

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

**Organisation:** NSW Department of Justice

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The Hon N Maclaren-Jones  
Chair  
Standing Committee on Law and Justice  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

File No:10/004502

Dear Chair

Please find enclosed the Department of Justice submission to the current Standing Committee on Law and Justice inquiry into the security classification and management of inmates sentenced to life imprisonment. I apologise for the delay in providing this submission.

The submission covers the Department of Justice and the NSW Police Force. I understand other statutory officer holders within the justice cluster were also invited to make submissions and that these have been made separately.

Yours faithfully

Brendan Thomas  
**Deputy Secretary**  
Justice Strategy & Policy

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## **Legislative Council Law and Justice Committee**

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

### **SUBMISSION – NSW DEPARTMENT OF JUSTICE**

October 2015

The Law and Justice Committee is conducting an inquiry into the security classification and management of inmates sentenced to life imprisonment in NSW. The Committee's terms of reference are confined to those inmates serving life sentences who are not eligible for release on parole. There are currently 57 such inmates in Corrective Services NSW custody (see Annexure A).

#### **Nature and purpose of security classification**

The Crimes (Administration of Sentences) Regulation 2014 sets out the system of security classification used for all inmates in NSW. Annexure B explains the different security classifications in detail and how they are assigned.

The purpose of the security classification system is to identify the risk posed by an inmate and to ensure that the inmate is managed at the level of control, supervision and security commensurate with that risk. The purpose of security classification is not to reward or punish inmates.

This approach to security classification is of long standing in NSW and is also the approach taken in other Australian States and Territories. It is built on the widely respected recommendations of the 1978 Nagle Royal Commission and 1987 Martin Report, which both articulated the principle that classification should be based on risk to security rather than a need to punish inmates (see Annexure C).

#### **Security classification for inmates not serving life sentences**

Corrective Services NSW policy requires an inmate to be held at the lowest level of security classification commensurate with the risk that inmate poses to security. This approach:

- promotes good order and discipline within correctional centres
- avoids public resources being wasted on inmates where the extra security is unnecessary
- creates an incentive for inmates to behave well in custody (to demonstrate their reduced risk level), and so protects correctional staff and other inmates
- ensures that inmates are managed humanely, and



- facilitates access to appropriate rehabilitation programs, work, education, leave and other programs necessary to reduce an inmate's risk of reoffending and prepare the inmate for reintegration into the community.

### **Security classification for life-sentenced inmates**

The situation is somewhat different for inmates serving life sentences with no possibility of release. These inmates will never be returned to the community and they do not need to be prepared for reintegration in order to protect community safety.

In recognition of this, Corrective Services NSW policy is that all life-sentenced inmates must always be classified at a level that requires them to be held in secure custody, regardless of the security risk posed by the inmate.

Life-sentenced inmates are never held in an open environment, or allowed to access work release or day leave in the community. In general, these inmates are also not provided with rehabilitation programs and treatment, as they will never be reintegrated into the community and will always be in prison.<sup>1</sup>

However, within these parameters, life-sentenced inmates still need to be classified and placed at a secure correctional centre appropriate to the risk that each inmate poses to security. There are several reasons for this.

Whenever possible and appropriate from a security perspective, inmates should be working in a Correctional Centre. This ensures that they contribute rather than being passive and served upon. Further, a well-structured day adds to the overall security of a correctional centre and good order and discipline. Work assignments must be reflective of the risk an inmate poses and differ between various secure correctional environments.

Second, classifying inmates at a level appropriate to their risk creates an incentive for good behaviour in custody (to demonstrate a reduced risk level). This is critical for the safety of correctional staff, as well as other inmates.

Third, a maximum security environment is significantly more expensive than other secure environments. Classifying life sentenced inmates at a higher level than is warranted by their risk level is not an effective way of spending of public resources.

Fourth, Corrective Services NSW has a responsibility to manage inmates humanely. Depriving inmates of liberty and imprisoning them to remove them from society is the punishment that has been imposed by the sentencing court. The conditions, in which an inmate is held, including security classification, must be adequate to ensure safety and security given the inmate's risk level. This is a long accepted principle of correctional practice (see Annexure C) and is recognised in the objects clause of the *Crimes (Administration of Sentences) Act 1999*.

