REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE NO. 3

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

At Sydney on Thursday, 6 April 2006

The Committee met at 1.15 p.m.

PRESENT

The Hon. Amanda Fazio (Chair)

The Hon. P. Breen
The Hon. Dr A. Chesterfield-Evans
The Hon. G. Pearce

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CHAIR: The Committee previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of the broadcasting guidelines are available from the table by the door. In reporting Committee proceedings the media must take responsibility for what they publish, including any interpretation placed on evidence before the Committee. In accordance with these guidelines, while members of the Committee and witnesses may be filmed or recorded, people in the public gallery should not be the primary focus of footage or photographs.

Under the Standing Orders of the Legislative Council, evidence and documents presented to the Committee that have not been tabled by Parliament may not, except with the permission of the Committee, be disclosed or published by a Committee member or by any other person. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings and I remind witnesses to ensure that matters raised are directly relevant to the terms of reference. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of the Committee hearing. Therefore, I urge witnesses to be cautious about comments to the media and others after they complete their evidence even if it is said within the confines of this building. Such comments may not be protected, for example, if another person decides to take an action for defamation.

A general reminder: People may not communicate messages directly to members of the Committee or witnesses; that must be done through Committee staff.

PETER JAMES MOSS, Chairman, Serious Offenders Review Council, c/- Newington House, Silverwater, affirmed and examined:

CHAIR: You are conversant with the terms of reference?

Mr MOSS: Yes.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request.

Mr MOSS: Yes.

CHAIR: Would you like to start by making a short opening statement?

Mr MOSS: I would, madam Chair, as follows: The Serious Offenders Review Council, of which I am the chairman, is an independent statutory body set up under the Crimes (Administration of Sentences) Act 1999, currently comprising eight members - such appointments are part-time - and we are serviced by a small secretariat of seven to eight persons operating from Newington House at Silverwater.

The core function of the Serious Offenders Review Council, but by no means the only function and by no means the only important function, is to advise the Commissioner of Corrective Services as to the classification and placement of and suitable rehabilitative programs for serious offenders, that term being defined in the legislation to include all prisoners serving a sentence as a result of a conviction for murder, or in some cases murders, and any other prisoner who must serve a minimum of 12 years before becoming eligible for parole. As I say, the council has a number of other very important functions and if any member wishes to know more about those functions I would be only too pleased to elaborate.

Looking at the Committee's terms of reference, it would seem to me that both myself and the council could only be seen to be relevant to term of reference 2, which refers to the management of high-risk prisoners by the Department of Corrective Services. Under the relevant regulation, that is the regulation made under the Crimes (Administration of Sentences) Act, the council is required to advise the Commissioner of Corrective Services in respect of the designation and management of prisoners considered as falling into the category of extreme high security prisoners or into the category of high security prisoners respectively. The council meets once every three months for this purpose. I chair those meetings. At those meetings the council is advised by senior correctional staff who are in attendance at the meetings and it goes without saying that the council is very reliant on the advice tendered by those senior staff.

Currently there are 72 prisoners in New South Wales designated as extreme high security prisoners. Of those, 28 are in the HRMU at Goulburn. Of the 72, 18 are unsentenced and they include the so-called AA inmates who, as you know, have been charged with what are called terrorist offences. All but three of the 72 are male. There are 31 high security prisoners. Considerable differences apply in respect of the security procedures that are applied to these two groups. Obviously by far the most stringent security procedures are applied to the extreme high security inmates.

Looking at term 2(a) of the Committee's terms of reference, I would simply inform the Committee that I have on a number of occasions interviewed serious offenders in the HRMU at Goulburn, so I am familiar with the procedures of getting in and out of that place on the part of visitors. Very recently, the Committee may be interested to know, an audio-visual unit has been set up and is operational in the HRMU and, having used that once recently, I found it to be very effective and I anticipate that, in future, interviews with serious offenders in the HRMU by the council will be by that means. It is very time-consuming to get in and out of the HRMU, particularly when you have a lot of others to see in the main population.

