Submission No 32

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

Name: Mr Peter Breen

Date received: 9/11/2015

PETER J BREEN

SOLICITOR & BARRISTER

The Hon Natasha Maclaren-Jones MLC
Committee Chairwoman
Standing Committee on Law and Justice
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 200

9 November 2015

Dear Ms Maclaren-Jones

Re: Inquiry into the security classification and management of inmates sentenced to life imprisonment

I am making this submission as the legal representative of Bronson Blessington and Matthew Elliott, prisoners in New South Wales for the past 27 years with no realistic opportunity for parole. They are two of the 10 non-release recommendation prisoners serving life sentences who fall within the committee's terms of reference in item 1(b). From time to time I have represented other prisoners in this group as well as some of the 58 natural life prisoners who fall within item 1(a). I attach for the information of the committee copies of letters to Mr Blessington and Mr Elliott from the Serious Offenders Review Council (SORC) dated 9 September 2015 advising the prisoners that their classifications would not be reinstated from A2 to B. The Commissioner of Corrective Services appears to have made the decision not to reinstate the classifications because of adverse publicity on commercial radio which, in my respectful submission, is not a good basis for public policy.

In effect, Mr Blessington and Mr Elliott are serving natural life sentences (never to be released) as determined by special legislation passed in the New South Wales Parliament in 2001. At the time of their arrest in 1988 they were aged 14 and 16 years respectively. They are the youngest convicts sentenced to life imprisonment by a parliament since transportation from England ended in 1840. And they are the only juveniles in a common law country outside the United States of America serving natural life sentences. They have been exemplary prisoners and Mr Blessington has undertaken an extensive prison ministry since he was aged 17. They have exhausted all their appeal remedies including to the New South Wales Court of Criminal Appeal, the High Court of Australia and the United Nations Human Rights Committee even though some issues in their case remain outstanding. Copies of letters from the federal and state governments are attached for your information.

In 2001, I was a member of the Legislative Council when the Crimes Legislation Amendment (Existing Life Sentences) Bill 2001 was introduced into the Parliament to keep the 10 non-release recommendation prisoners in prison – to retrospectively change their sentences from an effective limited term of years to the remaining terms of their natural lives. This legislation became known as the 'cement law' to reflect the words of then Labor Premier Bob Carr who said the new law 'cemented in' the 10 prisoners so they would never be released from prison. I attempted to amend the legislation with a provision that such a harsh sentencing regime should not apply to juvenile offenders. Indeed, the New South Wales criminal law and various international treaties to which Australia is a party clearly state that a child is not to receive a natural life sentence. My amendment to the legislation was defeated 31 votes to 9.

Prior to the 2001 legislation a non-release recommendation was not part of a prisoner's formal sentence. It was an off-the-cuff comment by the trial judge and had no effect on the prospects of a prisoner's subsequent rehabilitation or release on parole. At best it was an expression by the trial judge of his or her abhorrence at the facts of a particular crime. Most judges did not speculate on a prisoner's future prospects in the justice system. Indeed, most prisoners who had received a non-release recommendation had already been released on parole. In 2001 only 10 prisoners were serving life sentences with non-release recommendations and all 10 were entitled to apply for a redetermination of their life sentences to a fixed term of years after they had served eight years.

At the end of my contribution to the debate on the Crimes Legislation Amendment (Existing Life Sentences) Bill 2001 I tabled in the parliament details of 21 high culpability life sentences for murder that did not include a non-release recommendation. A copy of the list as it appears in *Hansard* is attached for ease of reference. Even a superficial examination of these 21 cases confirms that a non-release recommendation by a trial judge on sentencing was entirely arbitrary and not a reliable indication that the crimes were to be judged in the worst category of offences. I do not know the fate of the 21 cases but some of the offenders were the states most notorious prisoners in their day. The question for today is whether a retrospective life without parole sentence for Mr Blessington and Mr Elliott is such a cruel and unusual punishment for children as to involve the state in prison policy more severe than capital punishment.

The recent judicial killing in Indonesia of Andrew Chan and Myuran Sukumaran gives pause for thought about whether life without parole may in fact be a harsher punishment than the death penalty. Of the Bali nine prisoners, Chan and Sukumaran were sentenced to death while two

others, including Martin Stephens, have natural life sentences. Stephens wrote to *The Australian* newspaper and said he would rather be shot than spend the rest of his life in prison. Who could blame him? Spending the rest of your life behind bars without any opportunity for parole would send most people insane. In a first world country such as Australia the cruelty is amplified by the lack of any apparent public policy interest in the rehabilitation of life prisoners.