### **Role of community expectations in classification decisions**

Classification decisions for all life-sentenced inmates are made by the Commissioner of Corrective Services, taking into account advice from the Serious Offenders Review Council (SORC).

SORC's membership includes judicial members, official members (expert staff of Corrective Services NSW) and community members. SORC's community members ensure that its decisions about classification and management of life-sentenced inmates

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1. The exception is where the inmate poses a significant risk to staff or other inmates and this risk can be mitigated through rehabilitation programs.



reflect and take into account the community's expectations. When SORC formulates its advice, it is required by section 198 of the *Crimes (Administration of Sentences) Act 1999* to consider (among other factors) the need to maintain public confidence in the administration of justice and the need to reassure the community that serious offenders are in secure custody as long as is appropriate.

### **Role of registered victims for inmates not serving life sentences**

Victims of crime can choose to register with the Victims Register so they can be notified about specific events during an offender's time in Corrective Services NSW custody. The current role and scope of the Victims Register is outlined in Annexure D.

Registered victims are notified of a proposed change to an inmate's security classification if consideration is being given to assigning the lowest level of security classification to the inmate, which could render the inmate eligible for unescorted pre-release leave in the community. If the lowest security classification is being contemplated, registered victims will be contacted and invited to make a submission, which will be taken into account by the decision maker.

All other security classification decisions (which do not potentially result in the offender being back in the community through the external leave program) take place within the context of internal management of the correctional system based on assessed risks to security.

### **Role of registered victims for life-sentenced inmates**

As already outlined in this submission, life-sentenced inmates will never be considered for the lowest level of security classification, or for unescorted pre-release leave. For this reason, victims of life-sentenced inmates are currently not notified of decisions about these inmates' security classification.

### **Improved engagement with registered victims**

Corrective Services NSW recognises that communication and engagement with all registered victims can be improved. Victims need to be provided with more information about the correctional system so they can understand the context and basis for different decisions. Victims also need more active assistance so they can make a meaningful contribution to the decisions that affect them, including decisions to assign an inmate to a particular security rating.

Corrective Services NSW held a workshop with registered victims of life sentenced inmates and victim's organisations in August 2015 to discuss how improvements could be made. Agreed areas for action arising from the workshop include:

- improvements to the existing Victims Register forms, so that victims can specify how they wish to engage and what is of particular importance to them
- greater time and assistance provided (directly or through a partner victim support organisation) to prepare submissions for SORC or the State Parole Authority
- biannual meetings to be held with registered victims to maintain engagement and provide specific information (next to occur in February 2016), and
- information provided that explains the security classification system and programs provided by Corrective Services NSW targeting offending behaviour.

Corrective Services NSW will undertake these improvements in a way consistent with the Inspector of Custodial Services' recent recommendation about improving



communication with victims in his report *Lifers: classification and regression* (recommendation 4).



## **ANNEXURE A: Inmates serving life sentences in NSW**

As at 13 September 2015, there were 8,173 sentenced inmates in Corrective Services NSW custody. Of these, 98 are serving life sentences. These life sentences fall into four categories due to “truth in sentencing” changes introduced in 1990.

### **Truth in sentencing legislation**

Before 1990, inmates sentenced to life imprisonment in NSW could be released on licence during their sentence and return to the community. Commonly, prisoners were released on licence after serving 11 to 12 years in custody.

From January 1990, “truth in sentencing” was introduced in NSW. These reforms abolished release on licence and required any inmate sentenced to life imprisonment in NSW to spend the whole of their natural life in prison with no possibility of release.

When the changes were made, it was recognised that courts sentencing inmates to life imprisonment before 1990 may have expected that the inmate could be released after a period in custody. For this reason, provisions were introduced allowing these inmates to apply to the Supreme Court for a redetermination of their life sentences after they had spent eight years in custody.

