

Submission
No 21

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

Organisation: Homicide Victims' Support Group (Australia) Inc

Date received: 23/10/2015



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Security classification and management of inmates sentenced to life imprisonment

Submission to NSW Legislative Standing Committee on Law and
Justice on behalf of the Homicide Victims' Support Group (Australia)
Incorporated

23 October 2015

1 Background

- 1.1 The Homicide Victims' Support Group (Australia) Incorporated (**HVSG**) was founded in June 1993, at the Institute of Forensic Medicine (**Institute**) in Glebe.
- 1.2 The group was established when the parents of Anita Cobby and the parents of Ebony Simpson were introduced to each other and they, with the staff at the Institute, recognised the very real need for an organisation which could offer counselling, support and information to families and friends of homicide victims throughout NSW.
- 1.3 The aims of HVSG are threefold:
 - (a) offering support, counselling and advice to families;
 - (b) educating the general public, professional bodies and government agencies about the needs of homicide affected families; and
 - (c) reform of various laws that impact on family members.
- 1.4 HVSG has a working partnership agreement with Victims Services within the Attorney-General's Department and the NSW Police Force that enables HSVG to receive notification of every homicide in NSW within 48 hours of a homicide occurring. This then enables HVSG, the police and other services to put into place a comprehensive plan focussed on supporting the surviving family members.

2 Scope of this submission

- 2.1 The scope of this submission is limited to issues raised by HVSG and the families of homicide victims in response to paragraphs 2(a)-(d) of the Terms of Reference attached to the letter dated 11 September 2015 from the Legislative Council to HVSG. Broadly, this inquiry is intended to report on the security classification and management in custody of certain categories of inmates serving a sentence of life imprisonment. These submissions adopt the relevant Terms of Reference as headings.

3 Key issues for victims and summary of recommendations

- 3.1 Based on HVSG's experience of supporting families who are the victims of homicide, HVSG considers that the existing legal and procedural framework regarding security classification and custodial management of inmates sentenced to life imprisonment is appropriate and effective.
- 3.2 Nevertheless, HVSG considers that inmates sentenced to life imprisonment should not be reclassified to a classification which is below the 'B' level.
- 3.3 HVSG understands that classifications below this level provide the relevant inmate with access to rehabilitation programs of various kinds. Due to the nature of the crimes and sentences associated with inmates sentenced to life imprisonment, HVSG considers that this is inconsistent with the severity of their offence and potentially inconsistent with the community's expectations of the incarceration of serious offenders.

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- 3.4 HVSG considers that the forms of input into the reclassification process available to registered victims denies victims the ability to establish how they wish to engage and what is of particular importance to them. It recommends that registered victims be given a chance to specify how, when and what information (within the prescribed limits relating, for example, to the offender's medical and psychological history which cannot be released) they receive from Corrective Services NSW and that the legislation which already exists on this subject be amended and actually enforced.
- 3.5 HVSG also considers that Corrective Services NSW can improve on the methods it adopts in communicating with victims of homicide, and suggests possible changes which Corrective Services NSW might make to its approach outlined in Part 6, below.
- 3.6 Finally, HVSG accepts that access to programs are important for maintaining the security and good order of the prison system, but believes that inmates sentenced to life imprisonment should only have access to programs targeted at the permanency of their imprisonment. HVSG's recommendation in this respect is discussed at Part 7, below.

4 The existing legislation, policies and procedures for determining the security classification and custodial management of life-sentence inmates and whether appropriate and consistent with community expectations

Existing legislation, policies and procedures

- 4.1 Under the existing legislation, life-sentence inmates are classified in accordance with regulation 12 (in the case of male inmates) and regulation 13 (in the case of female inmates) of the Crimes (Administration of Sentences) Regulation 2014 (NSW) (**Regulation**) for the purposes of security.
- 4.2 In addition, each inmate who commits an escape offence following the commission of the offence may be classified as an "escape risk" under regulation 14 of the Regulation, or may be designated as a "high security inmate", "extreme high security inmate" or "extreme high risk restricted inmate" under regulation 15.
- 4.3 Each of these classifications is determined by the Commissioner in accordance with his or her consideration of whether and to what extent the inmate poses an escape risk, a risk to other people or a threat to "good order and security".
- 4.4 Pursuant to regulation 17 of the Regulation, the Commissioner is prohibited from causing a "serious offender" (as defined in section 3 of the Crimes (Administration of Sentences) Act 1999 (NSW) (**Act**), and which includes life-sentence inmates) to have his or her classification changed without seeking and considering the recommendation of the Serious Offenders Review Council (**Review Council**). HVSG's understanding is that while this requirement exists, in practice it is rarely enforced and the Commissioner determines the classification of serious offenders without seeking and considering any recommendation of the Review Council.¹ From HVSG's perspective, this situation is undesirable.
- 4.5 The Act provides that if the Commissioner proposes that if a 'low security classification' (permitting an unescorted leave of absence) be recommended by the

¹ Inspector of Custodial Services, *Lifers: Classification and regression*, 2015, [5.12].