New South Wales has an especially harsh regime for life prisoners, in my opinion, at least since 12 January 1990 when life under the Greiner Coalition Government became life without parole. Prisoners currently serving life without parole sentences in New South Wales will not see daylight beyond their cells for more than a few hours each day. As we beat our breasts over the appalling injustices of the Indonesian legal system, it is worth placing on record that there are plenty of prisoners in New South Wales jails who would relish the opportunity of death by firing squad. One act of gruesome judicial cruelty in the form of the death penalty is bad enough, but relentless day after day cruelty with no possibility of release or reprieve is, for many prisoners, far worse.

If, for the prisoners involved, life without parole is worse than the death penalty, then it follows that pleas for clemency or mercy are no less important for a life without parole sentence than a death sentence. Various high-profile individuals and numerous governments in Australia agitated the Indonesian government of His Excellency Joko Widodo to exercise the prerogative of mercy in favour of the condemned prisoners Chan and Sukumaran. The federal government went so far as to compromise its trade and diplomatic relations with Indonesia in order to labour the point that the death penalty is a cruel and unjust punishment. And yet the plea that a natural life sentence may be even harsher than the death penalty is one that generally falls on deaf ears in Australia. The United Nations Human Rights Committee ruled on 3 November 2014 that the retrospective sentences given to Mr Blessington and Mr Elliott by the New South Wales Parliament amounted to cruel and unusual punishment under the International Covenant on Civil and Political Rights. Although Australia is a party to the ICCPR, both state and federal governments turned their heads away from my interdictions on behalf of the prisoners. To my knowledge there has been no response to date by Australia to the UN ruling in the *Blessington and Elliott case*.

One response might be that the Royal prerogative of mercy remains on the statute books as an essential element in a life sentence. Section 102 of the Crimes (Sentencing Procedure) Act 1999 says, 'Nothing in this Act limits or affects the prerogative of mercy.' The same provision exists in section 114 of the Crimes (Appeal and Review) Act 2001 and various

sections of the Crimes Act 1900. At least half a dozen other criminal law statutes in New South Wales also include the prerogative. So long as the legislature recognises the broad and discretionary executive power of mercy to commute a prisoner's sentence to make it less burdensome (and more generously to grant an amnesty, reprieve or pardon) then there is always the possibility of a life sentence review for a prisoner who responds well to education and rehabilitation.

It follows that prisoners should not be denied access to programs that allow them to develop as human beings especially juvenile offenders who have a good record of recovery from their circumstances of adolescence that often contribute to criminal behaviour. Mr Blessington and Mr Elliott were both given good prospects of rehabilitation by the trial judge, and in the case of Mr Blessington, His Honour noted from the medical and psychiatric evidence that all the elements of a plea of diminished responsibility existed. Such a plea would have reduced the offence of murder to manslaughter, and the prisoner might have expected to receive a sentence of four to five years based on comparable sentences at the time. The trial judge noted that diminished responsibility 'was at no stage raised during the course of the trial'. In any event, both prisoners were entitled to a review of their life sentences after eight years.

Another reason for thinking Mr Blessington and Mr Elliott may be candidates for the Royal prerogative of mercy is that the courts have never given serious consideration to the impact on their case of the High Court decision in *Kable v DPP (NSW)* (1996) 189 CLR 51. *Ad hominem* laws infringe a person's right to expect that laws of the parliament will be general in nature and not usurp judicial power. For this reason, bills of pains and penalties (or bills of attainder in the case of a death sentence) offend against principles of parliamentary democracy. Acts of parliament imposing sentences on individuals or named persons will generally be struck down by the High Court as offending Chapter III of the Australian Constitution. In *Kable*, the parliament passed legislation in 1994 to keep Gregory Kable in prison after he served his sentence for killing his wife with a carving knife. The prisoner pleaded diminished responsibility to the crime of manslaughter and received a minimum sentence of four years and three months. Towards the end of his sentence Kable began writing threatening letters from prison to people connected with the crime. The Fahey Coalition government acted to keep Kable in prison.

Premier John Fahey had replaced Nick Greiner as head of the Coalition government when the Independent Commission Against Corruption incorrectly found that Greiner had acted corruptly by appointing one of his former ministers to a senior role in the bureaucracy. Fahey turned out to be a tough-on-crime premier like his predecessor and his government

sponsored the Community Protection Act 1994 which Gregory Kable successfully challenged in the High Court with the benefit of pro bono legal assistance. One of the High Court judges, Michael McHugh, succinctly described the problem with the legislation:

> At the time of its enactment ordinary reasonable members of the public might reasonably have seen the Act [the Community Protection Act] as making the Supreme Court a party to and responsible for implementing the political decision of the executive government that the appellant [Gregory Kable] should be imprisoned without the benefit of the ordinary processes of the law. Any person who reached that conclusion could justifiably draw the inference that the Supreme Court was an instrument of executive government policy. That being so, public confidence in the impartial administration of the judicial functions of the Supreme Court must inevitably be impaired. The Act therefore infringed Chapter III of the Commonwealth Constitution and was and is invalid [at par 40].

