

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

Organisation: Victims Services, NSW Department of Justice

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Standing Committee on Law and Justice
Legislative Council
Parliament House
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Dear Chairperson,

On behalf of Victims Services, NSW Department of Justice, I am pleased to provide this submission to the Standing Committee on Law and Justice in relation to the inquiry into the security classification and management of inmates sentenced to life imprisonment.

Victims Services bears significant interest in the **safety** and **recovery** of victims of violent crime and the **recognition** of the harm they have suffered as a result of these crimes. Victims Services works in close partnership with Corrective Services NSW (CSNSW) to meet these needs and also the needs of the community at large.

Victims Services recognises custodial management and the security classification of serious offenders sentenced to life imprisonment as a highly contentious issue often fraught with heightened community expectation and interest. Victims Services notes the significance and intention of an imposition of a sentence of imprisonment for life as it is maintained under section 61 of the *Crimes (Sentencing Procedure) Act 1999* - to meet the community's interest in **retribution, punishment, community protection** and **deterrence** in relation to a serious offence. Victims Services also notes the volatile nature of the correctional system and the influence the ongoing community interest in the retribution and punishment of an offender who is unlikely to leave the correctional environment can have on the correctional system's ability to administer justice and on the victim(s) ability to move on from a traumatic event.

In writing this submission we intend to advocate strongly on behalf of victims, providing possible solutions we believe would empower victims to take control over their recovery whilst also empowering CSNSW to effectively manage the correctional environment and provide community protection.

Should you have any queries in relation to this request, please contact me on

Yours sincerely

—
Mahashini Krishna
Commissioner of Victims Rights

Background to Victims Services

Victims Services, part of the NSW Department of Justice, helps victims of crime access services to aid in their recovery and assists victims in their rehabilitation by providing counselling, practical and financial assistance. The support provided by Victims Services includes:

- The administration of the Charter of Victims Rights
- A Victims Access Line with Support Coordinators who can provide information, support, crisis counselling, needs assessment and referrals
- The Victims Support Scheme which includes financial support and counselling

On 3 June 2013 New South Wales established the role of the Commissioner of Victims Rights. The Commissioner advises government on issues regarding victims rights, advances victims rights and assists victims in their interactions with government agencies and organisations. The Commissioner administers the *Victims Rights & Support Act 2013* and is responsible for the implementation and promotion of the New South Wales Code of Practice for the Charter of Victims Rights, which sets standards for the provision of service and support to victims of crime.

Eligibility for services provided by Victims Services is dependent on the level of service required and whether or not the violent crime occurred in NSW. Anyone can call the Victims Access Line for information to assist victims of crime at any time following the incident and throughout their involvement with the criminal justice system. Victims of crime who have suffered harm as a direct result of an act committed, or apparently committed by another person in the course of a criminal offence have rights under the Charter of Victims Rights. Victims who are injured as a direct result of an act committed, or apparently committed in NSW by another person that has involved violent conduct in the course of a criminal offence may be eligible for approved counselling and/or financial support.

Many of the victims of crime contacting Victims Services for support and assistance come from disadvantaged backgrounds or are vulnerable persons. Victims Services is aware that victims of crime from disadvantaged groups have particular needs and may be disadvantaged participating in Australia's justice system.

The Charter of Victims Rights

The Charter of Victims Rights is enshrined in section 6 of the *Victims Rights and Support Act 2013*. The Charter applies to victims of crime who have suffered harm. The NSW Charter of Victims of Rights is based on the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power. There are 18 rights in the Charter, including:

6.1 Courtesy, compassion and respect

6.2 Information about services and remedies

6.3 Access to services

6.4 Information about investigation of the crime

6.5 Information about prosecution of accused

6.6 Information about trial process and role as witness

6.7 Protection from contact with accused

6.8 Protection of identity of victim

6.9 Attendance at preliminary hearings

6.10 Return of property of victim held by State

6.11 Protection from accused

6.12 Information about special bail conditions

6.13 Information about outcome of bail application

6.14 Victim impact statement

6.15 Information about impending release, escape or eligibility for absence from custody

6.16 Submissions on parole and eligibility for absence from custody of serious offenders

6.17 Financial assistance for victims of personal violence

6.18 Information about complaint procedure where Charter is breached

The Charter of Victims Rights is supported by the NSW Code of Practice for the Charter of Victims Rights which is designed to help government and non-government agencies funded by the NSW Government to provide services to victims of crime to understand how to meet their obligations under the Charter and also provides specific information regarding obligations surrounding the Corrective Services Victims Register in addressing a victims needs beyond their justice journey.