I look at term 2(c), objectivity of the classification system, and I wonder does that impliedly raise for consideration the issue: Is the security classification system based on objective factors? Regulations 22 and 23 of the regulation provide for security classification for all inmates and the basis of that classification is "the opinion of the Commissioner of Corrective Services". In other words, classification of prisoners is a matter at the complete discretion of the Commissioner.

In the case of male inmates, the classification range is from AA to C3. In the case of female inmates, the range is from category 5 to category 1. I would be pleased to elaborate on what those classifications mean if any member wishes to know. There is also an E classification for prisoners who are viewed as having committed an escape offence. In addition to the classification categories, the Commissioner has imposed a timeframe based on proximity to expiry of non-parole period and will not approve a recommendation from the Council for a reduction in classification unless the particular inmate is within the relevant timeframe. I can give you the timeframes if you are interested.

There are currently, on the latest figures that I have been given, 661 serious offenders in New South Wales prisons. Of those, about 400 are in maximum security; about 126 in what is called medium security and about 134 are C classification inmates, that is either C1, C2 or C3.

Thank you, madam Chair.

CHAIR: We might go to questions now and we will start with questions from the Honourable Peter Breen.

The Hon. PETER BREEN: With regard to the classification of AA prisoners, my understanding is that because they are not offenders they do not fall under the normal classification system. The legislation I understand provides for offenders and these people are only on remand. Do you think there is a problem there in relation to classification?

Mr MOSS: Once again could I make a brief statement that might help to answer that question and perhaps others: As members would be aware, the definition of serious offender in section 3 paragraph (f) of the legislation and the recently amended clause 22 of the regulation dealing with AA inmates were apparently intended to bring the AA remand inmates within the definition of serious offender. When I became aware of this, which was some time after the regulation was amended, I looked closely at the amendments and formed the opinion that a question arose as to whether the amended regulation was ineffective, in which case the AA remandees would not be serious offenders because they would not be caught within the definition in the Act. I am still of the opinion that that issue is a live issue.

However, even assuming that opinion to be correct - and it has not been tested and it is not likely to be tested as far as I can see because the matter would have to be taken to a court to rule upon it - the practical consequences do not seem to be significant to me for the following reasons: First, the operation procedures manual clause 23, which was introduced as I understand it - everyone realises I cannot speak and do not speak on behalf of the department, I have nothing to do with the department in the sense that I am not employed by the department and I am certainly not authorised to speak on behalf of it. Any opinion I offer is my own opinion based on my experience relevantly over the last five and a half years. Clause 23, which was introduced as I understand it to deal with this new AA category, provides for every significant aspect in the management of AA inmates by entities other than the council, so that, even assuming my opinion to be incorrect and that they are serious offenders, their management is otherwise provided for by other entities except in relation to their status as extreme high security inmates and in that context the council reviews their status every three months along with the other extreme high security inmates. Initially it appeared that the then six inmates - there were only then six AA inmates, there are now others - were effectively placed in segregation to enable new security assessment procedures to be applied by specially nominated entities pursuant to the operation procedures manual. Each of these six then filed an application to the council seeking a review of their segregation.

On becoming aware of that, I instructed the council's registrar to write to their legal

representative - they are all represented by the same legal representative, not only the six but the additional ones that have since come in - and also to the solicitor having the carriage of the matter for the department, advising them that a question had arisen as to the basis on which they had been segregated and offering the legal representatives the opportunity of appearing before the council to make relevant submissions. That letter was both posted and faxed on 9 January 2006, but there has never been a response from either side. So the AA inmates through their solicitors have been informed in the clearest terms that at that stage there could have been a question as to the basis of their segregation.