Kable did not turn out to be the monster contemplated by the Community Protection Act. He was released from prison and became a useful and productive member of society working in prison reform. He speaks at public forums and runs a mentor program for young prisoners to help them avoid re-offending. Premier Fahey failed to secure re-election of the Coalition government in 1995 and some commentators blamed the way he handled the *Kable case* for the unexpected loss of government. Incoming Labor premier Bob Carr took a leaf out of Greiner's law and order book and passed tougher sentencing laws for prisoners serving life sentences. Like Fahey, Carr was especially interested in the Coalition's 'life means life' sentencing law passed in 1990 and wanted to extend it to 10 prisoners whose crimes were committed before 1990 and who had been the subject of non-release recommendations by their trial judges.

On 9 May 1997, the Carr Labor government enacted the Sentencing Legislation Further Amendment Act 1997 that required the 10 non-release prisoners to wait 20 years instead of eight before they could apply to have their life sentences redetermined to a fixed term of years. Eleven days later, the government amended the legislation with the Sentencing Amendment (Transitional) Act 1997 when somebody in the office of the attorney general realised that Mr Blessington had already applied to the court in 1996 to redetermine his life sentence to a fixed term of years. The new legislation provided that any pending application was covered by the new law and the applicant must wait 20 years. Mr Blessington's was the only application pending in 1997. This is the first instance of the New

South Wales Parliament directing specific legislation against Mr Blessington contrary to the principle established in the *Kable case*, namely, that legislation will be in breach of Chapter III of the Australian Constitution if it intrudes into the judicial power by sentencing individuals or named prisoners without a proper consideration of their circumstances.

The second instance of specific legislation being directed against Mr Blessington contrary to the *Kable case* principle is the Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill 2005 which provided that an applicant for redetermination of a life sentence to a fixed term of years must now wait 30 years instead of 20 to make the application. This legislation was enacted on 6 May 2005 and specifically targeted a decision of Justice Dunford in the Supreme Court of New South Wales handed down just three weeks earlier on 15 April 2005 (*Regina v Bronson Matthew Blessington* [2005] NSWSC 340). His Honour found that Mr Blessington succeeded on the primary question whether his application to review his life sentence filed in 1996 escaped the parliament's 1997 and 2001 sentencing laws which meant he would not have to wait 20 or 30 years for a review of his sentence. The judge said the application could proceed immediately. But the parliament trumped the judge's decision with a further *ad hominem* provision in the new legislation specifically directed at Mr Blessington to prevent his sentence review application proceeding any further.

Mr Blessington and Mr Elliott appealed to the New South Wales Court of Criminal Appeal to re-open their original appeal against the severity of their sentences (*R v Elliott and Blessington* [2006] NSWCCA 305). The appeal was unsuccessful. In a dissenting judgment, Justice David Kirby said he would allow the appeal in the case of Mr Blessington and sentence him to a term of 28 years imprisonment with a non-parole period expiring on 8 September 2009. Then the High Court considered the case but refused to interfere in the prisoners' sentences (*Elliott v The Queen; Blessington v The Queen* [2007] HCA 51). However, the five High Court judges hearing the appeal did make the observation in a joint judgment that the legislative activity affecting Mr Blessington's sentence was 'striking and unusual.' That was as close as the High Court got to considering the *Kable case* as it applied to the prisoners. Perhaps Justice Michael Kirby, a former judge of the High Court, was correct in his assessment of *Kable* during an extra curial observation when he said that *Kable* was a watchdog that barked just once.

The final point about giving a child a natural life sentence in the context of considering the Royal prerogative of mercy is that the sentence is not just disproportionate to the crimes by reason of the child's age, mental condition and rehabilitation prospects, but the child might be expected to

spend longer in prison than an adult receiving the same sentence. Mr Blessington and Mr Elliott are now healthy adults, and according to psychiatric evidence, outgrown their adolescent mental problems of 1988. Without mercy, they could well be in prison for 60 or 70 years. A report compiled by New South Wales Corrective Services concluded that prior to the 1990 'life means life' sentencing regime, the mean time served by a life prisoner was 11.7 years (minimum three years and maximum 34 years) with 92.5 per cent serving 15 years or less. Bearing in mind that these are sentences served by prisoners who were adults at the time of their crimes, it might be expected that a juvenile's sentence would be discounted even further. Approximately 225 prisoners had their life sentences redetermined to a fixed number of years under the sentencing regime that operated prior to 12 January 1990. Given that Mr Blessington and Mr Elliott were in custody from September 1988 – the day after committing the crimes for which they were convicted – in the normal course they would have had their life sentences redetermined after eight years and then been released on parole after serving about 10 years.

