REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

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

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At Sydney on Monday 23 November 2015

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The Committee met at 9.25 a.m.

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PRESENT

The Hon. N. Maclaren-Jones (Chair)

The Hon. D. J. Clarke
The Hon. D. Mookhey
The Hon. P. Primrose
The Hon. A. Searle
Mr D. Shoebridge
The Hon. B. Taylor
The Hon. L. J. Voltz

CHAIR: Good morning. We will start with the formalities so we can commence the hearing proper right on 9.30 a.m. This is the first hearing of the Standing Committee on Law and Justice inquiry into the security classification and management of inmates sentenced to life imprisonment. I acknowledge the Gadigal people, the traditional custodians of this land. I pay respect to the elders past and present of the Eora nation and extend that respect to other Aboriginals present. This inquiry will examine the legislation, policies and procedures relating to the security classification and custodial management of inmates sentenced to life imprisonment, including their impact on the operation of the correctional system, and the role of victims and community expectations in decision-making.

Today we will hear from a range of organisations and individuals, including the Hon. Reginald Blanch, Chair of the Serious Offenders Review Council; Dr John Paget, the former Inspector of Custodial Services; and Corrective Services NSW. We will also hear from Legal Aid New South Wales, the Community Justice Coalition, Justice Action and three victims' advocacy groups. Before we commence hearing from our witnesses, I have a brief statement to make in regard to the procedures for today's hearing. Today's hearing is open to the public and is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available.

In accordance with broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I also remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at this hearing. So I urge witnesses to be careful about any comments they may make to the media or to others after they have completed their evidence as such comments would not be protected by parliamentary privilege if another person decided to take action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat.

There may be some questions that a witness could answer only if they had more time or certain documents to hand. In these circumstances, witnesses are advised that they can take questions on notice and provide the answer within 21 days. I remind everybody here today that Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. I therefore request that witnesses focus on the systemic issues raised by the inquiry's terms of reference and avoid naming individuals unnecessarily. I also advise witnesses that if they would like to pass messages then that should be done through the Committee staff. Finally, I ask everybody to switch their phones off or to silent for the duration of this hearing.

REGINALD OLIVER BLANCH, AM, QC, Chair, Serious Offenders Review Council, sworn and examined:

CHAIR: I welcome our first witness, the Hon. Reginald Blanch, AM, QC. I invite him to make an opening statement before we commence questioning.

Mr BLANCH: In the last statement in my written submission about not introducing a cruel system of punishment what I had in mind was the building and subsequent closure of Katingal—the facility that was built at Long Bay jail but was closed down many years ago now. It was closed because it removed the prisoners in that facility from any human contact. It was found to be dehumanising and was closed on that basis. One matter I would like to stress is that the early part of the classification process has nothing to do with the way prisoners are treated; it is entirely to do with the way prisoners are managed. I would like to table the advice I have received from experienced officers within the jail system about classification, and I have brought nine copies of that advice with me.

Documents tabled.

The Committee will see in that advice that the difference between an A classification and a B classification relates to the level of security necessary and has nothing to do with privileges for prisoners. As a matter of policy I imagine that in managing the jail population the highest security jail cells should be available to the highest security risk prisoners. The question of movement to a C classification may not necessarily involve extra privileges depending on the jail where the prisoners are kept. In many jails this change would only allow the prisoner to work outside the jail walls at a facility that is still within an outer security perimeter. Changes in classification past C1 do involve extra privileges for prisoners, but I do not believe that any life prisoners have been classified past C1. The importance of the distinction is that up until that stage classification is really to do with, and only to deal with, the management of prisoners within the jails by the jail system. After the C classification it does involve questions of privileges for prisoners.

The Hon. LYNDA VOLTZ: With regard to your submission, you say, "I should first observe that prisoners are sentenced to terms of imprisonment as a punishment not for punishment." I assume you are going to the level of cruelty?

Mr BLANCH: Yes.

The Hon. LYNDA VOLTZ: When I first read that I was not quite sure what you meant. With people who serve life sentences with no possibility of release, obviously when they get to a certain age they will be looking at illnesses such as dementia and Alzheimer's; how does that work into the classification and the Corrective Services system itself?

Mr BLANCH: Well, it depends on the particular disease. One of the perhaps most notorious criminals serving life is Neddy Smith, he is suffering from Parkinson's disease. He is now in Long Bay hospital. It is really fairly irrelevant what his classification is because there is only one place he can be; he is dying and very seriously ill in Long Bay hospital. As I said in the opening statement, the classification at this level between the A and the B level has really got nothing to do with the privileges of prisoners, it is really a question of where they are housed. You will see from the advice that I have been given that I have passed on to you, that if you move from an A classification to a B classification really the only difference is that there is no requirement for you to be housed in a jail where there are towers.

You will see if you look at the jails that are involved in those two classifications that if you are a B classification there are other jails you can go to such as Junee, Cooma, Broken Hill, Bathurst and Cessnock, which are not available for an A classification prisoner. It is all to do with the fact that they are still high security jails and has nothing to do with the privileges of the prisoners. Coming to your question, I suppose the fact is that a prisoner who has been in jail for a very long time becomes thoroughly institutionalised and the more institutionalised and more ill they become the less of a security risk they are within the prison system, so there is obviously, I would have thought, no need for them to be classified at such a high level for management. The other side of the coin for that I imagine, from the administration of prisoners point of view, is there are a lot of new prisoners coming in who are high-risk and the beds in those jails are needed to house high-risk prisoners.

Mr DAVID SHOEBRIDGE: The prison hospital at Long Bay is maximum security?

Mr BLANCH: Yes.

Mr DAVID SHOEBRIDGE: I have been there on a visit, and it is surrounded by extremely high walls, razor wire and high levels of security. I went in and asked the staff about their biggest concern and they said it was mainly slip and falls in the bathroom because they had such an elderly cohort of prisoners.

Mr BLANCH: Yes.

Mr DAVID SHOEBRIDGE: It seems remarkable that we are putting aged frail prisoners in very expensive high security: what do you say about that?

Mr BLANCH: I agree with that. That is the flip side of what I was just saying, that a lot of life sentence prisoners are not a security risk at all.

The Hon. LYNDA VOLTZ: The point is that there is nothing purpose-built, given there are 50 or 60 lifers in the prison system, for what is inevitably going to happen.

Mr BLANCH: Yes, that is true. I am aware of the fact, only because somebody told me about it, that in the United Kingdom, because of the size of their jail population and the population in general, they have—

Mr DAVID SHOEBRIDGE: They ship them out to Australia?

Mr BLANCH: They used to—they have built purpose-built jails for elderly prisoners.

Mr DAVID SHOEBRIDGE: Surely that is something we should be looking at, isn't it? We should be looking at something like an aged care facility. A number of these prisoners, if there was a step between them and freedom they would not be able to get out. The only way I can see those prisoners escaping from maximum security at Long Bay is if they put all their Zimmer frames in a pile and climbed over the wall. It seems a remarkable waste of money.

Mr BLANCH: In the case of Long Bay hospital it is simply because it is the only facility for treating people who are ill.

CHAIR: Can I ask about classifications. In the document you have given us you refer to A2, E1, B, E2 and then C1. On the Department of Justice and Corrective Services NSW facts sheet it talks about male inmates category AA, A1, A2, which is maximum, category B and then category C1, C2, C3 and then females five and four and so on. Can you explain the various levels of classification and how many there are? I know that you have broken down those ones, but what are AA, A1, and E1?

Mr BLANCH: I have brought a document with me, but I did not make copies of it.

CHAIR: If you table it we can make copies.

Mr BLANCH: It is a matter of providing you with the information. That is, the number of life sentence prisoners who are in jail, their names and what categories they are. There are various categories of life sentence prisoners and the overall number is 90 something, not 60. There are some, since truth in sentencing where life means life, who are the true life sentence prisoners. There are groups of prisoners before that who are serving life but within different categories. If I can table this just for the assistance of the Committee it will tell you who they are and what their various categories are.

CHAIR: Is it possible to give an overview, without the individuals, of all the classifications?

Mr BLANCH: Yes.

Mr DAVID SHOEBRIDGE: Particularly the E1 and E2.

Mr BLANCH: There are a lot of very fine distinctions in the classification system and I have to say, to begin with, that I have been chairing the Serious Offenders Council only since September last year so I am not the world's greatest expert on the way the system works in terms of classification. In general terms a prisoner

who goes into custody becomes an A1 prisoner and then progresses to A2. There is no difference, in my understanding, between A1 and A2. The only purpose of the prisoner going from A1 to A2 is so that at some future stage they can be considered to go from an A2 to a B. The E1 classification relates to escapees. A person who escapes and who is brought back to custody is classified as E1. They then move to an E2 classification. The purpose of that is possibly to have their E classification removed altogether. The Serious Offenders Review Council reviews E classifications. A lot of them relate to people who ran away from the police and who were rearrested. Some of them have never been charged with escape. They have an E classification and because of that they are restricted in where they can be housed et cetera.

The E2 classification is equivalent to a B classification. There is virtually no difference between the security arrangements for an A-classified prisoner and a B-classified prisoner. This inquiry was partly triggered by a lot of publicity about Garforth, who was recommended to be changed to a B classification. There was an enormous amount of misinformation about that. There was never any suggestion that he be moved from the cell or the jail he was in, or that he get any extra privileges. It was just that he be classified as a B prisoner because it was no longer necessary for him to be held in one of those jails. However, he could—and there was no suggestion at that stage that he would—be moved to another jail. However, in future he could have been moved to one of the other jails that can house B prisoners, but with exactly the same security as previously.

The C classification is somewhat different. When the prisoner moves to C1—and some of these life-sentence prisoners over the past 20 or 30 years have been classified as C1—he can be sent to a whole lot of other prisons. Many of the C1 prisoners are housed in maximum security prisons. The C1 classification allows them to walk out through the main gate and go to the laundry, the bakehouse or whatever the facility might be within the outer perimeter of the prison to work and to come back again. I would think that there would be no problem about a life-sentence prisoner who has been in prison for a significant period and who was assessed as not being a risk being allowed to go out for the purpose of going to work and coming back again, for example. Some of the C1 prisoners are housed at less secure places and they do allow extra privileges. There would be a question about whether life-sentence prisoners should be allowed those extra privileges.

The Hon. DAVID CLARKE: Is the general position that moving a prisoner from one classification to another may not involve a change of privileges, but in other situations it will?

Mr BLANCH: Not between an A and a B classification.

The Hon. DAVID CLARKE: What about other changes in other classifications?

Mr BLANCH: If you are talking about C classifications, the answer is certainly yes. The whole system changes when you get to a C classification. As I said, until then the classification has nothing to do with privileges. After a C classification it has everything to do with privileges.

The Hon. DAVID CLARKE: Let us deal with those situations where there is a change of classification that does involve a change of privileges. There would be situations where that would arise, would there not?

Mr BLANCH: In C classifications it does. With a C1 classification, you can receive an on-privilege and an off-privilege. A move to a C2 classification very often involves an on-privilege or an off-privilege. An on-privilege is a capacity to work within the broader prison boundaries but not necessarily in the prison itself. The prisoner is housed in the jail but can go to within the outer perimeter to work. An off-privilege involves the capacity to go out to work in the community.

The Hon. DAVID CLARKE: Can you think of any situation where a prisoner has been reclassified and as a result has received additional privileges that has caused community outrage? Does any situation come to mind?

Mr DAVID SHOEBRIDGE: I do not think this is the witness to ask about community outrage.

Mr BLANCH: The short answer is that I cannot think of any. It may well be that a prisoner who has been given an off classification, for example, has done something in the community. That could happen. It is a risk that cannot be eliminated, so it may have happened. However, that has nothing to do with life-sentence prisoners because none of them would get an off-privilege.

The Hon. DAVID CLARKE: Do you believe generally that this whole area of privileges should take into account community expectations?

Mr BLANCH: Yes. The difficulty, of course, is working out the community expectation. One of the things that struck me about the Garforth publicity was the fact that people simply were not educated about what was involved. If you are talking about community expectation, you must talk about a community that is educated in what the system actually does and how it works.

The Hon. DAVID CLARKE: But you could envisage situations where there would be genuine community concern as a result of reclassification of prisoners that involved additional privileges?

Mr BLANCH: If it involved additional privileges, but if it did not I could not. As I said, the Garforth situation is one of them. It was a move from A to B that did not involve anything.

The Hon. DAVID CLARKE: But if it did involve—

The Hon. LYNDA VOLTZ: Point of order: The member has asked the same question repeatedly.

The Hon. DAVID CLARKE: To the point of order: I am trying to get a specific—

The Hon. LYNDA VOLTZ: I know what the member is trying to get.

CHAIR: The witness can answer the question as he sees fit.

The Hon. DAVID CLARKE: Do you believe there are situations where community concerns, or even outrage, would be reasonable? I am talking about a situation where a prisoner has been reclassified and as a result of that reclassification has received greater privileges.

The Hon. LYNDA VOLTZ: Point of order: I reiterate my previous my point of order. The witness has already said that he cannot think of any cases where that has happened as a result of a reclassification. I am not sure that the honourable member can keep asking the same question. We have some other questions to ask.

CHAIR: The witness can answer the question as he sees fit, or he can take it on notice.

Mr BLANCH: In theory, the answer to the question is yes, there could be legitimate community outrage if something like that occurred. However, I point out again that that is irrelevant to life-sentence prisoners moving from an A to a B classification.

The Hon. DANIEL MOOKHEY: Thank you for appearing before the Committee today. The thrust your earlier evidence was that in the lifecycle of a prisoner classification matters more at the start of their sentence than necessarily towards the end.