My understanding currently is that all the segregation directions for AA inmates have been revoked so that they are no longer in segregation, except for three. One of those is standing trial before the Supreme Court, so I think we can put him aside, he is a special case. The other two, as I understand it, will be released from segregation as soon as a suitable placement can be found. Placement of these AA inmates, as I understand it, is not a simple matter. The AA inmates will accordingly remain so classified for as long as the Commissioner continues to hold the opinion that they should be so classified. As I said earlier, classification is entirely at the discretion of the Commissioner.

I hope that, Mr Breen, might answer some of your questions.

The Hon. PETER BREEN: Yes, thank you. Do you have a view about the way the Commissioner exercises his discretion? Is he a good judge or a bad judge?

Mr MOSS: Well, can I say that the Commissioner and I have a very good working relationship. I would not want to see anything interfere with that because the council would find it difficult to be an effective body if we did not have a good working relationship with the Commissioner.

The Hon. PETER BREEN: I have the same problem visiting inmates, I have to keep a good working relationship with the Commissioner.

Mr MOSS: He is a very experienced commissioner. We do have significant differences of opinion as to classification and placement from time to time, but for as long as the legislation provides that he is to have the sole discretion then that is the way it must be and it would be surprising if there were not differences from time to time. I mean we see the relevant serious offenders twice a year. We do not see the whole 600, but we see a couple of hundred twice a year. We go to the gaols and we see them, we interview each of them individually. Then we put up our recommendations, but not all of those get through.

The Hon. PETER BREEN: No, the Commissioner may or may not accept them.

Mr MOSS: He may or may not accept them. The great majority, Mr Breen, get through, but some of them don't, and he will indicate usually that he is not prepared to do it.

The Hon. PETER BREEN: Do you think that there should be an appeal mechanism from the Commissioner's decision?

Mr MOSS: I cannot see how you could get one that would be practical. You would have every inmate who was knocked back appealing and the courts, as I understand it, have taken the view that they are very reluctant to come into these matters, which they regard as administrative matters, so I think it would be very difficult to devise an appeal system that would work.

The Hon. PETER BREEN: Can you explain to the Committee what your understanding of segregation is and how it works?

Mr MOSS: Well, segregation is simply the removal of an inmate from contact with all other inmates.

The Hon. PETER BREEN: Is there a period of time in which they must be released from their cell when they are on segregation?

Mr MOSS: Well, it depends. All inmates, not only serious offenders, all inmates who are segregated have a right to appeal to the council after 14 days and we are kept fairly busy hearing these reviews.

The Hon. PETER BREEN: That is all prisoners, not just SORC prisoners?

Mr MOSS: No, not just SORC prisoners, all prisoners, right across the State. Fortunately now many of the centres have got audio-visual facilities, so we do not have to go all the way down to Goulburn or all the way to Junee, which has just installed one, to hear a segregation review and then all the way back again. They do have that right to appeal to us and quite a number of them do and we hear them as soon as we possibly can, usually within a matter of a month, and then make a decision.

The Hon. PETER BREEN: There are two points to the question: First of all, most of the complaints that I get from prisoners relate to segregation. Segregation is a very onerous burden on prisoners.

Mr MOSS: Yes.

The Hon. PETER BREEN: They do not get out of their cells often for more than an hour a day; they do not get to mix with other inmates; they only get out for phone calls and visits and after a long period of segregation prisoners do demonstrate adverse reactions to it.

Mr MOSS: Yes.

The Hon. PETER BREEN: If the council can review segregations, what additional burden would be placed on the council by reviewing classifications?

Mr MOSS: Well, we would not be able to be both a recommending body and a review body, we would have to lose one or the other, and query where we get the expertise over and above the expertise that the Commissioner has. I could not tell you, Mr Breen, that I am satisfied that our judgment is any better than the Commissioner's judgment.

CHAIR: We now need to turn to questions from Dr Arthur Chesterfield-Evans.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Aren't you saying in essence that because (a) the matter is dependent on the Commissioner's say, and (b) all the evidence you would get is from his staff, you are actually unable to really form an opinion that is separate from his except as a second opinion on the information provided to you?