Review Council for a serious offender, the Review Council is required to give "preliminary notice of its intention to any victim of the offender whose name is recorded on the Victims Register" (see below).² The notice need only state that a proposal of that recommendation has been made, and that there will be an opportunity to make submissions to the Review Council about the making of such a recommendation. However, HVSG understands that no life-sentence inmates have been reclassified to a 'low security classification' as defined in the Act.

Community expectations

4.6 There is a common (and reasonable) perception among the families and friends of homicide victims that a life sentence is 'for life' and hence the conditions of the inmate will not change significantly over time. Reclassification from a higher to a lower classification may indicate to victims that an offender will be entitled to certain special privileges whilst serving their sentence. Particularly in the case of serious offenders, low security classifications are commonly perceived by victims as being irreconcilable with the extreme severity of the offences committed. Some examples of cases in which serious offenders have been reclassified over time to lower security levels include the following:

- (a) Andrew Garforth, who in 1992 abducted and sexually assaulted Ebony Simpson, a 9-year old girl, before weighting her schoolbag and throwing her into a dam;
- (b) Daryl Suckling, who abducted and murdered Jodie Sarcombe (probably by decapitation) at an unknown place in 1996;
- (c) John Cribb, who whilst on parole in 1978 for armed robbery, kidnapped, raped and murdered 39-year old Valda Connell and murdered two of her six children with a knife;
- (d) Kevin Crump and Allan Baker, who shot Ian Lamb whilst he slept in his car before later abducting 35-year old Virginia Morse, binding her to a tree, repeatedly raping her and then torturing her at a different location before shooting her between the eyes;
- (e) Bronson Blessington and Matthew Elliot, who (in the company of others) abducted, raped and murdered 20-year old Janine Balding in 1988; and
- (f) Michael Murdoch and Michael Murphy and others, who (in the company of others) abducted, repeatedly raped and murdered 26-year old Anita Cobby in 1986.

The existing information available to victims about the impact of various security classifications is lacking in detail. For example, information provided to victims by the Commissioner of Corrective Services NSW states that offenders on the 'C1' classification (a 'minimum security classification') are 'confined by a secured physical barrier comprising at least one perimeter fence'. There is no adequate explanation given to victims of homicide as to what impact the re-classification of an offender to a lower security classification actually has on the day-to-day life of inmates.

² Crimes (Administration of Sentences) Act 1999, s 67(1).

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- 4.7 As a result, it is difficult to comment on whether the existing framework actually meets community expectations. However, the minimal level of detail provided about the framework is certainly inconsistent with victims' expectations, as demonstrated by recent adverse media coverage of the issue.

HVSG Recommendations:

1. Consider amending the Regulations to include a requirement that Corrective Services provide information to any victim of the offender whose name is recorded on the Victims Register on request about the impact of classification on the day-to-day life of inmates.
2. Consider amending the Regulations to require that in the re-classification of life-sentence inmates consideration be given to the purposes of sentencing specified in the Crimes (Sentencing and Procedure) Act 1999 (NSW), including retributive purposes.
3. Consider introducing steps to ensure that reclassification of life-sentence inmates is undertaken with input from the Review Council pursuant to s 197 of the Act.

5 The impact of security classification and custodial management of inmates on registered victims and the role of registered victims in the classification and management decision making process

The existing notification system with respect to registered victims

- 5.1 The Act provides at section 256 for the maintenance of a "Victims Register" (**Register**) by "such government agency as the Minister directs". The agency currently responsible for the Register is Corrective Services NSW.
- 5.2 Application to the Register is by way of a form provided by Corrective Services (**Application Form**). The Form explains the operation of the Register and provides space for personal details. Once an applicant has been placed on the Register, they receive a written letter advising them of the classification level and location of the relevant inmate. All further communication between registered victims and Corrective Services is by way of telephone. If a victim requests information, they will be told the current classification level and location of the inmate. No further information is given.
- 5.3 The Application Form also provides for notice to be given proactively to victims in four circumstances (in compliance with the provisions of the Act):
- (a) If an inmate is being considered for a 'low security classification';
 - (b) If the offender is due for parole consideration;
 - (c) If the offender is due for release; or
 - (d) If the offender escapes from custody.