Mr BLANCH: No, it depends whom you are talking about. For people who are not serving life—

The Hon. DANIEL MOOKHEY: I mean life-sentence prisoners.

Mr BLANCH: Yes

The Hon. DANIEL MOOKHEY: In your submission you make the point that, particularly in the earlier part of a life sentence, when a prisoner is adapting to the institution, discretion on the part of prison officers is an important tool in prisoner management.

Mr BLANCH: Yes.

The Hon. DANIEL MOOKHEY: Would you elaborate? What does that mean? How is it used practically in the system?

Mr BLANCH: No. All I was trying to emphasise is that this is about how prisons are managed. We are in a situation at the present time where prisons are much fuller than they ever have been in the past. That of course creates a management problem. I am not the person to speak about that because I have no expertise in it,

but I imagine that the point of view of the people who manage the prisons is that they need to keep the most secure cells for the worst prisoners. It seems to me to be sensible to allow them to manage the jails accordingly.

The Hon. LYNDA VOLTZ: One of the documents you have tabled says that, within Corrective Services, there are currently more options for placing a C1 inmate than a higher classified inmate. Given that that has come from the prison officers themselves, it would be what they are looking to achieve. If a prisoner can be put in the C1 category, there are more options. The higher classifications are saved for where they are really needed.

Mr BLANCH: Yes, exactly. From my point of view, there is no problem with life sentence prisoners being classified as C1. But, in saying that, there is not a clear definition of where a C1 prisoner goes. Many of them, as I have said, are in maximum or medium security prisons. Some of them are not. I would not imagine that it would be appropriate for life sentence prisoners classified as C1 to be put on prison farms.

The Hon. LYNDA VOLTZ: But under some of their determinations they are required to complete certain programs and they can do so only in certain categories.

Mr BLANCH: Yes, that is true. For life sentence prisoners, many of them in the categories that you will see in the charts I have provided are entitled to seek to have their life sentence re-determined, as they are still under the very old system. That would give them a non-parole period. Others are in the same category, where there is a possibility that they could get parole. It has to be said that in many cases it is not a strong possibility, but there is a possibility, and where there is a possibility they would need to be able to demonstrate that they were suitable people for parole.

The Hon. DANIEL MOOKHEY: The basic theory is that the classification has more of a bearing on operational considerations, but not at the expense of punitive aspects. The classification makes more of a difference to how a prisoner is treated, as opposed to the classification itself being a form of punishment. Is that right?

Mr BLANCH: As I said at the beginning, the difference between the A and B classifications is all to do with management and not to do with privileges.

The Hon. DANIEL MOOKHEY: I am trying to understand precisely where the discretion should sit in the system. Your view is that because prison administrators tend to have much better information about the risk posed by an individual the discretion should be vested as closely as possible in their level?

Mr BLANCH: In relation to classification, life prisoners are all by definition serious offenders and come under the auspices of the Serious Offenders Review Council. In all of those cases, recommendations come to the council from various prison officials who have dealings with them. They have a classifications manager, a security manager and psychologists and so forth. All of those people prepare a report, which comes to the Serious Offenders Review Council. We then make a recommendation to the commissioner. The commissioner makes the decision based on the advice that he receives from us, and our advice is based on all the information that we receive from the prison.

The Hon. DANIEL MOOKHEY: Thank you. In that process is there a requirement for the administrators, those who formulate the recommendations to the council, or the council itself to solicit the opinion of victims?

Mr BLANCH: No, except where victims are registered. For all prisoners administered by the Serious Offenders Review Council there are cases where victims are registered. Before any classification is made that would involve the prisoner going out into the community, the Serious Offenders Review Council writes to the registered victim and asks for submissions from the registered victim. That means that in any case where the prisoner goes on work release or day leave—

Mr DAVID SHOEBRIDGE: Is that category C prisoners?

Mr BLANCH: Yes, C3 prisoners.

The Hon. DANIEL MOOKHEY: But in the reclassification at the top end of the hierarchy, the A and B categories, there is not necessarily a process in place for victim notification and solicitation of opinion?

Mr BLANCH: No. I imagine the reason for that is that there is no real difference between the A and B classifications.

The Hon. DANIEL MOOKHEY: Do you detect a great desire by victims to be involved at that level or do you think that the threshold is where there is a release into the community?

Mr BLANCH: Very often when we write to victims they do not want to make any response. It varies. There is not a huge interest, but there are some victims who are very interested.

The Hon. LYNDA VOLTZ: I return to the determination about where category C1 prisoners can be sent. If you were given the ability to make a determination for a C1 category but could define the institutions that they must be restricted to, would that make a difference to how you categorised them? As you said, there are some whom you think would be suited to certain environments but not others. Would that make a difference?

Mr BLANCH: Yes, it would. I think it could be managed on the basis of ensuring that if a life sentence prisoner were classified as C1 they did not then get moved to a prison situation which was more open. That can be managed because all life sentence prisoners fall under the auspices of the Serious Offenders Review Council and the Serious Offenders Review Council makes recommendations about where prisoners are housed. It could be clearer. The C1 classification is a little broad and I find it hard to define.

The Hon. LYNDA VOLTZ: It also could allay community concerns if they understood that there were to be restrictions. Given how broad the category is, there would be an assumption that someone could be sent to a farm when they really should not be.

Mr BLANCH: Yes, indeed.

CHAIR: Do you think the classification system in New South Wales is complex compared to those of other jurisdictions?

Mr BLANCH: I cannot compare with other jurisdictions. I do think it is complex. The difference between an A1, A2 and B classification is so small that there is virtually no difference at all. I do not know what the classification systems are in other jurisdictions.

Mr DAVID SHOEBRIDGE: When you read the submissions from victims groups such as the Victims of Crime Assistance League [VOCAL] and the Homicide Victims' Support Group, they all seem to recognise that there is a role for the granting and removal of privileges in prisoner management. Would you speak to your observations on that?

Mr BLANCH: I think that it is fairly obvious that a tool one can use in terms of prisoner management is if you can give privileges or take privileges back again.

Mr DAVID SHOEBRIDGE: What are we talking about in terms of privileges? "Privilege" sounds like something quite astounding, but it can mean something like having a toaster or being given slightly more access to buy-ups. Can you describe what these so-called privileges are?

Mr BLANCH: I am not the right person to ask about that, I think. They are the sorts of things that we are talking about. They are privileges that are removed. I am just trying to think of the sorts of punishments that they give for prisoners who commit offences when in custody, and it is buy-ups, days off, visits—removal from visitor privilege—

Mr DAVID SHOEBRIDGE: Time out of cell.

Mr BLANCH: Yes.

Mr DAVID SHOEBRIDGE: Can you describe clearly what the role of the Serious Offenders Review Council is? Can you perhaps describe how a prisoner is reclassified from A to B and where the Serious Offenders Review Council fits in that process?

Mr BLANCH: When that question arises there are reports that come to the Serious Offenders Review Council from the jail. The Serious Offenders Review Council interviews the prisoners usually once a year. For prisoners sentenced to a term, the interviews begin generally eight years out from the earliest release date. In any event, in broad terms, Serious Offenders Review Council members actually interview the prisoners and talk to the jail about what is needed for their rehabilitation. Then reports come back to the Serious Offenders Review Council from the jail, from a number of different people within the jail system. Very often now they have what they call a classification consulting group who together form a recommendation to the council. Psychological or psychiatric reports and case notes come to the council with that recommendation. The council then considers the question of advancement. The council then makes a recommendation to the commissioner who can accept or reject the recommendation of the council. The decision is entirely a matter for the commissioner.

Mr DAVID SHOEBRIDGE: So there are already, if you like, two checks in the system. One is the prison itself—prison officers, psychologists and others—has a team and they form a recommendation which is reviewed by you, particularly after speaking with the prisoner, and then your recommendation is again reviewed by the commissioner.

Mr BLANCH: Yes.

Mr DAVID SHOEBRIDGE: Do you think that it would be rational to have a further review where the Minister can just overturn these matters? Would that be a rational way of dealing with prisoner classification?

Mr BLANCH: I do not think so.

Mr DAVID SHOEBRIDGE: In your experience, and you have been in the role since September, is the Serious Offenders Review Council regularly disagreeing with what the prison recommendation is and recommending declassification or reduced classification when prison officers are recommending the same?

Mr BLANCH: No, and the reason for that is that the Serious Offenders Review Council has normally been working with the prison officers throughout a number of years with the various prisoners. If we go to a particular jail or do it by way of video conference we first of all speak to the general manager of the jail about each of the prisoners and then interview the prisoners so that by the time the recommendation comes to us there has been a fair degree of input from the council and the various people who work in the council. So there is a very high rate of agreement with the recommendations that come from within the prison system. It then goes to the commissioner and the commissioner does not always agree with the recommendations of the council.

Mr DAVID SHOEBRIDGE: In your experience would it be fair to say the commissioner is conservative in terms of making determinations? When you say "does not agree", do you mean that the commissioner is downgrading when the recommendation is to maintain the same or is the commissioner as a general rule maintaining the grading when the recommendation is otherwise to reduce it?

Mr BLANCH: No, almost always it is—

Mr DAVID SHOEBRIDGE: Conservative.

Mr BLANCH: Conservative—yes.

Mr DAVID SHOEBRIDGE: Who do you think is best placed to work out the appropriate classification of prisoners? The teams within the prisons that you are working with or the commissioner, who is at one remove—or the Minister, who is at one remove again?

Mr BLANCH: I believe it is the people who are actually in the jail who are working with the prisoners—the psychologists and other experts who are there. They are the people who really understand what is going on.

Mr DAVID SHOEBRIDGE: Would it be possible to provide this Committee—in confidence—with the paperwork for one of these classification processes so we can actually follow the paperwork through? Maybe you could provide us on notice with an explanation of that to get a sense of the depth of the analysis you do?

Mr BLANCH: Yes, if it is in confidence, because it will involve a particular prisoner, of course. If it is in confidence then that could be done.

Mr DAVID SHOEBRIDGE: I would appreciate that.

The Hon. DANIEL MOOKHEY: In the process that you just described, in response to Mr Shoebridge's question and to my earlier question, does the initiation of a reclassification tend to happen at a time period backdated from the earliest point of release?

Mr BLANCH: Yes, for ordinary prisoners. If you are dealing with life sentence prisoners it is a different situation.

The Hon. DANIEL MOOKHEY: Can you explain that situation? How does it actually initiate? Can a life sentence prisoner initiate an application for reclassification themselves?

Mr BLANCH: Certainly they can ask for it. Otherwise the initiating of it comes from within the management of the prison itself.

The Hon. DANIEL MOOKHEY: And does that initiation generally arise in a circumstance where it is offered as a reward to a prisoner or alternatively it is found that that level of supervision is no longer necessary and therefore a saving can be made in the system and therefore the process should begin? Do they tend to be the categories that attract initiation of an application for a life sentence prisoner? Am I missing one?

Mr BLANCH: No, when you are talking about life sentence prisoners I think the key question is how they need to be managed—if they get old, if they become thoroughly institutionalised. I mean, some of them have been in jail for a very long time. One of them was only 14 years of age when he went into jail, which is a somewhat unusual case, but he is going to be in jail for a very long time.

Mr DAVID SHOEBRIDGE: Largely they are not a flight risk because they would be incapable of living outside of their institution.

Mr BLANCH: Exactly.

Mr DAVID SHOEBRIDGE: And therefore they are showing no signs at all that they are willing to escape or wanting to escape; is that right?

Mr BLANCH: Exactly.

Mr DAVID SHOEBRIDGE: So why would we be spending a large amount of taxpayers' money keeping them in enormously high security facilities if they are no risk of escape?

Mr BLANCH: Yes, that is true.

CHAIR: You said you felt that the classification levels system is complex. What would you like this Committee to look at in relation to classification levels?

Mr BLANCH: As I say, I am probably the least qualified person to answer that question because I do not know what systems are used in other places, but it occurs to me that a simpler system of classification of just 1, 2 and 3 or A, B and C would be an easier and simpler process to administer.

The Hon. BRONNIE TAYLOR: Regarding the case of the registered victim of Mr Andrew Garforth you mentioned there was a lot of misinformation. If my interpretation is right, decisions that were made were probably influenced by a lot of frenzy that was going on—you did not use the word "frenzy", but that was how I interpreted it. Community expectations are very important because they can go either way and at the end of the day we are here to represent our communities. My question to you is about those things and about the misinformation that went out there in terms of the classification. If we were to look at changing classifications for these cases, how would you suggest that we make sure that that misinformation is not there and we are able to say that these classifications mean a certain thing and reflect this?

Mr BLANCH: It is a question of education, and I must say that the commissioner held a meeting with victims after all that fuss and the process was explained to them, and it was reported back to me by the official member from the council who attended that the victims were much more understanding of what had happened, having had it explained to them, and that what was written in the newspapers was not exactly correct.

The Hon. BRONNIE TAYLOR: Perhaps it is about managing the process of how that information is released. You said that once they felt they understood, they felt more comfortable. Perhaps we need to be careful about the steps that we take and be considerate with these cases. They have huge implications for people. Perhaps we have to look at the process that the information is delivered.

Mr BLANCH: What information are you talking about?

The Hon. BRONNIE TAYLOR: You said once the family of the victim were called in and the process of the reclassification was explained, that some of their fears were allayed. If they had been informed first do you think the outcome might have been different?