Initially, ‘redetermining’ the sentence involved the Supreme Court setting a non-parole period and a numerical head sentence instead of the life sentence. For example, the Supreme Court might have redetermined a life sentence to be a non-parole period of 20 years and a head sentence of 30 years.

From 1999, the Supreme Court was able to redetermine a sentence by setting a new head sentence or confirming the life sentence but also setting a non-parole period, after which the inmate would be eligible to be considered for release on parole.<sup>2</sup> For example, the Supreme Court might have confirmed the life sentence but have set a non-parole period of 20 years.

The redetermination provisions have been amended a number of times since 1990 to limit inmates’ access to the scheme. These changes included:

- requiring inmates to serve 30 years in custody before applying for redetermination if, at the time of sentencing, the sentencing court recommended that the inmate should never be released
- inmates subject to non-release recommendations cannot be released on parole (even if the Supreme Court has redetermined their sentence to include a non-parole period) unless their death is imminent or they are permanently incapacitated such they are unable to harm any person.

### **Types of life-sentenced inmates in Corrective Services NSW custody**

These changes mean that there are four different groups of inmates sentenced to life imprisonment in Corrective Services NSW custody. The groups are:

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2. Inmates can be convicted and sentenced under Commonwealth law rather than NSW law for certain offences. Under Commonwealth law (unlike the position in NSW), the court can set a non-parole period when it imposes a life sentence.



- (a) inmates sentenced to life imprisonment after January 1990 who were sentenced to imprisonment for the term of their natural lives and who are not eligible for release on parole or for redetermination
- (b) inmates sentenced to life imprisonment before January 1990 who, at the time of sentencing, the sentencing court recommended should never be released
- (c) inmates sentenced to life imprisonment before January 1990 who are still eligible to apply to the Supreme Court for redetermination of their sentence
- (d) inmates sentenced to life imprisonment before January 1990 who have had their sentence redetermined and received a non-parole period, making them eligible for release on parole by the State Parole Authority at the end of the non-parole period (although they would be on parole for life).

Fifty-seven life sentenced inmates fall within categories (a), (b) and (c), and so fall within the Committee's terms of reference (see Table A.1 below).

**TABLE A.1**

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

The remaining 41 life sentenced inmates are serving sentences with the possibility of release on parole (category (d)). These inmates fall outside the Committee's terms of reference.



## ANNEXURE B: NSW security classification system

The Crimes (Administration of Sentences) Regulation 2014 sets out the available security classifications in NSW. There are different classifications for male and female inmates (see Table B.1).

**TABLE B.1**

Security level	Security classifications		Physical security <sup>3</sup>
	Male	Female	
Maximum	AA	Category 5	Such inmates represent a special risk (to national security, the good order of a Correctional Centre, or to others) and are confined in special facilities at all times within a secure physical barrier that includes multiple perimeter fences with multiple detection systems, towers, internal electronic surveillance and biometric identity checks in the gatehouse.
	A1		
	A2		
	E1 (for inmates who have an escape history)	E1 (for inmates who have an escape history)	
Medium	B	Category 4	Such inmates are confined by a secure physical barrier comprising multiple perimeter fences with multiple detection systems and biometric identity checks in the gatehouse.
	E2 (for inmates who have an escape history)	E2 (for inmates who have an escape history)	
Minimum	C1	Category 3	Such inmates are confined by a secure physical barrier comprising at least one perimeter fence with detection systems.
	C2	Category 2	Such inmates may not be confined by a physical barrier at all times and may or may not require direct, full-time supervision.
	C3	Category 1	

3. These descriptions are paraphrased from the more detailed descriptions that appear in the Crimes (Administration of Sentences) Regulation 2014.



## **Process for assigning initial security classifications**

When an inmate is sentenced, an initial security classification is assigned to the inmate by the Manager or Deputy Manager Classification and Placement. The decision maker considers:

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

## **Reviewing and changing an inmate's security classification**

An inmate's security classification is reviewed at least every 12 months by a case management team within the correctional centre in which the inmate is placed. Annual reviews are required by clause 11(2) of the Crimes (Administration of Sentences) Regulation 2014.