Mr MOSS: No, I am not saying that, Dr Chesterfield-Evans. It is not correct in fact to say that we do not have additional information. As I say, we personally interview these prisoners twice a year and those notes are preserved and they appear in our minutes and they are later sent to the parole authority. We can learn a great deal from those interviews. In addition, often once they get close to parole, when we interview them, the parole officer is sitting in, so we get the benefit of what the parole officer knows and what the parole officer knows, which we do not know, is in particular what their post-release plans are and how valid they are, so we get some information there. Also we get to know the senior gaol staff. They sit in often. We always confer with them at the start of the interviews, so we get their personal views and often they are very experienced people. So we do have additional information. We also have psychological reports, psychiatric reports; we have discharge summaries from the sex offender program; discharge summaries from the violent offender program.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So you are not entirely regulatory-captured?

Mr MOSS: No, no.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But you are also dependent on the goodwill of the gaol staff?

Mr MOSS: Very much so.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Should you be making recommendations regularly and largely at variance with them, you might find that that would close down and you would have difficulty working?

Mr MOSS: We rarely make a recommendation at variance with the senior gaol staff's recommendation. In other words, if they were absolutely resistant to someone being reduced in classification, we would have to have some extraordinary reason for going against them because they are the ones who manage these people on a day-to-day basis and I have never met any of them that I am not impressed with. I think we are very lucky in the senior staff we have in the gaols.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: When you say they have a release plan, presumably if they are going to be released eventually they need to have a plan as to how they are trained or what job they are going to do so that they have some means of surviving when they are released?

Mr MOSS: Absolutely.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you overlook the amount of training, education or world readiness, if you like, from early in their incarceration, so that you have a long time to change that?

Mr MOSS: Well, we start seeing them twice a year, face-to-face, when they are about four years out from the expiry of their non-parole period, so out of 200, say, that we see in that way, if you mentioned a name I could almost bring the face to mind. We get to know them fairly well. We get to know, as I say, what the staff think of them, we have all these other reports, and once they get close to parole we also have the benefit of the parole officer's input. Now most of these are coming out. This is a key piece of information that we can never lose sight of - a lot of people do: Almost all of these serious offenders are coming out. There is only a small collection who are in for life, natural life, so the fact that they are coming out, whether you like it or not, makes it we think terribly important to try to get them to the stage where they are suitable to be released on parole under the supervision of the parole service. The alternative is that you leave someone in gaol for 20-25 years, totally institutionalised, and then out he goes without any help at all, without any supervision. If you can bring him out with, say, a couple of years' supervision to help him get a job, and before they come out they have to have satisfactory post-release plans approved by the parole service so they have to at least have accommodation, suitable accommodation, preferably they will also have a job, and of course the service imposes a whole string of conditions: No alcohol, no illegal drugs, no mixing with criminals, not to leave the State without notice, not to change address and so on.

The Hon. DR ARTHUR CHESTERFIELD-EVANS: When you see them and they are four years from release, if they had been in there for 20 years, would they have had much training over the previous 16 years or do you have to start it all at the end, four years out from parole?

Mr MOSS: No, they have had training. The question is - and this is a matter for the psychologists really, but if we talk about the major therapeutic programs, which are very expensive to maintain - when do you put people into those programs? Some of the psychologists will tell you that there is absolutely no point in putting them in in year 2 if they are going to be there 15 years later because they will tell you that the whole thing will become contaminated, so it is a question of how the program is designed to work and at what point in time it is designed to cut in.

The Hon. DR ARTHUR CHESTERFIELD-EVANS: If they are illiterate they might need 10 years of education to get them to a level where they could get a job.

Mr MOSS: Sure. Literacy starts, as I understand it, as soon as they come in. Many of them come in unable to read and write and by the time we start to see them they can read and write, and they have done other programs - they have done lots of other programs - particularly anti-drug programs, but it is the two major programs: The sex offender program and the violence offender program. They are the two big therapeutic programs and it is up to the psychologist to decide when they go into those programs, but generally speaking it is towards the end of the sentence rather than the beginning.