Mr BLANCH: I am not quite sure what communication there was with Mrs Simpson, for example, in the Garforth matter. There was a communication with her. Ordinarily there would not have been because a change from an A to a B classification, as I have said, does not mean very much.

The Hon. BRONNIE TAYLOR: But it did.

Mr BLANCH: It did to her, but she was told beforehand about that and her attitude about it was that there should not be any change. Obviously some victims have a very strong feeling and attitude. Many of them have been victims of some appalling crimes and there are people who would regard a life sentence as being too lenient. There will always be people who have that point of view.

CHAIR: You are saying there is not much of a difference to go from an A to a B classification. That is from maximum to medium security. Is there a difference or is there is no difference?

The Hon. ADAM SEARLE: What is the difference?

CHAIR: Yes, what is the difference?

Mr BLANCH: From that sheet that I gave you, you will see that an A classification prisoner has to be kept in a jail with towers on it, or whatever else. A B classification prisoner does not. A B classification prisoner could go to those extra jails you will see noted there. None of those things necessarily happen. In the Garforth case, he was to stay in exactly the same jail in exactly the same cell without any extra privileges.

CHAIR: And no other conditions or changes to routine?

Mr BLANCH: No changes at all.

Mr DAVID SHOEBRIDGE: It is not about privileges. Reclassification from A to B has nothing to do with privileges.

Mr BLANCH: Exactly.

Mr DAVID SHOEBRIDGE: That is the fundamental misconception.

Mr BLANCH: That is the point; it has nothing to do with privileges, it is all to do with management.

Mr DAVID SHOEBRIDGE: Can I read you the final paragraph of the submission from VOCAL, which is the Victims of Crime Assistance League, which summarises the furore and the response and the slowly dawning understanding of victims as to what happened. Mr Brown states:

> From my discussion with Victims affected by the most recent furore, it was obvious that their concern related more to the downgrading in Classification than the access to programs as they felt that this was a lessening of the punishment and by ensuring that the lowest classification achievable by a life prisoner is that of a B classification, and with full and frank explanation of what is involved with such a classification, I believe we can achieve an outcome that will be acceptable to Victims but still provide Custodial officers the tools they need to adequately manage the most difficult cohort within the prison system.

The victims are saying what the downgrading meant was never fully explained to them, and they recognise there is a role for privileges in victim management. How do we ensure that victims in the future do not misunderstand what is happening, that they can understand what the effect of a classification is so we do not get this furore? How do we feed that in?

Mr BLANCH: There could be a mechanism for writing to victims about it where there are registered victims, but I do not know how much extra work or administration that involves.

Mr DAVID SHOEBRIDGE: Could they not have some communication, have a letter and have someone phone them up and say, "The prisoner is being proposed to be reclassified from A to B. This is what the effect of the reclassification is. It is not an extension of privileges. We want to let you know that we are considering this. If you would like to make a submission about the reclassification, you are welcome to. You have 14 days." They should just get clear advice about what it is. It seems to me many of them thought it was this wide opening of privileges, when it was not.

Mr BLANCH: I think people thought that because it was misrepresented in the media.

Mr DAVID SHOEBRIDGE: Absolutely.

Mr BLANCH: In that particular case, there was communication with the victim.

CHAIR: Was that before or after the classification recommendation—

Mr BLANCH: Before.

The Hon. DANIEL MOOKHEY: As it currently stands, the requirement to contact victims only arises when a prisoner has been reclassified to an unescorted leave of absence, which is the point you already made.

Mr BLANCH: Yes.

The Hon. DANIEL MOOKHEY: Do you think there should be a lower threshold for contact or alternative forms of contact? I understand the unescorted leave of absence notification is really to solicit the victim's opinion as to whether that should happen, amongst other things, but do you think we should be creating an intermediate level or a level of contact requirement that sits below that in some sense?

Mr BLANCH: That could be done. That is fairly easy to do.

The Hon. DANIEL MOOKHEY: It will not be too onerous?

CHAIR: Unfortunately, time has expired for questions. You did not take any questions on notice—

Mr DAVID SHOEBRIDGE: Yes, he did.

CHAIR: Sorry, you did. You will have 21 days to respond to that and the secretariat will provide a copy of those questions. If there are further questions from Committee members, they will be sent to you. Thank you again for your time.

Mr BLANCH: Thank you.

(The witness withdrew)

JOHN PAGET, former Inspector of Custodial Services, sworn and examined:

CHAIR: Before we commence with questions, would you like to make an opening statement?

Dr PAGET: I would. First, thank you for the opportunity to appear before the Committee and to follow up the position I made when I was in the position of Inspector. I would hope that while the focus of the Committee is on the general question of the classification and management of lifers, it does take note of the lessons that came about with the very public regression of 12 lifers in July 2015. The classification system and corrections, in general, must be driven by principles if we are not to sink into indifference and inhumanity.

In this regard, I was inspired by Michael Gove, Secretary of State for Justice in the United Kingdom, who addressed the Howard League for Penal Reform on 5 November. He expressed the moral principles on which penal policy in the United Kingdom is going to be based. He talked about redemption and opportunities, he talked about tempering justice with mercy and he talked about giving people a sense of possibility and hope. I think you will agree that a moral framework for policy in New South Wales would be useful in combatting some of the other influences from talkback radio and tabloid media.

In 1991 Lord Justice Woolf published a report into the 1990 riots in Britain and he made the point that there are three aspects of prison life that must be kept in balance if the prison system is to be stable. These were: security, control and justice. In his report "justice" referred to fairness, which requires inmates to be treated:

> … clearly, consistently … impartially … in conformity with rules or standards, with access to redress.

The classification and its application to inmates—even those that many would regard as the least deserving, that is, the life inmates—must provide fairness if that system is to have legitimacy. This is recognised in the United Nations [UN] Standard Minimum Rules for the Treatment of Prisoners—named after another lifer, Nelson Mandela. Rule 39 holds that:

> no prisoner shall be sanctioned except in accordance with the … law … and the principles of fairness and due process.

There was no fairness in what happened to the 12 lifers in July of this year when the classification system was used as an instrument of punishment and not as an objective risk-management process. I think if we continue to act in this way, it is a tacit acknowledgement that we regard inmates—especially life sentence inmates—as a less deserving species and we cannot conceptualise the civilised treatment of them as being other than at the expense of victims. So while the terms of the inquiry are primarily about inmates, I think it is important for the Committee to note it is also about us as a community and the values that we have.

The Hon. DANIEL MOOKHEY: Congratulations on your retirement. Can I take you to page 18 of your submission, in which you say that: The decision by the Corrective Services Commissioner to regress 12 life sentence inmates from minimum to medium security is in breach of the Crimes (Administration of Sentences) Regulation 2014. Is it your view that that action was illegal or unlawful?

Dr PAGET: Unlawful. It was not consistent with—you may recall the Commissioner, in response, acknowledged that what we pointed out was correct.

The Hon. DANIEL MOOKHEY: Does the regulation, or any other aspect of law, allow that decision to be reversed or otherwise altered, or that also has to be made by the Commissioner?

Dr PAGET: I think there are other lawyers who are in a better position to answer that question than I am. But the point is that it was not consistent with the legislation and it had to be addressed in concert with the Serious Offenders Review Council [SORC]. I understand that has been done.

Mr DAVID SHOEBRIDGE: Dr Paget, you might describe how it was unlawful and what steps were missed by the Minister.

The Hon. DANIEL MOOKHEY: Or the Commissioner actually, but yes.

Dr PAGET: It is the Commissioner who wrote to the 12 inmates and the letter—the text of which is in my submission, and it is in the report on the inspector's website—said that they were going to revert back to A2 security, that that was not as a result of any behaviour on their part and that they could raise this with the SORC

if they wished. That was the substance of the advice. It also indicated, if I recall correctly, that the concern was concern in the community about their current classification. The particular regulation did not accord to the Commissioner the authority to do that. He could only do that in response to a recommendation from the SORC, so he is essentially preempting the decision of the SORC.

Mr DAVID SHOEBRIDGE: He retrospectively referred it to the SORC to get their opinion, to strap up the earlier decision.

Dr PAGET: I understand there was then discussion between the Commissioner and SORC but no decision. One of the recommendations we had made was that the decision to regress them be reviewed. The Commissioner's response has been that that will not happen until the results of this Committee are published.

The Hon. DANIEL MOOKHEY: So, insofar as that regulation applies, that regulation does not provide the opportunity for a prisoner to seek reclassification after the events that you described have occurred. Essentially, the discretion is still with the Commissioner.

Dr PAGET: It is in Regs 16 and 17. It is pretty simple. It just says that the Commissioner can do this but if they are managed by the SORC, he has got to get a SORC recommendation before he can do it. That is it. It is dead simple.

The Hon. DANIEL MOOKHEY: The purpose of this new classification system, to which you earlier alluded, its predominant purpose is risk-management, not punishment.

Dr PAGET: That is right.

The Hon. DANIEL MOOKHEY: And your view is that that has sound public policy reasons for why that classification system is built to reflect that purpose?

Dr PAGET: Absolutely. Classification is multi-faceted. We talked here about security but classification is also about placement for access to programs, it is about behaviour management. We should not get fixated on just the security aspect of it.

The Hon. BRONNIE TAYLOR: When you talk about having that ability with the classification, is the fact that it is incentive for someone who is in prison that, if they can work towards rehabilitating themselves, therefore they can work towards a lower classification and they have access to more things. But if you take away the process, in terms of the transparency and the fairness of it, it can act as a deterrent because, why work towards that? Is that correct?

Dr PAGET: If you start to interfere in what is supposed to be an objective process, you destroy its integrity. If you destroy its integrity, what is the point of the system? The whole emphasis of the development classification systems over the past decade has been to move away from subjective systems to an objective system, based on psychologically validated instruments to give you scores, professional input, professional override, which is quite legitimate, if necessary. And in the way it is here, with this particular cohort with which the Committee is concerned, you have this split of responsibilities between, if I may, the bureaucratic domain—the Commissioner—and the judicial domain where they judge, sitting on the SORC.

If you look back in the report I have mentioned in the debates in 1993, I think it was Wayne Merton and John Hannaford at various times presented two bills and in those bills there was discussion in the *Hansard* about the desirability, in the management of this cohort, of having some judicial independence. That was emphasised as the Senior Offenders Review Board transitioned into the Council. John Hannaford made the point that that independence was important and would be preserved in the SORC.

The Hon. DANIEL MOOKHEY: And the purpose, of course, of attaching the objective criteria and the application of discretion is essentially to be able to satisfy the other public interests that you referred to, as in the ability for rehabilitation, the ability to show mercy, and the ability to exercise discretion as to how the prisoner is managed. That is the point?

Dr PAGET: That is right.

The Hon. DANIEL MOOKHEY: Your point is, how that discretion is used or exercised, the information that gets back into that process should, as best as possible, rest close to the people whose responsibility it is to manage prisoners?

Dr PAGET: Yes. I think that is the point that John Hannaford and Wayne Merton were making back in the nineties, about keeping the process objective and having that balance between judicial and bureaucratic powers.

Mr DAVID SHOEBRIDGE: Not having it run on the front page of the *Daily Telegraph*?

Dr PAGET: I think that is a given.

The Hon. DAVID CLARKE: Dr Paget, you referred earlier in your opening comments, to justice being tempered with mercy and I think you referred to a judge?

Dr PAGET: That was the expression of the Secretary of State for Justice in the United Kingdom, explaining the moral basis for penal policy in the United Kingdom under his stewardship.

The Hon. DAVID CLARKE: That is right. Would you agree that justice is always a constant—in that justice should always be total justice—but mercy is variable dependent upon the circumstances of the crime?

Dr PAGET: Yes.

The Hon. DAVID CLARKE: Would you agree that there is a strong community expectation—a community view—that that should be the case? Would you agree that there is a community view that while justice should always be total, mercy is variable dependent upon the circumstances of the crime?

Dr PAGET: I have a problem with this term of "community expectation" that is thrown around as a mantra to explain all things. As Judge Blanch mentioned, there is evidence that, where there information is provided, you cannot assume that the public is without mercy. I have experienced it myself as a Commissioner. I rang up a victim of a particular crime and asked whether should would agree to letting an inmate who had caused her personal injury out of maximum security to die at home. She had every reason, I guess, not to agree to that, but she did. I think the judge was making that point that where there is information there comes understanding. You cannot assume that, while tabloid media and talk-back radio attempt to plumb a vengeful vein in the community, that vein actually exists out there as a constant. I do not think that is the case at all.

The Hon. DAVID CLARKE: But you would agree that, assuming that there is full information, the proposition that while justice is always constant—in that it should always be total justice—that mercy is variable, dependent upon the circumstances. Would you agree with that general proposition?

Dr PAGET: No. I think you are talking about how that might be reflected in decisions. There was a lady that I spoke to who gave mercy. That was a pretty simple case: let the person die in custody or die at home. She made a decision that this particular person could die at home. Another victim may have had a totally different perspective on that. If you mean, in that respect, that it is not a constant, my answer is: yes.

The Hon. DAVID CLARKE: There are many cases where judges, when they have been summing up in sentencing prisoners, have made the point that they intend to show the same mercy to the prisoner as the prisoner showed to the victim—that is, very little. That happens frequently, doesn't it?

Dr PAGET: I will take your word for it. You are asking how many judges make those sorts of comments. I do not know the answer to that. If you are telling me that that is the case—you said it happens frequently—then, okay.

The Hon. DAVID CLARKE: I cannot quantify it.

Mr DAVID SHOEBRIDGE: You did, though; you said "frequently".

The Hon. DAVID CLARKE: Have you read of any cases where a judge has made comments to that effect, or have you not heard of any such cases?