By any measure, changing the law retrospectively to require a prisoner to serve 60 or 70 years instead of the approximately 10 years his sentence would otherwise have attracted under the sentencing regime applicable at the time of his crimes is a striking injustice. Not only does retrospective sentencing offend the principle of proportionality in sentencing, backdating the punishment undermines a prisoner's appeal rights. To look at a crime committed in the late 1980s through the prism of our modern 'law and order' sentencing regime inevitably gives a distorted view. The situation is especially unfair in the case of Mr Blessington given that his appeal rights have been overruled by *ad hominem* legislation passed by the New South Wales Parliament on two separate occasions (1997 and 2005). In the absence of political intervention, the appeal judges in Mr Blessington's various appeals (1992, 1996, 2005, 2006 and 2007) would have looked at his punishment in the context of comparable sentences at the time of the crimes in 1988 – before the 1990 'life means life' regime.

The unfairness of backdating punishment is recognised in international law. In August 1980, Australia's representatives at the United Nations ratified the International Covenant on Civil and Political Rights. Article 15 of the covenant provides that no one convicted of a criminal offence shall be subjected to the burden of a heavier penalty 'than the one that was applicable at the time when the criminal offence was committed.' The Human Rights Law Centre argued before the United Nations Human Rights Committee on behalf of Mr Blessington and Mr Elliott (described together as 'the authors' of the application) that the retrospective sentencing breached Article 15 of the ICCPR. The committee found in a ruling on 3 November 2014 that the legislative changes complained of

violate the letter and spirit of the protection against retrospective criminal punishment for the following reasons:

1. At the time of the offence and sentence the authors had prospects for release that were realistic and would be regularly considered. In particular, the authors were able to apply for a determination of their life sentence after serving eight years in prison. While it is not possible to predict when the authors would have been released under the regime applicable at the time it is clear they had a realistic chance of release within their natural lives. The mean time served by persons subject to life sentences in NSW between 1981 and 1989 before release on licence was 11.7 years.

2. There is no doubt that the NSW legislature mounted a concerted campaign over several years to remove any reasonable prospect for the authors' release. The then Premier of NSW made statements in Parliament and to the media that the authors would never be released from custody. Further, the NSW Government has repeatedly acted to extinguish any prospect for the authors' release whenever it has become apparent that existing legislation fails to do so. For instance, in 1996, eight years after beginning his sentence, Mr Blessington sought a redetermination of his sentence. The NSW Supreme Court found that he was not affected by the new, more punitive sentencing laws targeted at him because his application was already on foot at the time of their commencement. The Court suggested that given the legal consequences that now flowed from the trial judge's comment that he should never be released, that comment could be challenged in the superior courts as manifestly excessive when made in respect of 14 and 16 year old children... In response to this judgment, the NSW Government promptly passed further reforms making it clear that the laws applied to any applications already on foot. The sole consequence of this further amendment was to delay the consideration of Mr Blessington's application for a redetermination of his sentence for over two decades.

3. The trial judge's comment that the authors should never be released has been *ex post facto* transformed into the criterion on which the authors (and a handful of other

named prisoners) are treated much more punitively than all other persons given life sentences in NSW, and much more punitively than they would have been under the laws in force at the time of their offence. This is so despite the fact that the comment: a) was criticised by superior courts; b) cannot be appealed or challenged; c) was made without any statutory basis; d) was made at a time when it was of no legal consequence; e) was made by a judge who could not have known the strict legal consequences that would flow from it; and f) was made without the opportunity for the authors to make submissions on the issue.

4. The situation of the authors is quite analogous to that of a person subject to a retrospective increase in the prescribed minimum sentence. A retrospective increase in the minimum sentence is unequivocally a breach of Article 15. A minimum sentence sets the date before which the person subject to it cannot seek release. At the time of the sentence, the authors could seek a determination of the sentence after eight years. They must now wait at least 30 years. In theory, their sentence may have been redetermined to provide for the earliest possible release date. It is impossible to know, much the same as it is impossible to know whether a person subject to a retrospective increase in their minimum sentence would have been released immediately upon serving the initial minimum term. The situations are analogous and should be treated as such.

The United Nations Human Rights Committee found on other grounds that Australia had breached its international obligations in the *Blessington and Elliott case* and consequently did not rule on the breach of Article 15. Even so, given the committee's damning observations, it might be expected that a finding in the authors' favour would have been forthcoming in the absence of the other breaches which related to breaches of the cruel and unusual punishment provisions of the ICCPR. Australia ratified the Optional Protocol to the ICCPR on 29 September 1991 which amounts to an undertaking to the international community to respect and ensure to all individuals within jurisdiction the rights recognised in the covenant. Furthermore, modern states governed by the rule of law have an obligation to maintain the integrity of their justice systems. At the time of their crimes in 1988, Mr Blessington and Mr Elliott could not have known that they were facing life in prison without parole for their crimes. The idea was simply unknowable given that early release

for good behaviour was always in prospect under the sentencing regime that existed in new South Wales prior to 1990.