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- 5.4 To the extent that registered victims receive information under the current procedure, the information is non-descriptive, and does not explain to the victim:
- (a) the reason for the proposed re-classification; or
 - (a) the effect that the re-classification will have on the day-to-day life of the inmate.
- 5.5 The current procedure, which is to provide information only when requested except in the four circumstances in paragraph 5.3, is problematic in that it denies victims the opportunity to establish the form of engagement. As discussed above at paragraph 4.6, victims expect a degree of 'permanency' in relation to a life sentence and either do not think to request updates about an inmate or find it psychologically confronting to do so. As discussed above, in HVSG's experience, there have been many instances when a victim of homicide has not been notified about the re-classification of an offender until after a determination has been made for re-classification by the Commissioner. In each of the case studies referred to in paragraph 4.6, no information was given as to the reclassification of inmates. In particular, John Cribb had been reclassified down to the 'minimum security' C1 level without notice having been given at any stage.
- 5.6 Given the paucity of available information, many of the victims have understood re-classification to mean that the offender would become entitled to enjoy certain privileges while serving his or her sentence. Whether or not this is an accurate understanding of the reclassification system, these circumstances cause a great deal of distress to homicide victims.
- 5.7 The result is that victims feel as though their views are not actually taken into consideration at any stage when the re-classification is being determined. HVSG suggests that there are two reforms to the current system. The first, which HVSG regards as extremely important, is to give registered victims more discretion as to the information they are provided with by Corrective Services NSW. The second is to amend the legislation to make the Register 'opt-out' rather than 'opt-in'. HVSG also considers that, if the existing legislation were to be amended, the opportunities for registered victims to make submissions to the Review Council should be retained (and implemented in practice) under any revised system.

HVSG Recommendations:

1. Consider amending the Act or Regulations to:
 - (a) Specify certain requirements of the Application Form, including an option for victims to nominate whether, when and how they are to be contacted by Corrective Services, and what information (within the prescribed limits) they wish to be provided with; and
 - (b) To the extent that this is consistent with victims' wishes under (a), preserve any existing requirements for notice to be given to victims about inmate reclassification.
2. Consider amending the Regulations so that victims of homicide-related offences are automatically placed on the Register unless they request otherwise.

6 Communication with registered victims prior to and following a security classification and custodial management decision and the form of such communication

- 6.1 HVSG believes that the substance of communication with victims of homicide in relation to reclassification is manifestly inadequate and that the attention recently given to reclassification in the media, whether accurate or not, was largely the outcome of poor communication with victims.
- 6.2 As noted in paragraph 5.4, the non-descriptive nature of the information provided to registered victims about reclassification creates confusion and potentially encourages the drawing of incorrect inferences about excessive leniency. For the sake of clarity, it is necessary for Corrective Services NSW to provide substantive information directly to victims about the consequences of offenders' reclassification.
- 6.3 Moreover, HVSG wishes to emphasise that the current lines of communication seem to be directed towards the bare satisfaction of administrative requirements and do not convey a sense of empathy to victims. For a victim to be curtly informed that the offender has been reclassified from the 'A2' level to the 'B' level in a one-line letter or a short phone call without explanatory information of any kind, is meaningless. It is disempowering to receive information by way of incomprehensible bureaucratic jargon. HVSG submits that this reinforces the need to bolster the reporting regime vis a vis engagement with victims.
- 6.4 HVSG suggests that the existing legislation could be improved to expand the types of information made available to victims by Corrective Services NSW. There are several ways in which this might be accomplished, which are set out in broad terms below:
 - (a) As soon as possible after the time of sentencing, victims should be provided with an information sheet detailing the classification procedure and the impact of classification on the day-to-day life of inmates so that if invited to

make a submission on the re-classification of an inmate by the Review Council, the victims are in a position to make an informed submission.

- (b) Any notice of proposed re-classification of an inmate provided to a victim under the Act should detail the reason for the proposed re-classification, and the effect that the re-classification will have on the day-to-day life of the inmate. Additionally, any communication with registered victims should be required to remind the same of their rights to make submissions to the Review Council under the Act.
- (c) The Review Council should respond to victims' submissions when made, and should give reasons in writing for their recommendation to reclassify to a lower classification. The Commissioner should also provide written reasons to victims for the ultimate decision to re-classify an inmate.

6.5 Finally, the relevant government departments should unify the three separate victims registers currently operating in New South Wales: the Victims Register (Corrective Services), Victims Register (Juvenile Justice) and Forensic Patients Victims Register (Mental Health Review Tribunal). Currently, there is no integration between them and this presents challenges to victims attempting to obtain information. There is no provision in the relevant legislation permitting the operation of three separate registers and HVSG sees this as another administrative practice which is inconsistent with the legislation and not in victims' interests.

