²⁸ Through questionnaires and focus groups, the tool assesses Relationship Dimensions (respect, humanity, relationships, trust, support) and Regime Dimensions (fairness, decency, order, safety, well-being, personal development and family contact).

The July 2015 decision by the CSNW Commissioner to regress 12 life-sentence inmates from medium or minimum security back to maximum security, through no fault of the inmates concerned, was not only in breach of the *Crimes (Administration of Sentences) Regulation 2014*, but was also inconsistent with correctional management practices over the past decade and was fundamentally unfair.

A *Daily Telegraph* article of 16 July 2015 quoted the Commissioner as commenting, "We need to manage a system that doesn't turn off every light at the end of the tunnel."²⁹ This comment is a recognition that an effective classification system contributes to inmate behaviour management by providing incentives to promote appropriate behaviour and performance. This contributes to a benign institutional climate. Where incentives are absent, staff are placed at risk by inmates who cannot see any meaningful future.

While positive reinforcement has an important role to play in promoting desirable inmate behaviours, it will inevitably elicit some media and community resistance on the grounds that "it is inequitable to reward antisocial individuals for doing what is minimally expected of most citizens".³⁰ This highlights the importance of CSNSW

²⁷ King, R. D., 'Security, Control and the Problems of Containment,' in *Handbook on Prisons*, Y. Jewkes (Ed), Willan Publishing, Cullumpton, 2007, p. 339.

²⁸ Liebling, A., *Prisons and their Moral Performance*, Oxford University Press, Oxford, 2004.

²⁹ Bennis, Matthew, 'Never to Be Released Prisoners Get Soft Serve in Jails from Corrective Services Boss Peter Severin Who Jet Sets to Mexico and Colorado to Brainstorm Jail Policy,' *The Daily Telegraph*, 16 July 2015.

³⁰ Marlowe, D.B., 'Depot Naltrexone in Lieu of Incarceration: A behavioural analysis of coerced treatment for addicted offenders,' *Journal of Substance Abuse Treatment*, 2006, vol. 31, p. 131.

explaining to the community the purpose of inmate classification, how it operates and the outcomes sought from the system.

With regard to management decisions, a fair, predictable and consistently applied classification system is essential for correctional centre and system stability. This is required at the best of times, but it becomes critical at a time when overcrowding brings with it a declining quality of prison life in which there are few, if any, incentives for both staff and inmates. It follows, then, that “the classification system must be managed and operated in a way that maintains high standards of credibility, consistency and accountability”.³¹ At present, the classification system is already under strain because inmate placement within the estate is being driven primarily by bedspace management. Inmates are being allocated to any vacant bed, regardless of their rehabilitation needs.

The re-classifications (or, rather, regressions) of the 12 life-sentence inmates in July 2015 represented a shift in the goalposts which undermined one of the core distinguishing features of an objective classification system: consistency, or *reliability*. Such an assault on the classification system will understandably do little for the legitimacy of the custodial system in the eyes of inmates. It will, with reason, cause other inmates to call into question the integrity of the classification system. In addition, inmates are well aware that the treatment of one inmate cohort, which they might find to be of concern, can also be directed at others. This is not helpful in the volatile custodial setting.

³¹ Anti-Discrimination Commission of Queensland, *Women In Prison*, Brisbane, 2006, p. 45.

A Special Note on Correctional Centre Staff

With regard to the impact of the classification system and management decisions, the Inspector of Custodial Services report *The Invisibility of Correctional Officer Work* made several points which are germane to this issue.³²

The custodial setting is a high-risk environment that would deter many prospective employees. Correctional officers, on behalf of the community, manage a significantly damaged population that, at times, can also be dangerous.

Policy decisions, such as those leading to correctional centre overcrowding or reduced inmate access to amenities, exacerbate the already high risks, particularly in volatile remand populations where there is heightened inmate vulnerability and greater risk of self-harm and suicide.

Some researchers have noted that the persistent threat of inmate violence stems from the fact that inmates are receiving longer sentences, resulting in less incentive for good behaviour and an increase in the number of mentally ill and violent inmates.³³

In seeking to manage the inmate population, correctional administrators deploy every tool in their management inventory to support that prison stability.³⁴ One such tool is an objective and fair classification system with which inmates are engaged and which is consistently applied across the estate.

When the predictability, consistency and fairness of inmate classification is undermined by *ad hoc* decisions, such as was the case in the July 2015 regression of 12 life-sentence inmates, negative impacts should be expected; not only on inmates directly concerned, but also on the wider inmate population. Correctional centre staff, who are already dealing with crowding and other pressures across the estate, will have to manage the consequences of inmate perceptions of a lack of integrity within the classification process, and the undermining of the utility of the classification system as a tool to assist them in the management of inmates.

³² Inspector of Custodial Services, *The Invisibility of Correctional Officer Work*, 2014, <http://www.custodialinspector.justice.nsw.gov.au/Documents/Accessible%20Report%20No%201%20DRAFT.pdf>

³³ *Ibid.*

³⁴ See Woolf, Lord Justice, and Tumin, S., *Prison Disturbances*, April 1990, (CM 1456), HMSO, London, 1991.