1. Reflection of community expectations within current legislation, policies and procedures surrounding security classification and custodial management of inmates sentenced to life imprisonment

The framework by which to define community expectations surrounding the treatment of offenders confined within this inquiry can be found within section 61 of the *Crimes (Sentencing Procedure) Act 1999* which orders the mandatory imposition of a sentence of imprisonment for life when it is believed that the *community interest* in retribution, punishment, community protection and deterrence can only be met through the imposition of such a sentence. This framework is demonstrative of the punitive and consequentialist aims (White and Perrone 2010, pp.452-453) of the community, aims which extend beyond the sentencing of such serious offenders to the ongoing treatment, security classification and custodial management of an offender in prison, and the development of a case plan under the *Crimes (Administration of Sentences) Regulation 2014*.

There are numerous legislative instruments, policies and advisory bodies in place to ensure that the classification and custodial management of these offenders are carefully considered and in

line with community needs and expectations. Victims Services primary concern, which is supported by the Victims Register, is to assist with the recovery of the victim. This is achieved through ensuring, as far as practicable, that the victim is safe from further harm or contact with the offender, and will be warned if these circumstances change. Legislation, policies and procedures already exist to ensure this and Victims Services is active in administering the Charter of Victims Rights and managing any complaints received regarding these processes. Complaints surrounding these issues are dealt with by means of recommendations suggesting policy and procedural change, or solutions for atypical cases.

Summary of Security Classification Legislation, Policies and Procedures:

In accordance with regulation 11 of the *Crimes (Administration of Sentences) Regulation 2014*, offenders are classified as soon as practicable to a security classification outlined in the table in Appendix 1.

An inmate's classification is then reviewed at least once every 12 months.

A victim registered on the Victims Register may inquire at any time as to the security classification of their offender.

In accordance with section 198 of the *Crimes (Administration of Sentences) Act 1999* the **Review Council** has advisory functions to make recommendations to the Commissioner of Corrective Services regarding the security classification, placement of and provision of developmental programs for serious offenders.

In accordance with Part 2, Division 7 of the *Crimes (Administration of Sentences) Act 1999*, the Review Council must notify victims registered against an offender on the Victims Register should they recommend a security classification that would allow the offender to become eligible for unescorted leave from custody and provide the victim with 14 days to lodge a notice to make a submission for review.

The Review Council must consider the victim's submission as well as multiple factors reflecting **public interest** when making a recommendation under part 2, division 7 of the act. This can include the offender's conduct, attitude, the nature of their offence, their willingness to participate in rehabilitative programs, the protection of the public (which is paramount) and the recommendations of the sentencing court.

Victims Services' position throughout this inquiry is that current communication processes with registered victims surrounding normal security classification is appropriate. It appears unclear whether part 2, division 7 of the *Crimes (Administration of Sentences) Act 1999* allows for an offender sentenced to life imprisonment to be recommended for a security classification that would allow them to become eligible for unescorted leave of absence from custody. If this is allowed then we would recommend an amendment to the legislation to ensure this was not allowable.

A worthwhile comparison that reflects community expectations surrounding an offender subject to a non-release recommendation would be within clause 2 of Schedule 1 to the *Crimes (Sentencing Procedures) Act 1999* which deals with applications for the determination of a non-parole period. Under this Clause, an offender subject to a non-release recommendation is not eligible to make such an application until at least 30 years of their sentence has been served. In order to reflect community expectations of retribution, punishment, community protection and

deterrence, it seems appropriate to investigate the merit of reflecting these standards found within clause 2 of Schedule 1 to the *Crimes (Sentencing Procedures) Act 1999* within the *Crimes (Administration of Sentences) Act 1999* - making it so that the offender is not eligible for recommendation to a security classification that allows them to become eligible for unescorted leave of absence until the offender has served at least 30 years of the sentence concerned.