Dr PAGET: I think I have, yes.

CHAIR: I would like to ask about the classification levels. We heard from the previous witness that there is not much difference between maximum in the A section and medium in the B section. Do you share those views or is there a difference in the classifications?

Dr PAGET: The Commissioner has provided you, in one of the annexes, with a list of what the differences mean. I think the judge is right; there is not too much difference. The problem also is that, with the overcrowding at the moment, bed-space management—not the classification system—is really driving placement, to an extent. Obviously, if there is a minimum security bed available somewhere, they are not going to put a maximum security prisoner there, but there will be many minimum security people in facilities, which, in better times, would be regarded as maximum security. There are minimum security people locked up in Long Bay Correctional Complex—a nineteenth century maximum-security facility. So, while the system tries to be objective, it is totally compromised in circumstances of overcrowding, where bed-space management is the driving force.

CHAIR: Do you think the current classification is complex?

Dr PAGET: Yes.

CHAIR: I noted that you mentioned that in your submission. What would you recommend?

Dr PAGET: When we did the report on prison overcrowding we recommended that Corrective Services reviews the classifications systems. As the judge said, there are a series of steps. There are a whole range of other restrictions on those classifications, as well. You do not have the total picture in the appendices provided by Corrective Services. It is even more complex than it appears.

CHAIR: Please enlighten us.

Dr PAGET: There is a AA classification; there is also a AAU classification—a AA person who is unsentenced. There is another cohort in the High Risk Management Correctional Centre at Goulburn jail. It is complex. Corrective Services recognises that and they have indicated that by April 2016 they hope to have completed a review of it, with a view to simplify it.

The Hon. DANIEL MOOKHEY: Thank you for providing, on page 7, with a very helpful guide to the classification of male inmates. You make the point—I think it is on page 12—that currently the requirement to contact victims in the event of a reclassification occurs when the reclassification "may result in the offender being eligible for unescorted leave of absence". Going back to your categorisations on page 7, that would be a move from category from A or B to C. Do you think it is necessary for there to be any other requirement in any reclassification from the A to B level, or is it your view—as we heard before—that because very little turns on those distinctions essentially that would be an excessive imposition on the system?

Dr PAGET: I think what needs to happen is happening now. After the meeting that the Commissioner ran with the victims at Henry Deane building, which I attended, it was pretty apparent that there is a diversity of views on what information they want, as the judge indicated. The issue is about timely information about what is happening. I mentioned in that report that the Corrective Services website is not friendly towards victims. Anybody would struggle to find the information there. There is not a portal for victims to click onto and access the information they need. At the meeting some of the victims expressed the view that they were not aware of what victims could access, in any case.

The time that the information is available is not necessarily the time when victims have their heads around what they want to do in this particular area. The question really comes down to the fact that they will have really disparate views and requirements. To make a specific generalised recommendation on what they can or cannot get would defeat that. I think you need to have the means where they can get information and make their own decisions to meet their own needs.

The Hon. DANIEL MOOKHEY: Am I right to conclude on the basis of that statement that your view is that the victims' register process needs to be fixed first, before—

Dr PAGET: I think they need to find out what the victims want rather than everybody saying, "This is what you are going to get; this is what we are going to do." That is the process the Commissioner has set in train—to find out what they want and how to deliver it. The reality is that the current process is not a modern means of communication. To give people a brochure is a pretty dated way of communicating. I think there is a recognition that different generations will communicate in different ways.

The Hon. DANIEL MOOKHEY: Regardless of whether or not this victim would want this, from the perspective of those who apply the classification system do you think a requirement to provide prior notification of a reclassification from A to B level would be unduly onerous on the system, given the SORC?

Dr PAGET: No, given the numbers we are talking about it would not be.

Mr DAVID SHOEBRIDGE: Would you tell the Committee about the meeting called by the Commissioner that you attended when there was an exchange between the Commissioner and the victims about what has gone on?

Dr PAGET: I have documented in the report what the outcomes were. Essentially, as I have indicated before, the expressions from people in that meeting were quite diverse. Some wanted to minimise their dealings with the department totally; others expressed views about the dangers of being vengeful and how that was self-destructive; and others expressed contrary views about what sort of classification lifers should enjoy over the totality of their sentences. There was quite a range of views expressed by that group. The clear issue I got out of it is that whatever you do, it has got to be done in a way which generates or sends a message out that victims' pain and suffering is recognised, they are respected and that needs to be expressed in the way in which communication is carried out.

Mr DAVID SHOEBRIDGE: Some victims will not want to hear about the prisoners or the offenders again; they have a different way of coping with it than engaging with the process. Some victims want to have a deep engagement with the process and want to be consulted. If we just set up a hard and fast rule we may well not be doing at least one class of victims justice.

Dr PAGET: I would agree with that. I think what the crying need and the research all indicate is that what is required is information and to be able to get that to them in a comprehensive and timely way.

Mr DAVID SHOEBRIDGE: Is one of the ways that could be done to empower victims' services to engage with the victims, find out what they need, and basically give them a case officer so as they can tailor the information and the way the information is delivered to the various victims?

Dr PAGET: I think I would agree with the general proposition. I am just mindful of the 1,200 registered victims and if we are talking about case managing 1,200, I am not sure how that would work.

Mr DAVID SHOEBRIDGE: What about for the lifers which is probably less than 100?

Dr PAGET: Again, I think as part of the communication process you would be trying to assess how they want to be engaged with the department. Some will say, "Leave me alone. I don't want to know you."

The Hon. DANIEL MOOKHEY: The point is the victims registered could be adapted in some form to provide a bit of a record or, at least, an opportunity for them to not just indicate a desire to be contacted but also the form of communication they would like?

Dr PAGET: I think that is fine. One of the agreements was that the Commissioner and the victims would meet twice a year in a forum to pursue those sorts of issues.

Mr DAVID SHOEBRIDGE: The Committee has received two submissions from victims groups—the Homicide Victims' Support Group and VOCAL—both of which say that there is obviously a role for privileges, and for the handing out and withdrawal of privileges in managing a prison population, and that includes for lifers, and it is essential. The both tend to also say that life prisoners should have restricted access to rehabilitation programs because they are never going to be released and, therefore, what is the purpose of rehabilitation. Do you have any view about that?

Dr PAGET: I think the issue becomes coloured a bit when you talk about rehabilitation programs. There will be some inmates who will require access to programs as part of their management throughout their sentence. For instance, if there is an anger management issue it is obviously not in the interests of staff that should go unaddressed so they will need access to programs of some form, given what the objective process should identify as their need.

The Hon. DANIEL MOOKHEY: Is that a rehabilitation program?

Mr DAVID SHOEBRIDGE: Can he finish?

Dr PAGET: There will be a series of programs. It gets a bit lost in translation, as you like, when you raise the issue that they are never going to get released so what is the point? The point is if they are going to be in prison for their natural life they are going to need access to programs for, in fact, the staff to be able to manage them successfully. There is also the issue that there are things like work that they should be doing, and work brings with it a requirement to engage in certain programs or training.

Mr DAVID SHOEBRIDGE: Beyond just the management of the prison system—so providing rehabilitation to make the prisoners more compliant and able to be managed—is there some kind of moral obligation or higher obligation we have to actually seek to rehabilitate prisoners, whether they are life, or for a term?

Dr PAGET: I think the answer to that is that most jurisdictions that give effect to United Nations covenants and treaties and will agree with that proposition that regardless they should have access to development going to continue throughout that period. Clearly it is very difficult because some of these people will be regarded by the community as the most least deserving of everybody, but they have to be managed in the prison system. To take your point about development, if you take the notion that development continues until you are in the grave then clearly I think there is scope for them to have access to a range of programs. Again, we have an objective process to determine what programs are needed and what ones are not. If we are going to keep this classification system objective rather than subjective let the professionals get on and find out what programs they need.

Mr DAVID SHOEBRIDGE: For how long were you the inspector?

Dr PAGET: Two years.

Mr DAVID SHOEBRIDGE: Before becoming the inspector what engagement had you had with the prison system?

Dr PAGET: I spent 2003 to 2007 as the Director of the Alexander Maconochie Centre in Canberra. I spent the previous six years as the Chief Executive Officer of the Department of Corrections in South Australia.

Mr DAVID SHOEBRIDGE: If we are to make decisions about classifications and the way prisoners are classified do you think it is important that we go into prisons and look at what the day-to-life of a prisoner is? Would that be useful?

Dr PAGET: I would not discourage anybody from not going into any prison at the moment. I think given the circumstances of the declining quality of life in New South Wales prisons, I think that would be a very good suggestion to go and experience that and have a look at how classification, how overcrowding is affecting the issues that this Committee is looking at.

Mr DAVID SHOEBRIDGE: Howard Brown from VOCAL states, "Most victims of crime have no concept as to what is involved when a prisoner is incarcerated" and then he says, "Might I say, however, I feel that the department has been quite remiss in not publicising what the life of a prisoner is really like and such publicity may dispel some of the myths around incarceration." Do you think if more people understood what the actual reality of prison life was this sort of inflated argument about privileges and luxury would be largely resolved?

Dr PAGET: I think there is no doubt, and there is research to back it up, that where there is information, experience and understanding people are far less punitive in their approaches. You get it when the

courts put information out in the community and invite model sentencing from members of the community, and they tend to turn out to be less punitive than the judges. There is plenty of research around to back up that proposition.

The Hon. DANIEL MOOKHEY: I ask you about the flipside of the current proposition, which is that the purpose of classification is risk management and not punitive. Have you any evidence from any other jurisdiction that demonstrates that classification systems are effective when they are used for punishment?

Dr PAGET: When you say "effective", it depends of course on the outcome you are seeking, but the answer to that is no, I am not. I cannot think of anyone who has a successful system if a classification system is based on punishment.

The Hon. DANIEL MOOKHEY: Therefore, your view is that, even if the Committee had some desire to reorganise the system on that basis, it would not be effective as a tool of punishment.

Dr PAGET: Absolutely not. That would fly in the face of having a principle-based system.

Mr DAVID SHOEBRIDGE: The benefit of a principle-based system that prisoners know what will be dealt with objectively is that it encourages compliance by the prisoners. Is that right—or one of the objectives?

Dr PAGET: The objectivity is a system should go some way to producing consistency and fairness. They are the key issues. I mention in the report the work that Alison Liebling from the University of Cambridge has done on the measurement of the quality of prison life. The key issue there are in the regime dimensions is fairness. Those things are shared not only by prisoners but by prison staff as well. They actually value the same things.

Mr DAVID SHOEBRIDGE: When 12 prisoners got a letter from the Commissioner saying, "Your classification is been upgraded, but it has got nothing to do with your behaviour and it has got nothing to do with what you have done", that almost flies in the face of fairness, does it not?

Dr PAGET: Well, I have said that and I will stand by it. I think it is fundamentally unfair. It is unfair to them, and this is not an advocacy for any particular inmate. But we are trying to get an objective system and that is not what happened. Not only that, the remainder of the inmate body is smart enough to figure out that if that can happen to this small cohort, how much integrity is there in this system, and how might that be applied to other cohorts? You actually do not need that when you have system that is under immense strain right now. You do not need to add to the volatility by bringing in unfairness of that order.

The Hon. DANIEL MOOKHEY: Your view is, is it, that in the taxonomy you put forward on page 10 between security control and justice, your view is that injustice disturbs control.

Dr PAGET: I am sorry?

The Hon. DANIEL MOOKHEY: Injustice makes control harder.

Dr PAGET: Absolutely. That is what Lord Woolf was saying: You have to balance those three items if you are going to have a stable system. If one of those three get out of balance, you do not have a stable prison system.

Mr DAVID SHOEBRIDGE: Dr Paget, there is often discussion about prisoners' privileges and the granting of privileges or the removal of privileges. When people hear the term "privileges", they think of something kind of grand. Could you explain to the Committee what the system means when it talks about privileges?

Dr PAGET: It will not surprise you that a General Manager has very limited scope to provide privileges. In the case at hand we had the newspapers talking about a cushy life and privileges, and of course not with a shred of evidence. But the general managers have very little they can do to ameliorate the regime so there will be questions like buy-ups and there will be questions about what can be kept in the cell and what cannot—you know, televisions and additional items—and what can be purchased.

Prison general managers try very hard to have those sorts of schemes in recognition that it is all very well to have negative consequences or sanctions, but you have to balance that with positive reinforcement. There has to be something out there to encourage the sort of behaviours you need. But the options available to a general manager are very, very limited. Of course, in this jurisdiction and in others—you will probably see it again in one jurisdiction at least this year—all hell will break loose over the Christmas menu and all it will be is that some inmate chef is using colourful language to describe a pretty ordinary meal. It will happen somewhere in Australia this year.

Mr DAVID SHOEBRIDGE: I do not mean this in a derogatory way, but you glossed over or said, "Privileges include things like": What are we talking about? Are we talking about access to a television or access to some chips at buy-up? What are we talking about?

Dr PAGET: Those sorts of things. It is very limited: It might be hours out of cell; it might be the amount of access they can get to the gym or other limited recreational opportunities.

The Hon. DANIEL MOOKHEY: Can I just ask you about access to those privileges? To what extent is that mediated through the classification system? I am looking at the information you provided on pages seven and eight, Category AA to Category C3, and that does not make any allusions to access to any of those privileges. Is it because it is just omitted, or is because the classification system is not the system that predominantly mediates people's access to those privileges?

Dr PAGET: Well, it is not. The judge made that point. It has nothing to do it. These are internal management issues within a prison and the structure of the prison and the nature of it will determine what is available.

