

**INQUIRY INTO ISSUES RELATING TO THE OPERATIONS  
AND MANAGEMENT OF THE DEPARTMENT OF  
CORRECTIVE SERVICES**

**Organisation:** Legal Aid Commission of NSW  
**Name:** Mr Will Hutchins  
**Position:** Senior Solicitor, Prisoners Legal Service  
**Telephone:**  
**Date Received:** 18/04/2006

---

**Subject:**

**Summary**

RECEIVED

11 8 APR 2006

Legal Aid  
NEW SOUTH WALES

GPSC's

Our Ref:  
Your Ref:

**PRISONERS LEGAL SERVICE**

Level 2  
323 Castlereagh Street  
SYDNEY NSW 2000

DX: 5 SYDNEY  
TEL: (02) 9219 5924  
FAX: (02) 9219 5059

11 April 2006

Michael Phillips  
Principal Council Officer  
Legislative Council  
General Purpose Standing Committee No 3  
Parliament House  
Macquarie Street  
SYDNEY 2000

Dear Sir,

**RE: INQUIRY INTO ISSUES RELATING TO THE OPERATIONS AND MANAGEMENT OF THE DEPARTMENT OF CORRECTIVE SERVICES**

Further to the evidence I gave before the Committee on the 27<sup>th</sup> of last month, I set out below a summary of the following terminology, inmate security classification, serious offenders, high risk, segregation, protection and limited association. This should assist the Committee to understand the various terminologies which are confusing and not interchangeable but can overlap.

**Inmate Security Classification**

1. All sentenced inmates receive a security classification and this determines which type of correctional centre they will be held in (eg. from special facilities with towers or electronic surveillance to facilities with no physical barriers or supervision) which, in turn, determines which developmental programs will be available to them.
2. Clauses 22 and 23 of the *Crimes (Administration of Sentences) Regulation 2001* prescribe how each male and female "**inmate is to be classified in one of the following categories for the purposes of security and the provision of appropriate development programs**". In summary this is:
  - Maximum security: AA (special risk to national security), A1 & A2 for males and Category 5 (special risk to national security) & 4 for females – special facility that includes towers or electronic surveillance;
  - Medium security: B for males and Category 3 for females – at all times be confined by a secure physical barrier;
  - Minimum security: C1, C2 & C3 for males and Category 2 & 1 for females – need not be confined by a secure physical barrier and, if C3 or Category 1, need not be supervised.



3. In addition, clause 24 of the Regulation prescribes classifications E1 and E2 for inmates who have committed an escape offence. Clause 27 of the Regulation authorises the Commissioner, on the recommendation of the Serious Offenders Review Council, to vary an escape classification.
4. Inmate classification is reviewed every 6 months. Usually a long term inmate will progress from a higher to a lower classification with unescorted day/weekend leave/works release, before being considered suitable to be released to parole.

### **Serious Offenders**

5. A 'serious offender' is defined under s3 of the *Crimes (Administration of Sentences) Act 1999*. It is any offender serving:
  - A sentence for life;
  - A sentence for murder;
  - A non-parole period of at least 12 years;
  - Any offender required to be managed as a serious offender by the sentencing court, the Parole Authority or the Commissioner (to my knowledge, only the Commissioner has ever made such a direction).
6. A serious offender is not necessarily regarded as high risk or kept in protection or segregation but, may be. A serious offender will receive a security classification as mentioned above. An offender who is classified AA or Category 5 (ie. special risk to national security) is prescribed by clauses 22(3) and 23(3) of the Regulation to be a serious offender.
7. A serious offender is managed by the Serious Offenders Review Council (SORC) which is based in the Silverwater Correctional Complex and chaired by Judge Moss QC. I understand that SORC meet each serious offender every 6 months to review their situation and then makes recommendations about prison placement and inmate classification to the Commissioner. When parole is considered, SORC submits a report to the Parole Authority. See section 197 of the abovementioned Act.
8. I do not know the total number of serious offenders in the gaol system but I understand it to be around 600.

### **High Risk (and the HRMU)**

9. Clause 25 of the Regulation authorises the Commissioner to designate an inmate as a high security or an extreme high security inmate, if they are a danger/extreme danger to other people or a threat/extreme threat to good order and security.
10. It is a designation, not a classification and is separate to inmate classification. A high or extreme high security inmate is not necessarily a serious offender but, may be.
11. Clause 27 of the Regulation authorises the Commissioner, on the recommendation of the SORC, to vary a high or extreme high security designation. In practice, it is very difficult for an inmate to have the designation removed.
12. It is my understanding that most high and extreme high risk inmates are held at the HRMU at Goulburn. I understand that they wear special boiler suits and when escorted they are shackled with ankle cuffs.

13. I have no idea how many high or extreme high security inmates there are.

**Segregation, Protection & Limited Association**

14. By s10 of the *Crimes (Administration of Sentences) Act*, the Commissioner or the Governor may direct that an inmate be held in segregated custody if association with other inmates is likely to constitute a threat to the personal safety of any other person, the security of the correctional centre or the good order and discipline within the correctional centre.
15. By s11, the Commissioner or the Governor may direct that an inmate be held in protective custody if association with other inmates is likely to constitute a threat to the personal safety of the inmate. Inmates in protection can be also designated strict protection or limited association ('LA') or non-association ('NA').
16. By s12, an inmate subject to a segregated or protective custody direction is to be detained in isolation from all other inmates or in association only with approved inmates. Such a direction remains in force until it is revoked.
17. An inmate whose period in segregated or protective custody exceeds 14 days may apply to SORC for a review hearing of the direction. Such an application can be repeated every 3 months. A protective custody direction given at the request of the inmate must be revoked if the inmate requests in writing.

**Overview**

Only a direction for segregated or protective custody has a formal appeal process. All the other forms of restrictive custody are at the discretion of the Commissioner. Similarly, a review of inmate classification is at the discretion of the Commissioner.

All forms of restricted custody have an impact on an inmates mental wellbeing, as well as limited, if not nil, access to rehabilitative programs and psychological counselling. If known at the time of sentencing, the impact of protective custody is legally recognised and a reduction in sentence is given.

Restricted custody beyond the date of sentencing, critically reduces an inmates prospects of obtaining parole because it limits access to rehabilitation programs and prevents progress to minimum security classifications C3 for males and Category 1 for females which means that the inmate cannot access unescorted day/weekend leave/works release.

Yours faithfully,



Will Hutchins  
Senior Solicitor  
Prisoners Legal Service