2. Inclusion of registered victims in the classification and management decision making process and how this may impact their recovery

Whilst it would appear that victim participation in the criminal justice system has been a largely recent phenomenon, with victim dissatisfaction relating to the lack of participatory opportunities and procedural rights for victims. Various legislative and other changes have resulted in an increased role of primary and family victims in the NSW Criminal Justice System, with legislative changes allowing these victims to:

Make a victim impact statement to be considered after the conviction of and prior to the sentencing of an offender in accordance with section 28 of the *Crimes (Sentencing Procedure) Act 1999*

Improve their participation in restorative justice initiatives

Register with the Victims Register in accordance with section 256 of the *Crimes (Administration of Sentences) Act 1999* to be advised of matters which may impact on their safety. For example, if:

- the offender is to be considered for a change in security classification which may result in the offender being eligible for unescorted leave of absence (i.e. pre-release leave)
- the offender is due for parole consideration
- the offender is due for release
- if the offender has escaped custody

Make submissions regarding the intention to grant parole to serious offenders in accordance with section 145 of the *Crimes (Administration of Sentences) Act 1999*

Make a submission regarding any proposal for a recommendation by the Review Council under section 197 of the *Crimes (Administration of Sentences) Act 1999* that a serious offender be given a security classification that would allow the offender to become eligible for unescorted leave of absence under a local leave permit or interstate leave permit (a *low security classification*).

Victims Services recognises the seriousness of the crimes pertaining to the offenders defined within the terms of reference of this inquiry, and due to the low likelihood that these offenders will ever be released, the participatory rights for victims of these offenders registered on the Victims Register often ends at the giving of a victim impact statement unless the victim's safety is at risk following the imprisonment of the offender.

Recent complaints that have informed this inquiry, however, have been in relation to registered victims expressing discontent about offenders being reclassified to a lower (medium or minimum) security classification with the potential to apply for rehabilitative programs or employment, but which do not allow for a security classification low enough to allow for unescorted leave of absence unless the victim is notified. These complaints appear to reflect

the community perception of leniency in the criminal justice system in these cases and a preference for the ongoing participation of victims in determining the administration of these serious offenders' sentences.

Policies provided by Corrective Services NSW, surrounding the Victims Register direct that the Register is not to be utilised to intervene in the management of offenders in the correctional system and as such, the Victims Register does not advise victims or allow victims to make submissions regarding normal changes to security classification and custodial management. It is then questionable whether a process that would allow this would be viable for the Correctional System or whether this would be empowering for the victim.

As discussed previously, Part 2, Division 7 of the *Crimes (Administration of Sentences) Act 1999* requires that should the Review Council make a recommendation to the Commissioner CSNSW to reclassify a serious offender to a low security classification that would allow the offender to become eligible for unescorted leave of absence, they must provide a notice of intention to any victim registered on the Victims Register in relation to the offender that allows them at least 14 days to lodge a notice of an intention to make a submission to the Review Council regarding the reclassification.

Victims Services considers this legislation appropriate and within the interest of the victim, the community and also for Corrective Services NSW, as there is an operational and legislative need for classification reviews at least once every 12 months and victim control over the administration of sentences would jeopardise their ability to administer justice on behalf of the rest of the community.

It is also important to note that a goal of these increased participatory and procedural rights, particularly with the Victims Register, has predominately been to assist with the emotional recovery of a victim. There is a risk, however, that increased participation beyond the imprisonment of the offenders listed within the terms of reference (i.e., those who have little to no chance of ever being released), can result in the ongoing trauma and negatively impacted recovery and mental health of the victim over the long term.

Each victim's recovery needs are different, however, and in considering positive/therapeutic benefits of involvement with the administration of a sentence, it is worth considering the potential of an 'opt-in' notification process regarding changes in security classification and case plans of an offender, accompanied by descriptions from the Classification Manager and/or delegate from Offender Services and Programs of the reasons for these changes, for example prison over population, victimisation within custody and behaviour of the offender, so as to prevent erroneous perceptions of leniency.

Additionally, more research is required on the benefit of victim participation in custodial management and security classification decisions, as well as how much participation registered victims wish to have in the process.

3. Access to Rehabilitative Programs and Services

Regulation 60 of the *Crimes (Administration of Sentences) Regulation 2014* looks at the provision of inmate services and programs, stating that:

- (1) The Commissioner may provide an inmate with services and programs that:
 - (a) offer the inmate an opportunity to develop skills, behaviours and attitudes that lessen the likelihood of the inmate re-offending, or

(b) contribute to the inmate living in society after release from custody, or

(c) promote the health, safety and well-being of the inmate

These programs can include welfare services, services for inmates who have disabilities, alcohol and other drug counselling services, psychological counselling services, literacy and numeracy programs, educational and vocational training programs, including the provision of libraries, pre-release and post-release programs to enable inmates to adapt to normal lawful community life, sports and recreational activities. The benefit of these programs for the custodial system as a whole would normally look at quantitative data such as the level of reoffending of participating inmates; however this data is not applicable to inmates sentenced to life imprisonment.