The Hon. DANIEL MOOKHEY: The desired form somehow, to withdraw or otherwise award privileges to a prison, does not necessarily require a reclassification.

Dr PAGET: No.

Mr DAVID SHOEBRIDGE: It would be very heavy-handed.

The Hon. DANIEL MOOKHEY: Mixing the two would confuse the debate.

Dr PAGET: I am sorry?

The Hon. DANIEL MOOKHEY: It is essentially the point my colleague just made, which is: If you were to use the classification process to mediate privileges, that would be a very heavy-handed response.

Dr PAGET: I think that one is at the strategic or the system level, and one is at the institutional level.

The Hon. DANIEL MOOKHEY: And the two are often confused?

Dr PAGET: Well, probably. Well, clearly. I mean, that is what happened in July when you had the two issues that were totally conflated. Again, it did not have to be that way if the information had been available.

Mr DAVID SHOEBRIDGE: Can you think of a way that politics can get above the sort of vengeful cycle that we have with prisons and communicate the reality of prison life to the broader public?

Dr PAGET: Politics getting above the vengeful: That is very difficult in Australia. It is not just New South Wales than faces this problem. You see it all around the country. The only instructive issue I can point to is, again, how long it will last. You have the Secretary of State for Justice in the United Kingdom going public with the moral principles which will underpin the penal policy there. Whether or not they will stand the heat of Parliament, that is a different question. If you look at what is happening in America, bankruptcy focuses the minds of governments on penal policy in a really nice way. It comes down to the point you are going to have another 300 cells or you can have 200 hospital beds, but you cannot have both. What do you want?

If you look at the leading lights in America now on decarceration, of all places it is coming out of Texas—the Texas Public Policy Institute and other States that have suddenly found they do not have the cash to indulge in this incarceration binge. The Americans of all people are winding back in some States. There are

plenty of records about the number of prisons that are closing in America and the reinvestment of such funds into other forms of control.

Mr DAVID SHOEBRIDGE: Dr Paget, do you know of any evidence that increasing prison sentences actually makes the community safer? I am happy for you to take that on notice.

Dr PAGET: There is a limit of information about incarceration and what impact it has on public safety. Within that, of course, there is the issue of more sentences and higher sentencing and longer sentences. It is really a vexed question, but the point is that it is a small impact. Somebody has written, I think, that it is like blowing your nose with $50 bills. It is effective, but a very expensive way of ensuring public safety.

Mr DAVID SHOEBRIDGE: There is that 2012 Bureau of Crime Statistics and Research [BOCSAR] report that suggests that arresting criminals and putting them in jail for short period of time has some modest but measurable impact on crime, but the extension of sentences has no measurable impact on crime. Are you aware of that 2012 report from BOCSAR?

Dr PAGET: Off the top of my head I am not, but I probably could recall if I saw it again. But so many people across the world have written about exactly that problem and tried to ascertain what impact imprisonment has on crime. You will get a range of figures, but all of them are quite small.

The Hon. DAVID CLARKE: Are you suggesting the upgrading of the classification of 12 inmates back in July was influenced by vengeance?

Dr PAGET: No. What I am saying is that if you looked at what was in the paper and the events that were in the public domain and what was written, it was about community concern. That was an issue, community concern. What were the various elements of that community concern were not really expressed. But there would be a whole range of issues with which people were concerned and many of those could have been allayed, I think, if there had been proper information available that was both comprehensive and timely. That was not the case. And it is not new. I mean, for heaven's sake, this happens regularly. It has happened just recently in the Northern Territory and the Commissioner has left.

The Hon. DAVID CLARKE: Do you suggest that the issue of vengeance contributed to that decision being made?

Dr PAGET: No, I would not make that judgement but I would make the point that there is clearly an association between what some parts of the media can promote by way of a punitive attitude in the community when what the community really needs is accurate information. The judge made the point about all the disinformation and misinformation that was out there.

The Hon. DAVID CLARKE: But the Minister had the information, did he not?

Dr PAGET: I wrote about the Commissioner's decision.

CHAIR: Unfortunately, time has expired for questions. Thank you for appearing today. You will have 21 days to respond to any questions taken on notice. Additional questions that Committee members may have will also be forwarded to you.

(The witness withdrew)

(Short adjournment)

BRETT COLLINS, Coordinator, Justice Action,

EMMA GAMBINO, Assistant Coordinator, Justice Action,

GARRY PAGE, Private Citizen, and

JOHN KILLICK, Private Citizen, affirmed and examined:

ROBERT VEEN, Private Citizen, sworn and examined:

CHAIR: Before we commence I remind witnesses and everyone here today that the Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of Parliamentary privilege. I therefore request that witnesses focus on the issues raised by the inquiry's terms of reference and avoid naming individuals unnecessarily. If at any stage someone wishes to ask that the Committee consider going in camera to discuss anything that could be confidential please do so before discussing any of that information.

Mr COLLINS: That will not be necessary, Madam Chair.

CHAIR: Would you like to make an opening statement before we commence with questions?

Mr COLLINS: Yes, please, Madam Chair. If I could first introduce our presentation for maybe two or three minutes and then if each of the ex-prisoner witnesses could speak for two minutes to present and after that we will take questions, if that is acceptable.

CHAIR: That will be fine for the Committee.

Mr COLLINS: First of all, I acknowledge the traditional owners of the land and also thank the Committee for the opportunity to present on behalf of those people who are affected by the laws, the convicts themselves. We are proud to speak as the convicts. I will introduce you rapidly to Robert Veen, who is an Aboriginal person who served 42 years in jail in two consecutive life sentences. Mr Garry Page, described as an aggressive psychopath, served a life sentence after voluntarily submitting to brain surgery. You will see he has two indentations on his head where he voluntarily submitted to brain surgery before he then received a life sentence. Mr John Killick spent many decades in the highest security prisons since the 1960s in four States with lifers before and after his helicopter escape from Silverwater prison. I am an ex-prisoner. I spent the 1970s in prison, 10 years of a 17-year sentence, and have been working since that time. It was then about at the time of the Nagle royal commission. I have been serving the prisoner community since that period.

The first thing we would like to say is sorry—sorry for the harm that the convicts have done and for the prisoners in the jails and personally for the harm that we have done to victims. We have strived to make amends and we have learnt new skills, and we acknowledge the harm that we have done in the past. We would also like to say thanks—thanks to the victims because the victims groups have shown a lack of vindictiveness in their presentation before the Committee. We acknowledge that and we think that is remarkable and refreshing. We see it as an opportunity to find some common ground not just around the lifers committee but also around the increasing use of imprisonment despite the chaos in the prison system at the moment.

This is also in the face of the reduced victims compensation payments since 2013. We all know that the victims compensation payments were moved from $50,000 to $15,000, so victims certainly have not had it easy. You will find at the back of our document that we presented and that I think has been distributed a number of recommendations at page 8. The recommendations really focus on trying to bring some changes in that are real, because we are concerned, as the prisoner movement, that we are used in this process. The media plays with us and also plays with the general community. Here is a great example for that to be seen. So we are looking for privacy as one of our key recommendations. That is privacy both for the victims and for ourselves during the period of our sentence.

We also bring a proposal. It is the proposal which was given to the Committee on Friday and it is a joint proposal between the victims group called Enough is Enough and ourselves. It is called the online counselling proposal, which was delivered to Corrective Services NSW in July 2014, last year. We have also given to the Committee an email string that indicates the negotiations that occurred after that meeting and the

attempts that we and Enough is Enough have made to try to bring about some reality for change for prisoners and also for victims to offer online services, which is an efficient and useful way of bringing reconciliation and learning to people inside prisons and giving victims the chance to be involved with the prisoner during the period of their sentence from the time of the beginning of the sentence.

The proposal has been developed again since that stage, but we have given this to you to indicate what was proposed back in July of last year. What we ask is that we should get support from the Committee for support for online services as a cheap, effective way of delivering rehabilitation services in the prisons from the time at which the prisoner is first arrested. That is a very carefully drafted and acknowledged worldwide statement for online counselling. We also propose that we look for support from the Committee pretty much to install at no cost the internet in prisons. With the assistance of the union movement we have been told we will get it. Then we will supply the services, working with Enough is Enough, for online counselling. On that basis I would like to introduce the other people—first, Mr John Killick.

Mr KILLICK: I think I could be of assistance to the Committee because I have spent quite a period of time in prison in four States, including the worst ones—Boggo Road, Pentridge, Yatala and a lot here, Goulburn et cetera. I learned a lot about the different classification systems the different States have—for instance, Queensland do not have medium security anymore; they only have minimum and maximum. I saw the effect on lifers that different classifications can have. I remember in 1966, when I was at Pentridge, they used to hand out very severe sentences—this guy got 40 years. His name was Major and he killed his mother. He walked in and said, "Well, when I walk out I will walk straight across the street and get my pension". He knew he would do 40 years and he was 25. His attitude was that he accepted what he was going to do and knew he would get out, so he took it from there. For another guy the judge had recommended that he never be released. He was troublesome throughout the whole system and ended up shooting a prison officer—he did not kill him but shot him—and was always trying to escape. I have seen what can happen to people in different States when they have no hope; I have seen the effect that can have on people.

I am a perfect example: I have said often that I give credit to the New South Wales system. A lot of people are put through the Department of Corrective Services' Violence Prevention Program. Not enough people get through it, but it is a very intense program working one on one with psychs and other prisoners. Mr Veen did it with me. The thing is it is effective and it makes you realise—people like me who did not realise it—that you have victims. I always thought that I did not have victims because I only robbed a bank because I always bluffed and even the judge said that. But you realise you have 100 victims when you rob a bank; not just the people in there but their families. Some people react okay but for other people it could ruin their lives. I have accepted these things and I hope I can answer any questions you would like to put to me.

Mr VEEN: I have served 42 years in jail on separate occasions. Like Mr Killick said about victim empathy, I have learned about that. You do not know how many people you hurt, especially with my crime. The other things I would like to talk about are the problems in jail with the lifers and long-term inmates and getting out, being set free. It should be a month to be notified and then work on the basis of talking about what progress you want to do outside and everything else like that. Especially with me, after doing 32 years on this sentence, I had no clue, no nothing whatsoever. I was sort of lost and just chucked out of the prison.

Mr PAGE: I have served a life sentence. I would like to congratulate my three friends here; we have known each other since 1977 and we used to play squash together. When the judge sentenced me to the maximum sentence at the Supreme Court on 15 December 1976 he said words to this effect: "After what I have learned about this man's criminal and mental history, I would not want it on my conscience that I was responsible for letting him loose on the streets. So I see no alternative but to sentence him to life imprisonment and then let the jail authorities have that worry, which is repeated detention." One of the jail psychiatrists, Dr Arno Reid, in a Supreme Court document at paragraph 24 said: "He is described as a confirmed psychopath most unlikely to respond to any available type of psychiatric treatment. I fear, therefore, that if he is released he will commit similar offences again."

Paragraph 76 says: "I cannot believe the change in this man since I saw him last"—this is after 11 years in maximum security. "He has embraced the philosophies of Alcoholics Anonymous and with his determination to remain sober I think we should give him a chance." I spent many, many years in prison thinking I was never going to get out. I used to say to meself, "Listen to these AA men coming in here carrying their message. Listen to these weirdos coming in here and telling me their problems. I am never getting out." That is how I felt but I got out and it is wonderful to be with friends I have known for 40 years.

CHAIR: We have limited time so to ensure all members have an equal opportunity to ask questions we will monitor timing and commence with questions from the Opposition.

The Hon. DANIEL MOOKHEY: I thank you all for your appearance today. You make the point in your submission that your view is the classification system essentially has two purposes: one is obviously control during the life of the prisoner, and two is that exercising the control function affects a prisoner's expectation of release. It is essentially a proxy signal for whether or not a prisoner is entitled to a pathway towards release. Is that your point?

Mr COLLINS: Yes, it is to a large extent. You work hard and you also expect every 12 months to be reassessed and to have your classification reviewed.

The Hon. DANIEL MOOKHEY: So it is a mark of progress?

Mr COLLINS: It is; that is right. It works well because it means that if you breach the understanding you have with the classification committee, or SORC, during those 12 months then your management plan effectively is not effective so you can have your progress reversed.

The Hon. DANIEL MOOKHEY: Is it your view that progress up and down the classification system affects a prisoner's willingness to participate in rehabilitation programs?

Mr COLLINS: Absolutely, there is no question about that. For example, the violent offenders treatment program we heard about earlier is one of the programs that is required before you are released and the parole board will allow you out. That is one of the reasons that we suggest that the online services program is much better. For example, with the sex offenders program, they do not allow you to do the program until the last stages almost before you are released. So if you are serving a long sentence it may be 10 years before you learn any new skills about behaviour. When we questioned Corrective Services about why they adopted that approach they said, "You might do the program early but afterwards you can revert to bad behaviour because we cannot maintain the program during the whole period of the sentence". So that is why the online services program is really good—because from the time you first come in you can set up an arrangement with a service outside. That can be maintained through the period of your sentence, when you are dealing with your problems; and then afterwards you can maintain it when you are released.

The Hon. DANIEL MOOKHEY: Insofar as the classification system is run with objectivity and integrity, is it your view that that is more likely to encourage prisoners to, firstly, comply with prison authority and, secondly, accept their wrongdoing and the consequences of their actions towards victims and engage in the aspect of contrition, which we also recognise is an important part of our justice system?