The Hon. DR ARTHUR CHESTERFIELD-EVANS: In terms of getting a job when they are out, that must be nearly all of them. Presumably a lot of them have either not worked in jobs ever or certainly not regularly?

Mr MOSS: Yes. If you sit down and look at all these serious offenders, the whole 600 of them, and if you read through the judge's sentencing remarks when they are sentenced, you will find common factors. You would have ticked one of these boxes, if not all of them: A totally dysfunctional family background, totally dysfunctional; access to illegal drugs and alcohol starting from about 11 upwards; violence in the home; drop-out at school. By the time they are 16 they are not only unemployed, they are unemployable, and I would not like to tell you how many times you find those in all the judge's sentencing remarks.

The Hon. DR ARTHUR CHESTERFIELD-EVANS: Does the incarceration period fix this or address this in any systematic and competent way or not?

Mr MOSS: Well, that is a big question. I mean it depends on them, to some extent.

The Hon. DR ARTHUR CHESTERFIELD-EVANS: But it must depend on the programs in the gaols?

Mr MOSS: These programs are voluntary. If they refuse to do them, they refuse to do them. We cannot compel them to do the sex offender program.

The Hon. DR ARTHUR CHESTERFIELD-EVANS: But sex offenders must be a fairly small fraction of the total number of people you are looking at?

Mr MOSS: They represent quite a large component and many people think they should be treated differently because, of course, many people worry about sex offenders more than other offenders. Whether that is logical or not is not a matter for me to say.

The Hon. PETER BREEN: Most sex offenders would not serve 12 years and would not come under your jurisdiction.

Mr MOSS: Well, we have quite a few, Mr Breen.

The Hon. PETER BREEN: They are serving more than 12 years?

Mr MOSS: Either that or they are in for murder.

The Hon. DR ARTHUR CHESTERFIELD-EVANS: How do the mentally ill or intellectually impaired people come to you? Do they come to you or do they come to the Mental Health Review Tribunal, or how do you interact with that?

Mr MOSS: We share jurisdiction. When someone is declared a forensic patient we share jurisdiction - and not very happily, I might say. I don't mean that we are unhappy about it, I mean the legislation does not actually make for smooth running, but the Mental Health Review Tribunal has a role to play, a review every six months, et cetera, but we still have to look after these mentally damaged serious offenders, interview them, try to do something with them. Often there are no programs for them because they are incapable of undertaking programs.

The Hon. DR ARTHUR CHESTERFIELD-EVANS: If they were intellectually impaired, for example, would they be treated the same as if they were not?

Mr MOSS: Well, as far as one can, one would treat them the same, but if they cannot undertake programs because they are not intellectually capable, obviously there is a practical distinction.

CHAIR: We now need to turn to questions from the Honourable Greg Pearce.

The Hon. GREG PEARCE: You have answered most of my questions. I would just like to ask, though: We have had some submissions regarding ethnic clustering in prisons. Do you have any comment to make on that practice?

Mr MOSS: I suppose everyone here knows that the place where that operates starkly is Goulburn, where there are four racially divided yards. I think it inevitable that there could be different opinions about whether that should be so or whether it should be done some other way. As I said, opinions I express about these matters are entirely mine and I am not an expert by any means in running prisons or how to best operate them, but, as I understand it, the reason that that is being done is to make it easier to manage these prisoners. Certainly I think the belief is widespread among experienced officers that if you let these prisoners get together there would be mayhem and I do not know whether the Committee is aware of it but gaol murders are by no means unknown. They seldom, if ever, make the press. It is very odd. I can only think that people aren't particularly interested. However, all I am saying is that even under the present system gaol murders are by no means uncommon and I think it is the fear of these experienced officers that if some other method were tried they just could not guarantee the consequences, but obviously it gives rise to its own difficulties.

The Hon. GREG PEARCE: We also had some submissions that prisoners were being sent to the HRMU for their own protection. Does that accord with your experience or do you have any comments on that?