For most inmates, the case management team and correctional centre management can decide to raise, lower or retain the inmate's security classification, taking into account static and dynamic risk factors.

However, for serious offenders, the Commissioner of Corrective Services must make decisions about security classification and placement after considering advice from the Serious Offenders Review Council (SORC) (see clause 17 of the Crimes (Administration of Sentences) Regulation 2014).

All inmates serving life sentences are 'serious offenders' under the definition in section 3 of the *Crimes (Administration of Sentences) Act 1999*.

## **Security classification for serious offenders**

For serious offenders, the case management team's recommendations about the inmate's security classification are provided to SORC with any relevant comments from the correctional centre management and the Manager, Classification and Placement. A subcommittee of SORC then generally interviews the inmate (although inmates serving life sentences will not be interviewed for every annual review).

SORC will then convene and consider:

- the recommendations it has received from the case management team and correctional centre management
- any information from interviews with the inmate
- case notes



- psychological and psychiatric reports
- program participation and treatment reports
- the original sentencing court's remarks on sentence
- time left to serve
- offences in custody and urinalysis results
- inmate correspondence.

It will also consider the principles listed in sections 198 and 199 of the *Crimes (Administration of Sentences) Act 1999*. SORC will then decide what security classification should be assigned to the serious offender.

SORC's advice is forwarded to the Commissioner of Corrective Services for a final decision about the inmate's security classification.

### **Involvement of registered victims in classification decisions for serious offenders**

If SORC is considering progressing a serious offender to C3 or Category 1 (the lowest security classification, which would render the inmate eligible to be considered for unescorted external leave programs) SORC must notify any registered victims of the inmate under section 67 of the *Crimes (Administration of Sentences) Act 1999*. The Victims Register currently performs this function (see Annexure D). Under section 68, registered victims are entitled to make a submission which SORC must take into account when formulating its advice to the Commissioner.

Registered victims are not currently notified of other security classification decisions.

### **Policy guiding decisions on classification of serious offenders**

Under Corrective Services NSW policy, the Commissioner will only lower a serious offender's security classification according to set timeframes, unless 'exceptional circumstances' apply. These timeframes are set out in Table B.2.

**TABLE B.2**

<b>Earliest a male serious offender will be reduced to:</b>	
B	8 years before the end of the non-parole period
C1	5 years before the end of the non-parole period
C2	3 years before the end of the non-parole period
C3	2 years before the end of the non-parole period
<b>Earliest a female serious offender will be reduced to:</b>	
Category 3	7 years before the end of the non-parole period
Category 2	3 years before the end of the non-parole period
Category 1	2 years before the end of the non-parole period



By its nature, this policy does not apply to serious offenders serving life sentences who are not eligible for parole.

**Policy guiding decisions on classification of life-sentenced inmates**

Under a Commissioner's direction from 2005, inmates serving life sentences who are:

- serving natural life sentences and not eligible for parole or redetermination, or
- serving life sentences and subject to non-release recommendations

are not to be considered for classification at a level below 'B' (medium security) other than in exceptional circumstances.



## **ANNEXURE C: Context of NSW security classification system**

Since the 1980s, Australia, New Zealand, the UK, Canada, the USA and a large number of European countries have operated 'objective' prisoner classification systems. The early evolution of NSW's current inmate classification system can be traced in large degree to the Nagle Royal Commission and the Martin review of classification. Corrective Services NSW has built its classification, placement and case management practices on their findings.

### **Nagle Report (1978)**

In 1976, the Honourable J. F. Nagle, a judge of the Supreme Court of NSW, was appointed sole Royal Commissioner to inquire into NSW prisons. The Nagle Report's recommendations on classification included:

*The primary object of any classification should be security. A detailed personal assessment of each prisoner should also be made. (Recommendation 58)*

*The following should be the security classifications:*

- *Category A: Prisoners whose escape would be highly dangerous to members of the public or to the security of the State.*
- *Category B: Prisoners who cannot be trusted in conditions where there is no barrier to their escape.*
- *Category C: Prisoners who can be trusted in open conditions. (Recommendation 59)*

These recommendations formed the foundation of the current security classification system.