Mr COLLINS: Yes, to an extent. To be quite direct and real about this, quite often we are not happy with the decisions of the classification committees. Quite often they are quite perfunctory. So quite often the reports prepared beforehand are prepared really without the input of the prisoner. Maybe my colleagues here have some comments to make about their experience with classification committees.

Mr KILLICK: A lot of people are recommended for certain classifications by boards such as the Serious Offenders Review Council. But it eventually comes down to one person, and with serious offenders the commissioner quite often will override boards such as SORC. They do feel frustrated in situations like that. Overall I have seen that people who are given access to programs and who are able to get along and do them are quite successful. Most of them come through pretty well, if they are given that opportunity.

The Hon. ADAM SEARLE: Mr Collins, what changes to the classification or reclassification process do you recommend?

Mr COLLINS: I would recommend there be a stated document before you begin classification so that you actually know the options that are available to you. You need to have a management plan which is prepared at the time that you are first arrested. It could even be done at the time when you are remand. You can then start to prepare yourself to deal with your problems, and that management plan then should be continued right through until parole. It should be documented and you should actually see it. You should be able to feed into it and to challenge it. The benefit of that is that it is no longer arbitrary. So when it comes to the time of parole they cannot say to you that you did not meet or that you attempted to meet what the parole board expected and

so afterwards feel disappointed. It not being arbitrary is really an essential part of this—to have things presented in a standard sort of way I think is essential.

The Hon. ADAM SEARLE: What do you see as the appropriate role for victims of crime in that process?

Mr COLLINS: I think the involvement of victims in that area is not helpful at all. I think the process really is one which is internal. Otherwise you really have what can quite often be an antagonistic response from the victim. In some situations the victims are quite happy to be involved in a positive way with the offender, because quite often the victim and the offender have some relationship with one another. So if there is an opportunity to do that then that should be grasped. In preparation for this inquiry, we made contact with the 12 prisoners who are of particular interest to the life sentence inquiry. Nine of those 12 have come back to us and said that they actually did not have the chance to make their apologies and to say sorry. They said, "Surely the victims understood that we were actually sorry about what we did. We feel badly about the act we did." But it was not openly stated.

There was no opportunity to have that form of restorative justice. So if the victim is ready for that then I think it is an entirely good thing that the offender be given the opportunity. We all acknowledge that we have done harm, and I think it is important that we can do that without feeling a sense of continual shame. We should be able to also move on and be exonerated after the end of our sentences.

The Hon. ADAM SEARLE: Should the commissioner retain the capacity to depart from SORC decisions?

Mr COLLINS: I think the commissioner should have a fair amount of power in these situations, and then there is obviously the legal decision. But it is another matter entirely for the Minister to have the power to override the commissioner. That is really problematic. The concern we have there is that, in this very situation with Garforth, we had immense pressure from the media with 30,000 signatories on a petition in 24 hours. It shocked everyone. Obviously it had been carefully created. It created immense tension for the Minister. The Minister was in a position to actually dictate to the commissioner, and did so. We think that should not have occurred.

The victim and the offender should have the legal right to privacy. So if the media were to report on something that had happened inside the jail then that would be seen as a breach of the law—in the same way as, for example, breaching a Family Court hearing or breaching a Children's Court hearing. There is an entitlement to privacy and the delicacy of the situation is not dissimilar to that which applies to those other courts. The victim's right, and those of the offender, to privacy after the sentence has been completed should be enforced by law.

Mr DAVID SHOEBRIDGE: I thank you all for coming here to give evidence today. My first question is to Mr Veen, Mr Killick or Mr Page. In your time in prison, were you part of a review of your classification where you engaged with the review and had a recommendation from either the Serious Offenders Review Board or the Serious Offenders Review Council [SORC], and that recommendation was for the lowering of a classification or some other beneficial outcome, which was then be vetoed by the commissioner?

Mr KILLICK: That describes perfectly the example of what happened to me. My release date was 3 March 2013, after a 14-year non-parole period. SORC recommended parole, and also the intention to grant parole by the parole authority, but then the commissioner stepped forward and opposed it. He knocked it back and I had to do another 12 months, because he wanted me to do external leave. He then said, "I can't let you out until you do weekend leave," but he would not give me weekend leave because I faced extradition to Queensland. So I found I was in a terrible position where I could not get parole because I could not get weekend leave and I could not get weekend leave because I had an extradition order.

Mr DAVID SHOEBRIDGE: So it was a catch-22 situation?

Mr KILLICK: Yes, eventually the parole authority said, "Either he needs to get some external leave or we're going to let him out." So that is what happened. But it was a pretty dicey thing to happen.

Mr DAVID SHOEBRIDGE: Mr Page, did you see examples of this?

Mr PAGE: I have a good one—my own situation. When I was serving a life sentence term you had to have a seven-year review. I never got a seven-year review because of politics. I complained to the Ombudsman Dr Brian Jinks, the Deputy Ombudsman, came to see me on several occasions. He sent me a draft report—an interim report. It said words to the effect that in matters as important as prisoner classification not only should justice be done but also it should be seen to be done. He said, "I am of the view that there was some procedural injustice done to Mr Page."

I made a mistake—I went to Graham Gambie at the *Sun Herald*. He wrote an article entitled "Now it's life in jail on the 'never never' plan", which quoted a "prisoner's bizarre claim" that if money can be paid to get out of prison then also someone can pay to keep you in. That happened to me. I know I cannot mention any names so I will not. The Ombudsman came back and saw me. He said, "You're not going to get that final report tabled in Parliament. We're going to start another draft report on you next year." It took more time, and I had a psychiatric history in there. It was not a nice situation. They just kept sweeping it under the rug and putting me on the bottom of the pile all the time.

Mr DAVID SHOEBRIDGE: How does that impact itself in terms of prisoner behaviour when there is an objective process gone through which is then overturned by a subjective decision?

Mr KILLICK: It makes you disillusioned, and you get depressed. My son and his wife had actually come home from China, and then they had to go back. He had actually thrown in his job. What I have always felt, and most people I think would logically agree, particularly with serious offenders when you have an organisation such as SORC which is dealing with you for 15 or 20 years they get to know you. They know everything about you. They have all the reports. Then somebody like the commissioner comes along, and I know he has a lot of pressure on him from the media and everybody else, and overrides a lot of reasonable people. It is one arbitrary decision overriding all these people who have dealt with you for 15 to 20 years. That can disillusion you.

Mr DAVID SHOEBRIDGE: Have you seen that have an impact on other inmates and on their behaviour?

Mr KILLICK: I have.

Mr DAVID SHOEBRIDGE: Can you give an example?

Mr KILLICK: Well, there are people now that are waiting to get out and they can't get out because the same thing is happening: they have been recommended to get out and they are not, they are being held back for external leave and they can't get the external leave. Mr Veen is an example, he was 12 years past his parole period and it is very frustrating.

Mr DAVID SHOEBRIDGE: I understand it is frustrating but does that impact on the way the prisons run? Does it make it more difficult to control inmates in those circumstances? Does it have an impact?

Mr KILLICK: I think self-preservation—if a person is rehabilitated to the extent he is ready to step out into society he has to be able to accept it and prove he can handle setbacks, if he can't handle setbacks he is not ready to go out. That is a gauge, the way you handle it and accept it. Not everybody handles these things well. This is where it is difficult for people making the decisions to make the right decision. Because my experience in the old days was when you got recommendations they came through. You worked towards something, you knew you were going to get it and you worked towards it and you got it. It always happened but now it can be a lottery. It is causing a lot of stress in the system.

Mr COLLINS: To be fair, I earlier said that I felt the commissioner should have more power. Listening to that and decades and decades of work in the area, of course people are entitled to have something that had been agreed to by the organisation—if it is the Serious Offenders Review Council [SORC]—and have an expectation for that to be carried through. What Mr Killick said a moment ago is what a lot of prisoners are told: you have to cop what you are given and if you cannot cop it how can you put up with other frustrations? You can almost expect to be treated unfairly and that expectation you have to build in to the way you are dealt your rights as a prisoner. They are almost not there.

Mr KILLICK: It is why these programs are important: like violence prevention, anger management, even gambling.

Mr DAVID SHOEBRIDGE: You almost need it to deal with the prison system?

Mr KILLICK: That's right. Some people cannot contain their anger and they need these programs.

Mr COLLINS: The program is only running for a short time as well, that is the other thing. It normally runs for a few hours a week.

Mr KILLICK: A place like the violent offenders therapeutic program [VATP] is professional and you are put in a wing. We were put in a wing which is 30 prisoners doing it and we didn't associate with the other prisoners and we worked with the psyches and officers and everybody was good at it and the majority, 80 per cent, were released into the community.

CHAIR: Time has expired for questions. What was the acronym?

Mr KILLICK: Violent offender's therapeutic program.

The Hon. DAVID CLARKE: Mr Collins, in your conclusion to your report, page 30, you state:

> Whether a prisoner is serving a life sentence or not every prisoner is entitled to the prospect of release.

Are you saying that you can think of no cases where a life sentence should actually mean a life sentence in practice, without the prospect of release?

Mr COLLINS: Absolutely. Mr Clarke, in my experience, and I have travelled internationally as a criminologist as well, and speaking to people for example a psychiatrist who is in charge of the highest security psychiatric hospital in the United Kingdom and he said, "There are no bad people, I can actually communicate with everyone." That is my experience as well. The Justice Action [JA] mentoring presentation where you have somebody beside you who has a similar experience to your own and wants you to survive and gives you the benefit of their friendship and support, that is a wonderful thing. You cannot ask for more than that. It may not be the parole officer, in fact it is often not the parole officer, somebody beside the person as a mentor and friend.

The Hon. DAVID CLARKE: You have spoken about victim impact statements, do you believe they should be abolished?

Mr COLLINS: I think it is entirely fair that the victims say the effect it has on them. Quite often an offender never hears, they only see the evidence presented in court as part of proving the case. To hear in a personal way and to understand it themselves and later at some stage even to try to make amends in some sort of way, that is a useful process and we think that is entirely good.

The Hon. DAVID CLARKE: You say on page five:

> The notion of an eye for an eye represents a restraint on revenge or retaliation.

Do you believe that the punishment should fit the crime?

Mr COLLINS: I think crime is a unique thing, it depends on motive and a whole range of other things as well. Of course how can you look at a man like Bobby Veen who is a member of the stolen generation, a person who is a child prostitute at the age of 20, how can you talk about his double life sentence as not having some shame for all of us? How do you behave in the face of that?

The Hon. DAVID CLARKE: In your conclusion you say:

> Once the trial is over and the offender has been sentenced the offender should have the right to serve the court's sentence without interference from the media, the victim or politicians.

Do you mean that there should be a court prohibition on referring to the offender and his crimes? There should be a court prohibition on Ivan Milat, for instance?

Mr COLLINS: Ivan Milat is a good case in point. He at one stage had swallowed some razor blades that had opened up in his stomach. Someone got access to the x-ray of the stomach and presented it on the front

page of the *Sunday Herald* showing his stomach. How demeaning to us as a community to feel there is a benefit to see what Ivan Milat has done?

The Hon. DAVID CLARKE: Total prohibition on any reference to Ivan Milat?

Mr COLLINS: The entitlement to privacy in the same way as the entitlement to privacy in a family court or a Children's Court is able to be exploited and such a stench di varia. When politicians cannot resist the pressure of a 30,000 person petition, to then break the law and not to do it in accordance with what the victims' want. The victims do not support the action of the Minister. That is the thing we should protect ourselves against. If it means privacy, yes.

CHAIR: I have a question for Mr Killick. You mentioned you served in a number of prisons around Australia

Mr KILLICK: Yes.

CHAIR: And have experienced different levels of classifications at the various institutions. You mentioned Queensland has two classifications, maximum and minimum: do you think the New South Wales system is complex or it works very well?

Mr KILLICK: I think the overcrowding is a problem with New South Wales. When they do a case management plan if they can put it into effect it works.

CHAIR: I am more interested in the classification levels. I understand that Queensland has two whereas New South Wales has three and various other levels?

Mr KILLICK: I went up there for six months last year and it is a mess up there because you only have maximum and minimum and so many people are in between. You will find that most of them will stay in maximum. So it does not work.

Mr DAVID SHOEBRIDGE: You think there is benefit in having the grades?

Mr KILLICK: Definitely.

Mr DAVID SHOEBRIDGE: Even if complex?

Mr KILLICK: It's complex but it didn't used to be, medium was medium and medium security was different to maximum, but they are encroaching into each other now.

CHAIR: Some of the evidence we had this morning is that there is no difference between A and B.

Mr KILLICK: I would say that is simply because of the overcrowding. They have nowhere to put them.

Mr COLLINS: We really talk about social interactions as well between maximum and medium security.

CHAIR: There is a slight difference between the two?

Mr COLLINS: I was talking more in terms of community interactions and the prisoner community itself. That is significant. If you are able to be with someone with whom you have a supportive relationship, that is a good thing and to build up some skills is a good thing. The idea of cutting out cross security of compartments is an important one. At one stage you could move around the jail freely, these days it is not the case; people are locked down to 30 and 60 people pods. The ability to transfer and move and use the strength of the prisoner community to support each other and support itself is important. Justice Action, we come here to present on behalf of prisoners and convicts, but when it comes in using us as part of the support group for after care or management inside, we do not get access. The new Minister, David Elliott, will not even talk with us, he won't have a meeting with us.

For the past 30 years we have always had a meeting with the Minister within a few days of his being appointed. In this case the Minister has not even spoken with us. We want to offer goodwill to ensure that people are not returned to jail; we want them out and supported. We do not want crime. We are the community most affected. We are working with Enough is Enough on a serious online service proposal capable of being carried out, but we have had nothing.