Mr MOSS: I cannot think of any serious offender who is in there for his own protection. He is in there to protect others from him. There are, of course, many prisoners who are on protection, some of them - hundreds of them - put themselves on protection, which causes problems because of non-access to programs while you are on protection, but some others are put on protection against their wishes because the authorities take the view that they have to be protected. For example, recent problems have arisen because of warring Lebanese gangs coming into custody and it has been vital in the view of the authorities to separate these gangs in different gaols and, as part of that process, some of them have forcibly been put on protection. They too have a right to seek a review from the council and we go over and review their protection, and always when they are put on protection against their wishes they are adamant that they have nothing to fear, but sometimes we take a different view and say, well, you may think you have nothing to fear, but the evidence is that you do have something to fear.

CHAIR: I have a few other questions I think we gave you notice of.

Mr MOSS: I have not had notice of any, madam Chair, but don't worry about that.

CHAIR: Well, I will ask you one that follows on from some evidence that you gave at the outset, which was in relation to the E classification, people who have a history of trying to escape.

Mr MOSS: It does not have to be that. They simply have to be seen to commit an escape offence. It does not require an escape; it does not require a conviction. It is a rather peculiar definition.

CHAIR: Does that classification apply to the prisoner for as long as the rest of their custodial sentence applies or, if their behaviour improves, do they change to a different form of classification?

Mr MOSS: It applies for as long as the classification sticks on them. To get out they have to apply to us and they have to be able to show special circumstances before we can make a recommendation, but even if we find special circumstances the Commissioner may not be persuaded.

CHAIR: When they appear before you or when any serious offender appears before your council do they have the right to have legal representation at that appearance?

Mr MOSS: Well, the only time they appear is on segregation or protective custody review applications and, yes, they do. When we interview them they do not have any right, and it would make it impossible to work, but when they appear before us in the legal sense, yes, they do and, yes, some of them choose to be represented.

CHAIR: We have received quite a few submissions that have raised a number of issues, the veracity of which we are not able to guarantee, but we are still asking questions about them. The Committee has received submissions that the HRMU operates as a de facto segregation unit without the safeguards contained in Part 2 Division 2 of the Crimes (Administration of Sentences) Act. Do you have any comment to make in relation to that?

Mr MOSS: Well, as I understand it, the HRMU is a sort of self-contained organisation with its own general manager. As you probably know, governors have gone out the window and general managers have come in. The HRMU has its own general manager, but there is segregation within the HRMU, that is, inmates are not regarded as segregated simply because they go to the HRMU because, as I understand it, they do mix. They might not mix with all the inmates in there, but they mix with some. There is still a procedure where one can be segregated within the HRMU. In fact I did a review only the other day in respect of one of those.

CHAIR: Another thing that has been raised with the Committee is that the AA security classification is an infringement of civil liberties because it operates on the basis of an offence charged rather than risk posed by the individual prisoner and therefore it is too arbitrary. Do you have any comments to make in respect of that?

Mr MOSS: Well, all unsentenced prisoners, who it follows have not been convicted of anything apart from past convictions, are classified. Some of them are classified at the very top and some of them are classified AA, so in that sense I cannot see any relevant distinction between the way the AA unsentenced prisoners are classified and the way any other prisoner, unsentenced, is classified.

CHAIR: Is it possible for a prisoner to be classified as both extreme high risk and AA at the same time?

Mr MOSS: They are. All of the AAs are extreme high security.

CHAIR: What are the practical consequences of being designated as extreme high security or as a high security inmate? What difference does it make to the prisoner?

Mr MOSS: High security does not make much difference. As I understand it, it just means that they may not have access to an oval for exercise or, if there is a particular program in a low security area, they might not have access to that program, but extreme high security inmates are a very different story. All sorts of very strict procedures apply to the extreme highs. For example, on visits they have to wear very distinctive clothing; their visitors are scrutinised; I think their mail is scrutinised; they are moved from cell to cell frequently and on any movement, whether it is to court, to another gaol or a hospital, stringent provisions come in not only as to the number of security personnel who must be present but as to restraints - physical restraints - placed on the extreme high security inmate.