Victims Services notes that part of the intention of these programs is to address issues within the structured environment, and there is a potential that these programs (such as programs targeting violence) may prevent reoffending within the correctional environment, and could potentially prevent the victimisation of other inmates. Victims Services also notes the contentious topic of the offenders with a history of victimisation that may require additional support to promote their health, safety and wellbeing.

However current programs being undertaken as part of a joint project between Corrective Services NSW and Victims Services, and supported by feedback from the Royal Commission, indicate a high percentage of the inmate population are affected by complex trauma. This is in relation to a prior history of violent victimisation not associated with their current offending behaviours. It is also important to note the intention to provide a program to an inmate through rehabilitative programs, as stated within regulation 60(1) of the *Crimes (Administration of Sentences) Regulation 2014*; to promote the health, safety and well-being of the inmate, a human right which must not be impeded by the correctional system.

Further to the discussion of rehabilitative programs, it is worthwhile considering the merit of serious offender access to employment opportunities within the Correctional system. Correctives Services runs numerous Corrective Services Industries (CSI) programs in which all sentenced inmates in full-time custody are expected to participate, where eligible. These programs are important to the custodial system, allowing the inmate to keep occupied in prison and also allowing them to contribute to “the efficiency and self-sufficiency of the correctional facility” (CSNSW Media and Communications Unit 2015). As stated within CSNSW’s Corrective Service Industries factsheet, “the total CSI revenue [in 2013/14 financial year] was \$91.8 million with a trading profit of \$35.9 million. This included a 1% contribution from external sales to the Victims Compensation Levy” (CSNSW Media and Communications Unit 2015). It is in this way that the potential inclusion of inmates sentenced to lifelong imprisonment in CSI programs would make it so these inmates are able to contribute not only to the custodial system but also to the Victims Support Fund which provides much needed financial support and counselling to victims of violent crime in NSW.

A contentious issue raised by the CSI programs by the community is the potential for some inmates to receive an income from CSI programs. According to the Corrective Services Industries factsheet, a 5 day, 30 hour week worked by an offender in a CSI program is expected to make the offender \$24.60 - \$70.55 a week, with a total maximum weekly income of \$85 per week. Despite this allowing offenders to purchase items in accordance with the ‘buy-up’ scheme, and despite the offender not being able to use the money when they ‘get out’ due to the extremely low prospect of getting parole, this also allows them to:

pay victims support levies which as mentioned above go to the Victims Support Fund to ensure ongoing funding for support services for victims

possibly pay off an restitution debt they have as a result of their violent offence – these offenders have committed the most heinous crimes and at present they are not asked to pay restitution debts as they have life sentences. By allowing them to earn a prison wage could mean they contribute to the Victims Support Fund by making restitution payments from any income received

assist with family responsibilities such as child support and other costs

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

The power to make decisions regarding the security classification and custodial management of offenders sentenced to life imprisonment quickly and efficiently in accordance with legislation allows Corrective Services NSW the ability to effectively manage risk and keep the community safe. Regulation 11 of the *Crimes (Administration of Sentences) Regulation 2014* states that an inmate's classification needs to be reviewed at least once every 12 months, but classification may need to be assessed at an earlier date due to prison overpopulation and operational needs.

For example, if the Classification Management team were unable to move inmates sentenced to life imprisonment into the most appropriate centre/arrangement as quickly as possible, it could risk the safety of correctional officers and the safety of other inmates, particularly remand inmates awaiting sentencing who are required to be housed in maximum security.

Further, CSNSW's ability to service the Courts would be jeopardised. For example, the ability to keep a person sentenced to life imprisonment in a medium security facility would create greater stability in the correctional system with a limited change to their experience and the function of their sentence (in particular, retribution and punishment) as these inmates could be moved to areas that are not as close to the courts, allowing for reduced transportation costs when remand and other inmates face court as these inmates, already placed within an overcrowded system (Donnelly et al 2015), would not have to swap beds facing court dates.

The ability for Corrective Services to service the courts is of particular interest to Victims Services as seeking justice is an essential part of other victims' recovery. Furthermore, in higher security prisons, the custodial officer to prisoner ratio is much higher, creating additional costs per offender per day.