CHAIR: Unfortunately the time for questions has expired. Any additional questions members might have will be sent to you by the Committee secretariat and you will have 21 days in which to respond. Thank you for appearing today and giving evidence.

(The witnesses withdrew.)

WILLIAM HUTCHINS, Solicitor in Charge, Prisoners Legal Service, Legal Aid NSW, sworn and examined:

CHAIR: Would you like to make an opening statement?

Mr HUTCHINS: My views on the five questions posed in the terms of reference for the inquiry are contained in the submission lodged by Legal Aid. In summary, lifers are sentenced to jail as punishment, not for punishment, and they should be given access to programs and activities. I am the solicitor in charge of the section of Legal Aid known as the Prisoners Legal Service, which is commonly referred to as "PLS". PLS has been in existence since 1986 and provides legal advice and assistance to inmates. Its main role is to represent inmates in parole hearings conducted by the NSW State Parole Authority. I have been in charge of the PLS since 1992, and with the exception of prisoners and people who work in Corrective Services, I would probably have the most knowledge about lifers and their security classification and custodial management. In particular, I have worked closely with the second and third categories of inmates to whom this inquiry relates; that is, inmates serving life sentences who are subject to non-release recommendations and those who did not have a specified term set for their life sentence before the introduction of natural-life sentences in 1990.

Following the introduction of natural-life sentences and the abolition of release on licence in January 1990, inmates serving life sentences were given the right to apply to the Supreme Court for the determination of a specified term. PLS represented most of those lifers in their applications to the Supreme Court, including Robert Veen and Garry Page, who have just appeared before the Committee. To my knowledge, there are approximately 250 inmates who are eligible to apply to the Supreme Court. These applications were heard during the 1990s with very few happening after 2000. With a few exceptions, most of those applications for determination were granted. Those inmates have long since been released on parole and have satisfactorily reintegrated into the community. The exceptions to which I have referred are mainly the inmates in the second category to whom this inquiry relates; that is, those who were subject to non-release recommendations when their life sentence was imposed.

There is a total of only 10 offenders to whom that non-release recommendation applies and they were involved in only three offences: the murders of Virginia Morse in the early 1970s, and Anita Cobby and Janine Balding in the late 1980s. In addition to those 10 inmates, there are probably another 10 old lifers who have not made an application for determination of their life sentence or who have had their application refused and need to reapply. That makes a total of about 20 old lifers in custody. Add to that the number of natural lifers in custody who have been given natural-life sentences since 1990, which I understand is 56, there is a total of approximately 76 inmates to whom this inquiry relates; that is, those who satisfy the three categories of prisoners the Committee is considering. That concludes my opening statement. With my experience I hope I can assist the inquiry in answering any questions.

The Hon. DANIEL MOOKHEY: The very brief summary of your submission on page 5 is that you support the classification system in principle as it is currently drafted.

Mr HUTCHINS: Do I support it?

The Hon. DANIEL MOOKHEY: You make the points that you believe the current classification system does not compromise the objectivity of the classification system, the Serious Offenders Review Council [SORC] will act in accordance with regulation, Corrective Services should be reviewing the decision it made, and it should review its communication strategies. I conclude on the basis of that that you do not think the system is in need of massive reform or otherwise.

Mr HUTCHINS: I do not really. I have been working with the classification system since the early 1990s and it has barely changed. That is a total of 25 years. Notwithstanding that it does appear to be complex, having the As, the Bs, the C1s, the C2s and the C3s works well. The biggest problem—and I heard this alluded to in answers given earlier—is the fact that a lot of recommendations are overridden by the commissioner, particularly in relation to serious offenders. I have had recent cases this year where SORC has recommended the progression of a serious offender from B to C1 and the commissioner has rejected it.

That has many ramifications because the commissioner has a set of guidelines for the progression of classification of serious offenders. The guidelines indicate when a B should be given and when a C1, a C2 and a C3 should be given. The guidelines say that it takes five years to progress through C1, C2 and C3. From memory, it could be two years as a C1, two years as a C2 and one year as a C3. A C1 needs to be given to an

offender five years out from when they are eligible for parole. Otherwise they will come up for parole and they will not have progressed to C3. The State Parole Authority and SORC want them to progress to C3 so that they can be exposed to what they call temporary release programs in the community. Temporary release programs are work release, day leave, weekend leave and education leave. Basically they are on leave from jail without a guard. Understandably, the authority and SORC like a serious offender to have had at least six months of temporary leave before they feel that a person is ready for parole.

In the two cases I mentioned that I have had this year, both offenders are eligible for parole in two years. However, the commissioner's rejecting their progression to C1 means that they will not be ready to put up a proper application for parole when they are ready in two years. That is the biggest drawback of the system. I agree that the commissioner should make the final decision on classifications, but SORC is the body on the ground. It is his organisation, it deals with the inmates face to face, and it has visiting committees that meet the inmates, I think, at least twice a year. They talk with the inmates and produce case management plans. I believe that their recommendations should be put into effect by the commissioner unless there is a really good reason not to.

The Hon. DANIEL MOOKHEY: Insofar as you think that the commissioner's discretion should be fettered, do you have a test, or a view as to how one would be designed to achieve that purpose?

Mr HUTCHINS: That is a very hard question to answer. It would have to be along the lines of: "Except in unusual circumstances the recommendation of the Serious Offenders Review Council should be adopted". The commissioner is in a really unusual position. He has the power over when a serious offender progresses through classification. He also has the power to come to the Parole Authority and oppose parole. That happens all the time. The commissioner will come along and oppose parole. Usually the reason for his opposition is that the person has not progressed to C3 and had leave from jail, yet the commissioner is the person who has the power to grant that leave.

Mr DAVID SHOEBRIDGE: Do they not recognise the irony in that in the submissions? What is the commissioner's response when that is pointed out to him?

Mr HUTCHINS: We will submit that there is a conflict. The Parole Authority acknowledges it, but it will usually adjourn it to allow progression to C3. It is only if it gets to the point where it looks obvious that the inmate will never progress to C3, if the commissioner has had two or three opportunities to grant that—

Mr DAVID SHOEBRIDGE: That was Mr Killick's case?

Mr HUTCHINS: Yes; that is one example. Eventually they gave him parole because it became clear that he would never get to C3 because of the apparent reason that there was still a warrant for him in Queensland.

The Hon. DANIEL MOOKHEY: If you do not know the answer to this question, you may take it on notice. Do you have any data on the number of times the commissioner has refused to apply the recommendation of the Serious Offenders Review Council and that has created a problem in the parole process?

Mr HUTCHINS: No, I do not.

The Hon. DANIEL MOOKHEY: Are you aware of anyone collecting that data?

Mr HUTCHINS: The only people who would have that data would be the Serious Offenders Review Council.

Mr DAVID SHOEBRIDGE: We will ask the commissioner this afternoon, perhaps on notice, for the data.

Mr HUTCHINS: I have certainly seen two examples this year, Mr Khan and Mr Skaf.

The Hon. DANIEL MOOKHEY: The thrust of your point is that the Committee should consider the effect of the commissioner's discretion on parole as much as the effect of prison control and prison management.

Mr HUTCHINS: Yes. It is difficult, given the ambit of the inquiry. As I understand it, the inquiry is looking at those who are serving life sentences without any possibility of release. I do not believe that, up to this point in time, the commissioner has ever progressed any of those inmates below the B classification. The reason is that if they progress to C1 it involves the right to move to a less secure jail, such as a prison camp. In a less secure environment there may be the risk of escape if they have a natural life sentence hanging over their heads.

Mr DAVID SHOEBRIDGE: Mr Hutchins, thank you for coming to give evidence today. If the commissioner accepts the recommendation from the Serious Offenders Review Council then we know why the commissioner is making the decision. There are detailed reasons from the Serious Offenders Review Council, supported by advice from the prison authorities. If the commissioner follows that advice, we know why the commissioner is changing or maintaining the classification. When the commissioner refuses to follow the recommendation of the Serious Offenders Review Council, do we know why?

Mr HUTCHINS: Not really. A form is sent to the commissioner from the Serious Offenders Review Council. It is only one page. It says, for example, "It is a recommendation of the Serious Offenders Review Council that this inmate progress to C1 and be transferred to Long Bay Correctional Complex to do the sex offender program." Underneath that there are the words "approved" and "not approved". The commissioner puts a line through the one that does not accord with his decision. Occasionally he will write comments under "not approved". I saw one last year that said, "This inmate is too notorious to progress yet."

Mr DAVID SHOEBRIDGE: Surely one of the bare minimums this Committee should look at is to require the commissioner to give reasons when the commissioner fails to agree with a recommendation of the Serious Offenders Review Council?

Mr HUTCHINS: I agree.

Mr DAVID SHOEBRIDGE: Because, if nothing else, that would give the prisoner and the Serious Offenders Review Council an idea of what they need to do to get the approval in future.

Mr HUTCHINS: I totally agree. I think it would be a good idea that the commissioner give some detailed reasons, not just a short phrase. Sometimes there is no phrase at all, but sometimes there is a phrase written under "not approved".

Mr DAVID SHOEBRIDGE: When you are acting for these clients and they have a recommendation from the Serious Offenders Review Council and the commissioner overrules it with the stroke of a pen, do you communicate with them on that?

Mr HUTCHINS: The difficulty is that we do not get access to the documents without making an application under the Government Information (Public Access) Act.

Mr DAVID SHOEBRIDGE: Really?

Mr HUTCHINS: Yes. They are not freely disseminated. If an inmate complains to us that they had classification review last month and they did not progress when they thought they would, we then make an application under the Government Information (Public Access) Act to obtain a copy of the documents. Then we will see what the recommendation of the Serious Offenders Review Council was and the commissioner's response on that form.

Mr DAVID SHOEBRIDGE: So the commissioner does not even have a standing arrangement with Legal Aid whereby you can request these things without having to go through the Government Information (Public Access) Act process?

Mr HUTCHINS: No.

Mr DAVID SHOEBRIDGE: It forces you to go through the Government Information (Public Access) Act process. Do you find that peculiar?

Mr HUTCHINS: I have never really thought about it.

Mr DAVID SHOEBRIDGE: It seems bloody odd to me. You are Legal Aid. You are part of the Government. You are a government entity. You do this constantly. Surely there should be an administrative arrangement whereby you can say, "I am acting for X. Can you give me the papers?"

Mr HUTCHINS: I agree with you. We do not act for every inmate.

The Hon. DANIEL MOOKHEY: Sorry to interrupt, but how many do you act for?

Mr DAVID SHOEBRIDGE: Can we get the answer about the current arrangement?

Mr HUTCHINS: It would be a good idea. The difficulty is that we have to make a request for information under the Government Information (Public Access) Act, which takes another month.

Mr DAVID SHOEBRIDGE: And requires a $30 cheque.

Mr HUTCHINS: That is usually waived for inmates. It takes about a month to get the documents. Then we consider them. That will take a couple more weeks. There is no appeal process to it. Our only option is to consider whether the commissioner has made an error of law in his decision and to take the matter to the Supreme Court, which is a very expensive and cumbersome exercise. Legal Aid is limited in its ability to take matters to the Supreme Court.

Mr DAVID SHOEBRIDGE: You waste a lot of your time in this administrative mess.

CHAIR: Mr Mookhey had a question about clients.

The Hon. DANIEL MOOKHEY: How many lifers does Legal Aid provide assistance to in the classification process?

Mr HUTCHINS: That is not a question that is able to be answered.

The Hon. DANIEL MOOKHEY: In your experience, do prisoners going through this process tend to have access to legal support?

Mr HUTCHINS: Prisoners are able to ring Legal Aid through an internal phone system in the jail, which is called the common auto dial list [CADL]. There are 16 numbers on it that an inmate can ring and have a free, 10-minute call. One of the numbers is Legal Aid. Another is the Aboriginal Legal Service. I think the Health Care Complaints Commission is another one. There is a whole string of them. When they ring Legal Aid they are transferred to the Prisoners Legal Service. We talk to them briefly. Obviously there is not much left of the 10 minutes. We will then organise a videoconference with them to discuss the matter in more detail.

The Hon. DANIEL MOOKHEY: Is the default position of Legal Aid to offer assistance to prisoners who are applying for reclassification or is it a discretionary exercise by Legal Aid?

Mr HUTCHINS: It is not quite a default position. It is not quite that formal. If an inmate contacts us and we think there is a genuine issue with their classification, we will then decide to look at it closely and make an application under the Government Information (Public Access) Act. We will then consider whether there are grounds to go to the Supreme Court. Usually there are not, because the threshold is very high. What we will do in a lot of cases is make a submission to the commissioner asking him to review—

The Hon. DANIEL MOOKHEY: But that scenario applies—

CHAIR: It is time for questions from Government members.

The Hon. BRONNIE TAYLOR: Thank you very much, Mr Hutchins. I am trying to get my head around this complex issue. You alluded to page 7 of your submission when you spoke about classifications. We heard from previous witnesses that once prisoners have access to a program it gives them a sense of hope of rehabilitation, of the possibility of making their lives better and getting out of prison and contributing to society. Here you say that even if a lifer is held as a B classification and detained as under maximum or medium security, you recommend that they should have access to programs within those centres. Is it the case that, if

somebody is a B classification, they do not have access to any of the programs that were mentioned by the previous witnesses?