As pointed out by the Human Rights Committee in its findings in the *Blessington and Elliott case*, Australia has undertaken by signing the Optional Protocol to the ICCPR 'to provide an effective and enforceable remedy when it has been determined that a violation has occurred.' Exercise of the Royal prerogative of mercy in favour of Mr Blessington and Mr Elliott would be such a remedy. The option remains open and there has been no other response from the federal or state governments since the United Nations ruling 12 months ago. In these circumstances, I urge the Law and Justice Committee of the New South Wales Parliament to recommend as follows:

(a) Existing legislation, policies and procedures for determining the security classification and custodial management of life prisoners are appropriate and should not be dictated by adverse interests such as the commercial objects of talkback radio.

(b) While registered victims have a role to play in the management of life prisoners (Gary Lynch and Ken Marslew come to mind) there is no role for them in security classification which should be determined by public policy considerations.

(c) Registered victims are entitled to know about security and custodial arrangements for all prisoners but it hardly serves their interests or the interests of the state for registered victims to be in the loop as it were when every decision is made affecting the prisoners responsible for crimes against them and their families.

(d) It is always appropriate to reclassify and provide life prisoners with access to rehabilitative programs and services even if they have little or no prospect of release from custody as there is always the prospect of the prerogative of mercy in a case of exceptional suffering by a prisoner or exceptional rehabilitation. Furthermore, commentators agree that between one and two per cent of prisoners are wrongly convicted of the crimes for which they are sentenced, and in the absence of a criminal cases review commission in Australia, the possibility of new evidence exculpating a prisoner is an important consideration.

(e) Inmate security classification and management decisions are an important if unexceptional aspect of the operation of the prison system made easier by trusting the advice of the SORC.

Please let me know if you require further information or my attendance at a public hearing, although I live in Byron Bay these days and I would need assistance with travel expenses if I am not in Sydney at the time.

Yours sincerely

PETER BREEN

into disrepute. One commentator compared Denning's remarks to the idea of vicarious or utilitarian punishment put forward by author and social philosopher John Ruskin [1819-1900]. According to Ruskin, it might be possible to deal with unsolved murders by choosing an inhabitant of the place of the murder by lot, and then hang the person to encourage the rest of the community to keep the peace. The idea found currency in the early colony when the likely suspects were rounded up and flogged until someone confessed. And utilitarian punishment is behind the thinking that says a person may be technically innocent, but they probably committed some other comparable crime, so justice has been done.

The principle at risk is the presumption of innocence, a principle already under severe strain as a result of the proliferation of inquisitorial bodies with extraordinary coercive powers. If investigators and prosecutors do not bear the burden of proof, then it shifts to the person under investigation, and allegation and innuendo becomes the new currency of inquiry and a presumption of guilt replaces that of innocence. The Executive Government can utilise its agencies as investigators, superseding the work of police officers, and it can engage the Parliament to sideline sentencing judges. These may be popular developments in New South Wales, but they are not right, and they are only permissible because Australia is the last common law country in the democratic world to secure a bill of rights for the protection of the rights and freedoms of its citizens. At the commencement of my speech I foreshadowed that I would seek to incorporate in *Hansard* a list of comparable sentences that were attached to Blessington's application in the High Court, indicating the high-culpability life sentences for murder where the judges failed to impose non-release recommendations. I now seek leave to incorporate the document in *Hansard*.

Leave granted.

HIGH CULPABILITY LIFE SENTENCES FOR MURDER WITHOUT A NON-RELEASE RECOMMENDATION IMPOSED PRE 1989 LEGISLATION

1. McDonald, William

Date of offence/s:	4 killings on 4/6/1961, 20/11/1961, 31/3/1962 and 3/11/1962.
Date of sentence:	24/9/1963, McClemens J.
Facts:	All victims homeless men who had their genitalia excised. After obtaining conviction on one of the murders, the Crown did not proceed with the others.
Redetermination:	He filed an application but has never given instructions to proceed with it.
Parole:	Does not have a parole date. He has been in custody since 1963 and will turn 80 on 17/6/2004.