5. Recommendations

Victims Services would like to make the following recommendations to the Inquiry based on the information provided above:

1. The potential development of an opt-in notification process being established within the current function of the Corrective Services Victims Register.
 - This would allow the Victim to receive notifications regarding changes in security classification and case plans.

- Notification should include information about support services that are available like the Approved Counselling Services so victims can be therapeutically supported if they decide to make submissions.
 - These notifications should be accompanied by a description by the Classification Manager and/or delegate from the Offender Services and Programs team with the reasons for certain changes that may include:
 - Offender behaviour and attitude
 - Offenders willingness to participate in rehabilitative programs
 - Operational needs of Corrective Services NSW
 - This description should also include the limits to the change including
 - The similarities in security levels; and
 - Access to programs
2. Undertaking further research regarding the benefit of victim participation in custodial management and security classification decisions, including a survey of current registered victims on the Corrective Services Victims Register regarding their perception of their participatory needs for recovery.

6. References

Corrective Services NSW Media and Communications Unit 2015, *Corrective Services Industries*, Fact Sheet, Corrective Services NSW

Donnelly, N., Halstead, I., Corben, S. & Weatherburn, D. 2015, 'The 2015 NSW Prison Population Forecast', *Crime and Justice Statistics*, NSW Bureau of Crime Statistics and Research, Issue Paper Number 15

Kunst, M., Popelier, L. & Varekam, E. 2014, 'Victim Satisfaction with the Criminal Justice System and Emotional Recovery: A Systematic and Critical Review of the Literature', *Trauma, Violence and Abuse*, Volume 1, Number 23

White, R. & Perrone, S. 2010, *Crime, Criminality and Criminal Justice*, Oxford University Press, Australia

Appendix 1

Security Classifications as per Part 3, Division of the Crimes (Administration of Sentences) Regulation 2014

	Male Inmate Classifications	Female Inmate Classifications	Summary
Maximum Security* *Also houses all remand inmates prior to sentencing	Category AA	Category 5	-Special risk to national security -Perceived risk of engaging in or inciting others to engage in terrorist activities -To be confined at all times within special facilities within a <u>secure physical barrier</u> with -towers, or -electronic surveillance equipment
	Category A1		-Special risk to good order and security -To be confined at all times within special facilities within a <u>secure physical barrier</u> with -towers, or -electronic surveillance equipment
	Category A2	Category 4*	Male: -To be confined at all times within special facilities within a <u>secure physical barrier</u>

		<p>*Similarities to the male Category A2 in terms of the requirement for electronic surveillance, but does not include the requirement of towers or other highly secure perimeter structures.</p>	<p>that includes</p> <ul style="list-style-type: none"> -towers, or -other highly secure perimeter structures, or -electronic surveillance equipment <p>Female:</p> <ul style="list-style-type: none"> -To be confined at all times within special facilities within a <u>secure physical barrier</u> that includes -electronic surveillance equipment
Medium Security	Category B	Category 3	<p>Male:</p> <ul style="list-style-type: none"> -To be confined at all times within special facilities within a <u>secure physical barrier</u>. <p>Female:</p> <ul style="list-style-type: none"> -To be confined at all times by a <u>physical barrier</u>. -<i>unless</i> in the company of a correctional officer or some other person authorised by the commissioner
Minimum Security	Category C1		<ul style="list-style-type: none"> -To be confined at all times by a <u>physical barrier</u>, -<i>unless</i> in the company of a correctional officer or some other person authorised by the commissioner
	Category C2	Category 2	<ul style="list-style-type: none"> -<u>Need not be confined</u> by a physical barrier at all times -Need some level of supervision by a correctional officer or some other person authorised by the commissioner
	Category C3	Category 1	<ul style="list-style-type: none"> -<u>Need not be confined</u> by a physical barrier at all times -Need not be supervised

Escape Risk Classifications	Category E1	<p>-Inmate has conspired or attempted escape or has escaped from custody.</p> <p>-Special risk to security and should at all times be confined:</p> <ul style="list-style-type: none"> -In special facilities within a <u>secure physical barrier</u> that includes towers or electronic surveillance equipment, or -by a secure physical barrier that includes towers, other highly secure perimeter structures or electronic surveillance equipment
	Category E2	<p>-Inmate has conspired or attempted escape or has escaped from custody.</p> <p>-To be confined at all times by a secure physical barrier</p>