The Nagle Report also recommended that:

*[The Royal Commission] accepts the aims of imprisonment as punishment, retribution, deterrence and the protection of society, but emphasizes that the loss of liberty is the extent of the punishment. Whilst in prison a prisoner should be treated justly and humanely and an attempt should be made at rehabilitation. Imprisonment should be a last resort and those imprisoned should be kept in the lowest appropriate security. (Recommendation 7)*

This recommendation is one of the foundations upon which correctional management practices in NSW have been based. Corrective Services NSW aims to place inmates at the lowest appropriate security classification in correctional centres consistent with their security requirements.

### **Martin Report (1987)**

In 1986, His Honour T. J. Martin, QC, a retired judge of the District Court, was appointed by the then Premier to enquire into the prisoner classification system. His Honour made 58 recommendations, including:

*That the principle be adopted that security classification is not to be used as a method of punishment. (Recommendation 11)*

The Martin Report felt that high security ratings not fully justified on a security basis were likely used as punishment. If this were the case, it would be contrary to the



propositions in the Nagle Report that the only punishment in imprisonment is to be the loss of liberty, and that security ratings should be the lowest appropriate.

The Martin Report made the observation that those prisoners who have nothing to hope for are less likely to make an effort to behave in gaol in a constructive and law abiding manner and are likely to make difficulties for themselves, other prisoners and prison staff.

### **National corrections guidelines**

All Australian jurisdictions have endorsed the *Standard Guidelines for Corrections in Australia* (2012) (Standard Guidelines) which establish guidelines and principles for correctional services (both custodial operations and community corrections). They represent a statement of national intent, around which each Australian State and Territory develops its own legislation, policies and performance standards.

The sixth guiding principle for custodial corrections in the Standard Guidelines is that prisoners must be: "...held at a level of security which is commensurate with the level of risk posed by that prisoner".

In the detailed section in classification and placement, the Standard Guidelines state:

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

*The security classification of prisoners should be based on an objective assessment of risk and a risk management strategy that takes into consideration, among other things, the nature of the crime, the risk to the community, the risk of escape, and their behaviour in custody. (p.19)*



## **ANNEXURE D: Victims Register**

Corrective Services NSW's Restorative Justice Unit maintains a Victims Register under section 256 of the *Crimes (Administration of Sentences) Act 1999*.

### **Who can use the Victims Register**

Victims of adult inmates can opt to add their names to the Victims Register. In cases where the victim is deceased, family members are eligible to have their names added to the Victims Register.

There are currently approximately 1200 victims registered against 800 offenders. About half of the victims with active registrations are registered in relation to a serious offender within the meaning of section 3 of the *Crimes (Administration of Sentences) Act 1999*.

### **Role of the Victims Register**

The Victims Register will inform a registered victim (where the inmate is currently incarcerated) when:

- the inmate is being considered for a change in security classification that could result in the inmate being eligible for unescorted leave programs
- the inmate is due to be considered for parole
- the inmate is due to be released
- the inmate has escaped from custody.

These are the situations that could result in the inmate being back in the community, and so are the ones of most relevance to victims.

The Victims Register also informs registered victims if the inmate dies in custody.

The Victims Register does not routinely notify victims when an inmate's classification changes (unless it may result in eligibility for unescorted leave in the community) or when an offender is moved between correctional centres.

### **Victim submissions**

If the inmate is being considered for parole, the Victims Register will invite any registered victims to make a submission to the State Parole Authority. Similarly, if a serious offender is being considered for a classification that may result in unescorted leave eligibility, the Victims Register will invite any registered victims to make a submission to SORC (for serious offenders) or the case management team making the classification decision (for non-serious offenders).

The Victims Register provides advice to registered victims about the rationale, purpose, formatting and content of submissions. The Victims Register can also provide practical assistance to help registered victims draft written submissions.