2. Lawson, Leonard

Date of offence/s:	2 killings on 6/11/1961 and 7/11/1961.
Date of sentence:	4/4/1962, McClemens J.
Facts:	He was sentenced to death in 1954 when 26 yrs old for kidnap and 2 counts of rape which were commuted to 14 yrs and he was released on licence on 27/5/1961. He re-offended 6 months later in Nov 1961 by raping and killing a sixteen yr old girl whose portrait he was painting; and, the following day he shot dead a school girl during a siege at SCEGS school at Moss Vale. In view of the conviction for murder on the 1st killing, the Crown did not proceed re the 2nd.
Redetermination:	Declined on 31/5/1994, Badgery-Parker J.
Parole:	He died in custody on 29/11/2003 aged 76, having been in custody on the life sentence since late 1961.

3. Turner, Eric

Date of offence/s:	4 killings, two on 15/12/1948 and two on 24/8/1973.
Date of sentence:	12/11/1973, Nagle J.
Facts:	Turner, aged 20 choked his fifteen year old girlfriend to death and killed her father with an axe. He was sentenced to death but this was commuted to life. He was released on licence on 20/8/1970. Three years later he stabbed his mother-in-law to death and her 11 year old grandson.
Redetermination:	Granted on 20/8/1992, Judge Wood – minimum term of 20 years from 26/8/73 to 25/8/93 with an additional term of life.
Parole:	Parole has been refused (he will be considered again on 18/8/05).

4. McCafferty, Archibald

Date of offence/s:	3 killings between 24/8/1973 and 28/8/1973.
Date of sentence:	26/4/1974, Glass J.
Facts:	McCafferty, aged 25, just before the first killing, had a delusion that if he killed seven people, his baby son who was accidentally suffocated the year before by his wife, would return to life. He arranged with others to assist commit these offences. The first victim was walking home

when randomly attacked and kicked and stabbed. The other two victims were shot dead after picking up the offenders who pretended to be hitchhiking.

Redetermination: Granted on 15/10/1991, Wood J – minimum term of 20 years from 30/8/73 to 29/8/93 with an additional term of life.

Parole: Released to parole on 1/5/1997 (and deported).

5. Lewthwaite, John

Date of offence/s: 26/6/1974.

Date of sentence: 11/12/1974, Slattery J.

Facts: Lewthwaite aged 18, broke into a house to rape a young boy he believed was there. A 5 year old girl woke up and he furiously stabbed her thirteen times to death. The judge said, "I have the utmost concern as to whether you should ever be released from gaol...considerations of this nature do not become my lot".

Redetermination: Granted on 31/7/1992, Slattery J – minimum term of 20 years from 26/6/74 to 25/6/94 with an additional term of life.

Parole: Released to parole on 21/6/1999 (there is no record in NSW of him returning to custody).

6. Johnstone, Kenneth

Date of offence/s: 1/11/1974

Date of sentence: 2/6/1975, Nagle J.

Facts: Johnstone aged 37, killed and sexually assaulted a thirteen-year-old girl. He had formed a relationship with the girl and on the night of her death, he met her by pre-arrangement outside a skating rink. Her body was found two days later in a shallow grave, naked but for socks with severe tearing injury to the vagina. Cause of death was asphyxiation due to strangulation.

Redetermination: Granted on 20/12/1991, Badgery-Parker J – minimum term of 19 years from 6/11/74 to 5/11/93 with an additional term of life.

Parole: Parole has been refused (he will be considered again on 22/1/04).

7. Lyttle, Reginald

Date of offence/s: 15 died in a fire on 5/12/1975.

Date of sentence: 25/11/1976, Begg J.

Facts: Lyttle, aged 24, started a fire at the Savoy Hotel, Kings Cross, in which 15 people died. He was charged with murder in relation to 4 of the deaths.

Redetermination: Granted on 6/3/1996, Newman J – minimum term of 28 yrs from 14/276 to 13/2/04 with an additional term of life.

Parole: Parole has been refused (he will be considered again on 14/2/04)

8. Conlon, Shirley

Date of offence/s: 13/6/1978.

Date of sentence: 8/12/1978, Slattery J.

Facts: Conlon, aged 22, with the intention of robbing the Housing Commission rent collector, shot him in the stomach, then tied him up and several hours later killed him by shooting him in the head. The judge, in what arguably is a non-release recommendation, commented that Conlon should not ever hold out any expectation for release and maybe she should be one of those persons who will spend the whole of her life in gaol but added, "any recommendation I made would be of little value, because undoubtedly your case will be looked at from time to time".

Redetermination: Granted on 24/4/1992, Slattery J – 27 years comprising a minimum term of 15 yrs from 15/6/78 to 14/6/93 with an additional term of 12 years from 15/6/93 to 14/6/05.

Parole: Released to parole on 15/6/1993 (there is no record in NSW of her returning to custody).

9. Cribb, John

Date of offences: 3 killings on 11/8/1978.