HVSG Recommendations:

1. Consider amending regulation 11 of the Regulation in accordance with para 6.4 of this submission.
2. Consider amending regulation 324 of the Regulation in accordance with para 6.4 of this submission.
3. Consider amending sections 69 and 70 of the Act in accordance with para 6.4 of this submission.
4. Consider implementing steps to cause the relevant department(s) to consolidate and maintain one unified Victims Register for New South Wales. HVSG suggests that this register be maintained by Corrective Services NSW.

7 Whether it is appropriate to reclassify and provide inmates sentenced to life imprisonment with access to rehabilitative programs and services

- 7.1 HVSG identifies two issues which it submits are relevant to the continuation of rehabilitation for life-sentence inmates: the purpose of rehabilitation and the balancing of rehabilitation against the unique challenges posed to victims of homicide.
- 7.2 On the first issue, it has already been recommended in paragraph 3.2 that life-sentence inmates no longer be reclassified to the 'C1' classification or lower. This is based on what HVSG perceives to be the community expectations of the incarceration of serious offenders, but is also partly due to HVSG's understanding that the programs offered to offenders at the C1 level are limited as to available spaces and, most importantly, are intended to upskill and prepare the inmate for life following release from custody.
- 7.3 To the extent that life-sentence inmates will spend their natural lives in prison, the rationale for such persons occupying the limited spaces in these rehabilitation programs is unclear to HVSG.
- 7.4 Additionally, the indefinite sentences of life-sentence inmates means that they can occupy those limited spaces for an extended period of time, limiting overall opportunities for the rehabilitation of term-limited inmates on a permanent basis.
- 7.5 For these reasons, HVSG considers that it is unsatisfactory to permit life-sentence inmates to undertake rehabilitation programs and if at the same time term-limited inmates are deprived of participation in such programs.
- 7.6 HVSG also notes that the activities currently undertaken in rehabilitation by life-sentence inmates are liable to be regarded by victims as suggestive of a high level of support not commensurate with the support offered to them as victims. For example, Peter Simpson, the father of Ebony Simpson (murdered by Andrew Garforth), has occupied in excess of 28 job positions since his loss. Further, there is very little state-sponsored assistance made available to victims to help them through the grieving process and prevent a 'cascade' of problems which affects many victims. A victim who finds it challenging to return to work early enough may struggle to find employment later, leading to defaulting on financial obligations, relationship problems and so on. In such cases, it is not unreasonable that a victim with knowledge of the offender's participation in a structured and stable rehabilitation program would identify an injustice compared with the difficulties he or she faces in holding down work and managing the incredible challenges in his or her altered life. A useful analogy for this would be the 'return to work' programs which cater for injured employees re-entering the workforce.
- 7.7 However, HVSG wishes to emphasise that its focus is on the victim rather than the offender. It does not recommend that life-sentence inmates be retained on a maximum security classification indefinitely, or that the existing education or activities provided to offenders on the 'B' classification be taken away. Rather, it recommends that the Committee consider generally any opportunities to expand the financial and psychological assistance available to victims of the unique crime of homicide.

7.8 Additionally, HVSG does not dispute the significant body of research indicating that rehabilitation in prison is generally beneficial to both inmates and the custodial system. However, it does recommend that 'rehabilitation' provided to life-sentence inmates be targeted so as to reflect the permanency of their imprisonment. In particular, it recommends that available rehabilitation be directed towards providing opportunities for 'atonement', managing these offenders as permanent inmates, encouraging these offenders as role models for the prison population and respecting Australia's fundamental human rights obligations in respect of prisoner rehabilitation.

HVSG Recommendations:

1. That life-sentence inmates no longer be reclassified to the 'C1' level or lower.
2. That the Committee consider generally expanded engagement with the victim community and strategies to increase the level of ongoing assistance offered to victims who request it.
3. That the participation of life-sentence inmates in current rehabilitation programs cease.
4. That a new rehabilitation program catering to the specific characteristics of life-sentence inmates be developed, with the following priorities:
 - (a) Providing opportunities for 'atonement';
 - (b) Managing these offenders as permanent inmates;
 - (c) Encouraging these offenders to act as role models for the broader prison population; and
 - (d) Respecting Australia's fundamental human rights obligations.

8 Conclusion

- 8.1 This completes the submission prepared on behalf of HVSG. HSVG acknowledges the pro bono assistance it received in preparing this submission.
- 8.2 HVSG would like to thank the Committee for the opportunity to contribute to this inquiry.
- 8.3 Should you have any further questions, please contact Martha Jabour on the contact details below.

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