The Hon. PETER BREEN: There used to be a program operated by SORC called the Pathways program. It sort of mapped out a journey for each prisoner. Somewhere along the line that

was abandoned and there is a feeling amongst SORC prisoners that they do not really have the direction that they used to have under that program. Do you have a view about that?

Mr MOSS: Mr Breen, I think it was before my time, but I know what you mean and I think that what happened was when the Commissioner introduced the timeframes, then existing program pathways were no longer relevant because that changed drastically when you could get your C classification or your C2 classification and so on, but we still seek program pathways from the psychologists and the drug workers and the major therapeutic program coordinators. We write to them and say: What is the recommended program pathway for this inmate?

The Hon. DR ARTHUR CHESTERFIELD-EVANS: You said that there were problems between your own group and the Mental Health Review Tribunal and these were legislative problems. Could you outline what those problems are and how you think they should be addressed?

Mr MOSS: I think, Dr Chesterfield-Evans, they have recently been addressed. I have an idea that a committee has been set up, whether in this place or some other place, but essentially the Mental Health Review Tribunal was making recommendations or wanting to make recommendations that were outside its jurisdiction. Particularly it wanted to reduce classification and, of course, that is up to the Commissioner. They got terribly frustrated, I know, but I think something has been done about that in terms of an inquiry or recommendations or something.

The Hon. DR ARTHUR CHESTERFIELD-EVANS: Release requirements were subject to ministerial discretion and I know that was a source of frustration to them.

Mr MOSS: Yes.

The Hon. DR ARTHUR CHESTERFIELD-EVANS: But in terms of interaction, presumably if someone is in for a long time and they are a serious offender being reviewed by you and they have a mental health problem so that they are being reviewed by the Mental Health Review Tribunal, how does that actually work in practice and is it a problem?

Mr MOSS: No, it is not a problem in the sense that we interview them just as we would interview other serious offenders. It is just that you have two different jurisdictions trying to achieve two different things. We are trying to get them down in classification in the ordinary way, but sometimes the Mental Health Review Tribunal wants to do different things. For example, there is a notorious prisoner out at Silverwater and for months and months - it must be 12 months - the Mental Health Review Tribunal has been trying to get this inmate to some high-powered mental hospital up on the central coast. They have had meetings - I gave evidence before one of them - but that prisoner is still sitting out at Silverwater because the Commissioner has one jurisdiction and one brief and the Mental Health Review Tribunal has a completely different brief.

The Hon. DR ARTHUR CHESTERFIELD-EVANS: Presumably if you fix the mental health problem there would not be an offender in any case. That is an optimistic view that perhaps the Mental Health Review Tribunal might take.

Mr MOSS: I think it is the public perception in this case, this is a very notorious inmate, multiple murderer, and I think there might be considerable debate if it became public that he was about to go off and have some treatment which may lead then to an application that he be released.

The Hon. DR ARTHUR CHESTERFIELD-EVANS: So in a sense the Department of Corrective Services opinion holds and he is kept in just in case?

Mr MOSS: No, all I am saying is that there just does not seem to be one body that can make a decision. The Commissioner is taking one view, which I do not think is unreasonable, and the Mental Health Review Tribunal is taking a view, and I do not think that is unreasonable, but it needs someone to be able to make a decision between the two of them and to take responsibility for that decision if anything goes wrong.

CHAIR: That brings us to the end of the time for this hearing. We would like to thank you for coming today. The information you have given us is very helpful, it has answered a lot of the questions we had in relation to the classification issue and other matters that we need to address in our report, so thank you very much for making your time available. I do not think we have any outstanding issues that we need to raise with you, so we will not be contacting you for answers to questions on notice.

(The witness withdrew)

(The Committee adjourned at 2.05 p.m.)