Date of sentence: 22/5/1979, Roden J.

Facts: Cribb, aged 28, kidnapped a mother and her children aged 10 and 4 in her car. He raped the mother and then stabbed them all to death and put bodies in boot of the car where they were found by tow truck operators. The judge said, "I regard it as no part of my function to seek to express the horror and revulsion that is felt in the community when offences of this nature are committed".

Redetermination: Declined on 12/11/1993, Newman J.

Parole: Does not have a parole date. He has a second redetermination application pending.

10. Schneidas, Peter

Date of offence/s: 10/8/1979.

Date of sentence: 8/4/1980, Slattery J.

Facts: Schneidas had been committed to prison in 1977 for 3 years in respect of a series of false pretences. Whilst in custody he attacked a prison officer and a cumulative sentence of 10 years, with a non-parole period of 6 years and 6 months was imposed in 1978. On 10/8/79 he attacked another prison officer and killed him. Schneidas attacked the officer from behind striking him

nine blows with a hammer, shattering his skull. The Judge said, "...prisoners who murder prison officers and police officers in the execution of their official duties should not expect to ever return to live in the community...what happens in your case in the future is a matter entirely for the Executive Government".

Redetermination: Granted on 16/12/1993, Grove J - minimum term of 15 years from 8/4/80 to 7/4/95 with an additional term of life.

Parole: Released to parole on 22/3/1997 (there is no record of him returning to custody, but he died within two years of his release).

11. Rees, Berwyn

Date of offence/s: 3 killings on 4/8/1977 and 24/11/1980.

Date of sentence: 13/4/1981, Begg J.

Facts: On 4/8/77, Rees aged 28, robbed a gun and sports store at Bondi Junction, he directed the manager and a customer to lie face down on the floor and shot them in the back of the head and then stole some guns and ammunition. On 24/11/80 police were called to investigate sounds of gunfire in a remote bush area. As a police officer approached, Rees shot him dead. Other police arrived and Rees wounded one in the stomach but was disarmed by the others.

Redetermination: Granted on 12/8/1993, Smart J – minimum term of 18 years for the 1977 killings from 24/11/80 to 23/11/98 and a minimum term of 27 years for the 1980 killing from 24/11/80 to 23/11/07 with additional terms of life.

Parole: Not eligible for parole until 24/11/2007.

12. McWaters, William

Date of offence/s: 2 killings on 8/12/1980 and wound police officer with intent to murder.

Date of sentence: 9/7/1981.

Facts: McWaters, aged 44, had a history of animosity to his neighbours. He shot dead the husband on the lawn and the wife inside the house while on the phone to police. He then shot in the head a police officer who arrived.

Redetermination: Granted on 19/10/1992, McInerney J – minimum term of 13 years from 8/12/80 to 7/12/93 with an additional term of life.

Parole: Released to parole on 13/12/1996 (there is no record in NSW of him returning to custody).

13. Hitchins, Terry

Date of offence/s: 2 killings on 9/6/1981 and 13/7/1981.

Date of sentence: 23/9/1982, Slattery J.

Facts: Hitchins was aged 16. On 29/6/81, along with a co-offender robbed a taxi driver and Hitchins stabbed him to death. On 13/7/81, with another co-offender robbed a second taxi driver and Hitchins killed him by placing him in the boot bound and then set fire to the car. The judge referred to the practice of release on licence after ten years and said, "...serious consideration should be given to the prisoner Hitchins spending the rest of his time in gaol..."

Redetermination: Granted on 3/6/1993 – minimum term of 24 years from 15/7/81 to 14/7/05 with additional term of life.

Parole: Not eligible for parole until 15/7/05.

14. Luckman, Paul (now Nicole Pearce) & 15. Reid, Robin

Date of offence/s: 4/5/1982.

Date of sentence: 2/12/1982, Roden J.

Facts: Luckman, aged 17, and Reid aged 34, picked up two 13 year old boy hitchhikers with a plan to torture and kill. This plan was carried out with one of the boys being tormented over some hours including being stabbed 15 times and buried while still alive. The other boy was released. The judge described the case as "one of the most brutal and callous crimes ever to come before a Court in this State".

Redetermination: Luckman was granted on 20/10/1993, Bruce James J – 24 years comprising a minimum term of 16 years from 6/5/82 to 5/5/98 with an additional term of 8 years from 6/5/98 to 5/5/03. Reid was granted on 26/11/98, Bruce James J – minimum term of 24 years from 6/5/82 to 5/5/06 with an additional term of life.

Parole: Luckman was released to parole on 26/10/1999 (there is no record in NSW of her returning to custody). Reid is not eligible until 6/5/06.

16. Boyd, Samuel

Date of offence/s: 4 killings on 13/9/1982 and 22/4/1983 and wound with intent to murder.

Date of sentence: 4/1/1985, O'Brien.

Facts: Boyd, aged 26, killed first victim when he did a job at her house as a pest controller. Second victim (a male) killed early hours of 22/4/83 after they left a hotel together. Third and fourth victims killed later in the day when he held them hostage at Glenfield Park Special School 22/4/83. The fifth victim was also a hostage at the school, but not killed, and the offence was wound with intent to murder.

Redetermination: Declined on 7/7/1994, Carruthers J.

Parole: Does not have a parole date. He has a second redetermination application pending.

17. Croyston, David & 18. Graham, Kenneth

Date of offence/s:	31/7/1983.
Date of sentence:	28/11/1983, Lee J.
Facts:	Croyston aged 26 and Graham aged 28, picked up two 15 year old girl hitchhikers whom they repeatedly raped vaginally and anally. One of the girls was killed by asphyxiation and raped after she died. The other girl managed to escape. The judge said, "...your hearts and minds that night were the hearts and minds of beasts...the murder can only be described as an outrage...There is not one single mitigating circumstance that can be advanced".
Redetermination:	Croyston was granted on 9/3/1994, Smart J – 28 years comprising a minimum term of 19 years from 1/8/83 to 31/7/02 and an additional term of 9 years from 1/8/02 to 31/7/11. Graham was granted on 24/10/1995, Smart J – 25 years comprising a minimum term of 17 yrs 6 mths from 1/8/83 to 31/1/01 and an additional term of 7 yrs 6 mths from 1/2/01 to 31/7/08.
Parole:	Both have been refused parole

19. Glen, David

Date of offence/s:	10/10/1985.
Date of sentence:	22/12/1986, Wood J.
Facts:	Glen aged 19, met his 10 year old cousin one morning when she was on her way to school and invited her back to his unit. There he tied her up and repeatedly sexually assaulted her. She was strung up to a rail in a wardrobe with a belt tied around her neck and left there to die by asphyxiation. The Judge described the offence as "vicious and sadistic...not a single factor has been advanced to mitigate against the appalling circumstances of this hideous killing...the prisoner has shown not a shred of remorse...(the sentence will) require very careful consideration by the authorities in relation to his future custody and in particular as to whether he should be, at any time in the future, returned back to the community..."
Redetermination:	Declined on 1/10/1999, Wood J.
Parole:	Does not have a parole date. He has a second redetermination application pending.

20. Clarke, Rodney

Date of offence/s:	15/7/1987
Date of sentence:	15/9/1988, Cole J.
Facts:	Clarke, aged 21, broke into a neighbour's house at night. When a 9 year old girl woke up, he grabbed her and then proceeded to rape her vaginally and anally and killed her by suffocation with a pillow.
Redetermination:	Declined on 15/12/1999, Newman J. Granted on 4/5/05, Hidden J – Life sentence confirmed but non-parole period set of 28 yrs from 22/7/87 to 21/7/15 after taking into account that since first application was declined, he completed a 10 month long intensive sex offenders programme.
Parole:	Not eligible for parole until 21/7/15.

21. Potter, Anthony

Date of offence/s:	2/10/1987
Date of sentence:	14/10/1988, Hunt J.
Facts:	Potter was released to parole on 1/12/86 in respect of a 12 year sentence imposed on 5/8/83 for four charges of sexual intercourse without consent, which offences, also occurred while on parole. On 2/10/87, aged 26, he abducted and killed his victim. He was also charged with abduction, administer stupefying drug and sexual intercourse without consent in relation to a second victim. He was sentenced to life for the murder to commence on 28/10/94 the expiry date of the balance of his previous parole. In relation to the other matters he received fixed terms totalling 20 years which, with remissions expired on 30/4/03.
Redetermination:	He has lodged an application for redetermination of the life sentence but it has not yet been heard.
Parole:	Does not have a parole date.

The Hon. PETER BREEN: I thank the House for its indulgence in allowing me to speak for such an extended period. Previously the longest I had spoken on a matter was about 15 minutes, and I underestimated how long my speech would take. I apologise to the House.

The Hon. Dr PETER WONG [1.15 a.m.]: Tonight is indeed a sad night, for it is the night that this House will pass a bill that purports to be a judgment upon one of our fellow citizens. In reality, however, it is a judgment upon all of us. The House is debating the Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill. Bronson Blessington committed a heinous crime at the age of 14 that justifiably shocked, and continues to shock, our society, despite the fact that we have been told that at that time Blessington had a mental age of 9 or 10. While I totally condemn the crime he committed, and I have great sympathy for the sorrow and pain experienced by the family of Janine Balding, I cannot but notice that by all accounts Blessington has matured and transformed, being a Christian or otherwise.