Mr HUTCHINS: No, they do not. It is a matter of the cart before the horse. The classifications go with the programs. To do both the Violent Offender Therapeutic Program [VOTP] and the Custody Based Intensive Treatment [CUBIT] sex offender program, which are the main long-term programs in the corrective services—they both last about 12 months—my understanding is you have to be C1 before you can actually do it. So to do it as a B there has to be an exception made by the commissioner, which is highly unlikely to happen. So I think at the moment the only programs that would be available to those that are lifers that are of interest to the inquiry would just be the very short-term programs. There is a short-term anger management program, but that is something like two hours a week for six weeks or something. It is just a very low key program, whereas I am pretty certain the VOTP is five days a week for 10 or 11 months. It is a full-on, intensive program.

The Hon. BRONNIE TAYLOR: We have just heard evidence that when someone who is classified as never being able to be rehabilitated is offered the opportunity of doing a program it could be quite life changing. But if we cannot reclassify them so they cannot go through that process then they will never have the opportunity of making that better.

Mr HUTCHINS: Assuming for the moment that the lifers would remain as B forever, what would have to happen is the programs would have to come to them. The commissioner would have to make the programs available within the jail where they are with their B classification. But at the moment the programs are only available for C1, and that is always in a less secure environment than a B classification jail.

CHAIR: And that is because a person is going to be released within that five-year period; is that correct?

Mr HUTCHINS: Yes—or it is linked to that.

The Hon. BRONNIE TAYLOR: You may choose not to answer this, and that is fine, because I do not know if I am overstepping the line—maybe the Chair will tell me. You have had vast experience with Legal Aid and in dealing with lifers, as you said in your opening statement, and it is pretty obvious from your evidence. In your opinion, if there was an opportunity for someone who had a life sentence to do some of these programs earlier might we have an easier transition and a better outcome in terms of society and community?

Mr HUTCHINS: Definitely. I do not see why someone who is serving a whole-of-life sentence should be kept in the most maximum secure jail with the most intensive security guards around. As strange as it may sound, in my experience the best behaved inmates in jail are the lifers. They seem to be generally much more compliant and much better behaved than short-term inmates.

Mr DAVID SHOEBRIDGE: They have come to terms with the institution.

Mr HUTCHINS: They just seem to accept their conviction and that they have this long sentence. They just get along with it.

The Hon. BRONNIE TAYLOR: I am sorry if I get the acronyms wrong—

Mr HUTCHINS: Yes, there are too many of them.

The Hon. BRONNIE TAYLOR: I am learning. You talked about the fact that the Serious Offenders Review Council [SORC] reviews the application and whether or not they recommend something, then they say: "Yes, we recommend that this classification be changed." Then a form goes to the commissioner and you said it was a tick a box—there was no explanation or sometimes you saw a line and then you had to make an application under the Government Information (Public Access) [GIPA] Act if you wanted that information. I understand that the commissioner is coming and I acknowledge what Mr Shoebridge said before, but are we just assuming that is one line there? Is there perhaps something that has gone on and the commissioner has taken a thoughtful process into that recommendation or were you sort of thinking—

Mr HUTCHINS: I am just not able to answer that. I can only comment on the documents that I have seen that we have got in response to a GIPA request—and it is just a bare page.

The Hon. BRONNIE TAYLOR: And with all of your experience in Legal Aid and what you have seen, which is much more than I have seen, you have never seen that there is a process that that has gone by with the commissioner. What has changed? An earlier witness, Mr Killick, said that previously there was a process and you knew that the process would be followed through. You went from one point to another point, and you knew if that was recommended by SORC that that would happen. But it seems like something has changed—you are saying more things are being knocked back or there is more intervention.

Mr DAVID SHOEBRIDGE: Is it more arbitrary now?

Mr HUTCHINS: I think it is.

The Hon. BRONNIE TAYLOR: Why? What has changed?

Mr HUTCHINS: I do not really know why. I hazard a guess—

The Hon. ADAM SEARLE: What is your best estimate?

Mr HUTCHINS: —it is something to do with the fact that there has been a change of commissioner in the last few years. The ultimate decision has always been with the commissioner. There do seem to have been more non-approvals of recommendations for C1 in recent years than previously.

Mr DAVID SHOEBRIDGE: So back to the good old days of Woodham.

The Hon. BRONNIE TAYLOR: Can I ask one more question?

CHAIR: Unfortunately time for questions has expired. Thank you very much for coming today. Any additional questions the Committee members have will be sent to you and you will have 21 days to respond. Thank you again for appearing.

Mr HUTCHINS: Thank you for the invitation.

(The witness withdrew)

JOHN DOWD, AO, QC, President, Community Justice Coalition, affirmed and examined:

CHAIR: Welcome. Would you like to make an opening statement?

Mr DOWD: If I may. Firstly I thank the Committee for the opportunity to come before it and for the interesting way in which you have slightly widened your terms of reference. Classification of prisoners is not just for the benefit of prisoners. It is an administrative tool for the administration of the prison system and to offer incentives for better behaviour or for rehabilitation and it applies to everybody. Whether that person is never to be released or will die in prison is in a sense irrelevant, because they are within a community made up of warders and other prisoners. This is for the benefit of those warders and others prisoners. Killings and injuries do occur in the prison system. So it is not just for the benefit of the prisoner but for the benefit of everybody.

One of the points I want to make is that the incident which led to this Committee draws me to examine the section under which the commissioner is given power. That section has within it the words "under the control or direction of the Minister". I have not researched that phrase, but that could mean anything from complete and utter control to the most minimal control. It is not the Community Justice Coalition's view that the Minister should have the power, for instance, to say, "This person cannot be fed. This person shall be locked in solitary confinement", or that with respect to this prisoner or that prisoner, "Whatever the commissioner says I am going to override it." It needs to be looked at in the legislation to make it clear that the Act is about the power of the commissioner, not about the power of the Minister who may respond to community pressure to interfere with the commissioner's running of the prison. The consequence of ministerial overriding is to put every prisoner at concern as to what may happen.

In relation to victims' notification, unless the person is to be released or taken to a prison where escape is very easy, we can see no basis why victims should be told what happens internally, what happens between B and C and C1 and C2. Whatever happens, it is a matter of concern to the victim and naturally they react against it. No-one is required to be reasonable. There is no law making people reasonable, but that is not the test, and I think it is harmful to the victims but also harmful to the public reaction, which occurred in this case.

The terms of the Committee deal with community expectations. That does not mean the community's reaction to a particular horrific situation or a particular community view in a particular situation. The very sort of McCarthyism that went on after World War II, anti-communist, was hysteria, particularly in the United States. So in a case like the facts giving rise to this Committee where there is a shock jock reaction or where there is a community reaction, then it ought to be not that reaction to a particular case, but community expectations generally to a properly educated community.

The only other point I wanted to make in my opening is the issue that has just been raised under the previous witness about classifications. I believe generally in the classification system, but in one particular case where I sentenced someone to 18 years on the top and 13 years on the bottom for a murder, at the end of 13 years he wrote to me to say, "I have been a model prisoner. The Serious Offenders Review Committee said I can be released when I get a C2 classification. The parole board said I can be released when I get a C2 classification. I cannot get that classification because it is the commissioner who decides that I cannot get a C2 or C3"—which means preliminary release—"therefore I cannot get out." That power of the commissioner under this Act should be a reviewable or an appellable decision. In that case I said, "You will have to go to the prisoner's Legal Aid system." He said, "I did everything you said I had to do", and because it was a high-profile case—the one involving Ken Marslew's son, which is the Pizza Hut murder—the feeling was that it was high-profile and that is why he did not get it. I do not know what has happened since because, unfortunately, I could not intervene. But the failure to have a proper appeal mechanism in that capricious situation where, for no reasons at all—just getting them to give reasons is only a start. There should be a right of appeal of some sort for the small number involved in that.

CHAIR: We have limited time so we will divide time to ensure all members have an opportunity to ask questions.

The Hon. DANIEL MOOKHEY: Incidental to your last comment, when you say an appellate system, I presume you mean not appeal to the Minister but an appeal to the courts?

Mr DOWD: That is right because, in effect, it is the Minister who administers the Act. The Minister is not obliged to look at proper procedures whereas an independent tribunal or court is.

The Hon. DANIEL MOOKHEY: On the basis of your submission, am I right in understanding that you do not necessarily think that the designation of a life sentence should be a factor that precludes a person from obtaining any formal classification, that is, because a person is the recipient of a life sentence, no order should be created that would permanently preclude them from a C classification or anything like that?

Mr DOWD: That is so.

The Hon. DANIEL MOOKHEY: The predominant criterion that you think should be used in deciding a prisoner's classification is whether they pose a risk to the order or control of the prison?

Mr DOWD: That and the entitlement of every human being, no matter how bad, to improve themselves to seek redemption with their community or with their faith.

The Hon. DANIEL MOOKHEY: I turn to the system of victim notification. You make quite a strong point that you feel it is not necessarily the case that victims ought to have an entitlement to communication in respect to reclassification. Am I right in saying that you are not necessarily calling for their existing rights to be notified upon a C3 classification to be disturbed, or you are?

Mr DOWD: No, I said if there is a likelihood that the person is about to be released or is under such circumstances such as in a C2 when they might be out for a day or overnight or for limited periods, then of course the victim should be notified because the victim may want to protect themselves, may want to leave, may want to hide themselves, or whatever, because the victim is entitled to be concerned that they or their family would be at risk.

The Hon. DANIEL MOOKHEY: From the A to B classification, you do not think necessarily the victims ought to have a right to notification?

Mr DOWD: No. The victim is not obliged to be reasonable and, as we have said in the submission, if someone gets a course, or a toaster, or an extra hour of day in some cases the victims would not want them to get anything, so that is not reasonable for them to be involved. This is about prison administration and if there are incentives to good behaviour in the prison administration then they are there for the benefit of all prisoners and the warders and the community.

The Hon. DANIEL MOOKHEY: Given the prominent nature or classification, as you say, as a prison management tool do you have a view insofar as SORC is undertaking the objective assessment of the factors that should apply to a commissioner's discretion, that that is being properly done, that there are improvements to the SORC process, that there are any suggestions or adjustments that you think SORC should be undertaking to either modernise or adapt what they do?

Mr DOWD: I do not know their procedures precisely, but as I understand their procedures, generally it works well. There is no perfect system. It works, however, with some very experienced people and even if they are new people, they soon acquire experience. These bodies do a better job, but sometimes the prison authorities may know a little better about a particular prisoner and so on. I think the system does not warrant changing.

The Hon. DANIEL MOOKHEY: Do you think that the commissioner's discretion should be fettered?

Mr DOWD: The commissioner's discretion, yes, should be fettered by an appeal system on an unreasonable process of refusal to do a classification.

The Hon. DANIEL MOOKHEY: But the test is unreasonableness?

Mr DOWD: Yes.

Mr DAVID SHOEBRIDGE: Thank you for coming today. Legal Aid said that when they are acting for a client and they want to review the classification decision by the commissioner, they are forced to put in a Government Information (Public Access) Act [GIPA] application—a freedom of information application—to get access to the documents. In your experience, having been a Minister, do you think that that is a rational use of public resources?

Mr DOWD: No, I was appalled to be reminded of that anomaly. Of course they should not have to go through the GIPA Act, which is a time-consuming, laborious and expensive procedure, in terms of allocation of time. That should be as of course.

Mr DAVID SHOEBRIDGE: Legal Aid said that when they get the decision, the papers, back that if the commissioner has decided to overturn the considered recommendation of the Serious Offenders Review Council, that it is just a tick-a-box approval with potentially a little gloss, such as that the prisoner is too notorious. Do you see merit in requiring the commissioner to give reasons when his recommendation or his decision differs from a recommendation of SORC?

Mr DOWD: This decision of the commissioner is a very serious one, not only for the prisoner but for the prisoner's family and everybody involved. And having that power, for a commissioner who may be media savvy and media conscious, it can be abused and, in cases that I have seen, has been abused. He or she should be obliged to give proper, set-out reasons, and then there should be an appeal mechanism.

Mr DAVID SHOEBRIDGE: That really only becomes a problem when the Minister disagrees with a recommendation from SORC, does it not?

Mr DOWD: That is right.

Mr DAVID SHOEBRIDGE: Because otherwise you have got the detailed body of consideration that has formed the recommendation from SORC. But it is when the Minister disagrees, there should be an obligation to give reasons.

Mr DOWD: That is right.

Mr DAVID SHOEBRIDGE: In terms of challenging that, would the appropriate tribunal be the new NSW Civil and Administrative Tribunal [NCAT], rather than expensive Supreme Court proceedings?

Mr DOWD: I am troubled by this. I am not satisfied that the Supreme Court is necessarily more expensive than NCAT.

Mr DAVID SHOEBRIDGE: You may be right.

Mr DOWD: It is not a matter likely to be pursued because the court's time is the court's time. So I do not have a strong view. I am inclined towards the Supreme Court as the proper provision but there could be a lot of matters and it may well be that you do NCAT first, with an ultimate appeal to the Supreme Court in special circumstances, in the same way as a special leave application to the High Court, that you have got to show reasons why.

Mr DAVID SHOEBRIDGE: Potentially the appropriate tribunal to go to would be the court that had sentenced the offender in the first place.

Mr DOWD: Yes.

Mr DAVID SHOEBRIDGE: Because that would be the jurisdiction most suited to that type of case.

Mr DOWD: Except they are looking at an administrative decision, not the original offence.

Mr DAVID SHOEBRIDGE: In terms of the classification process, are you aware of any circumstances where a life prisoner has had the classification reduced and then escaped or become a danger to the public?

Mr DOWD: No.

Mr DAVID SHOEBRIDGE: In your experience, is the way the current legal system classifies life offences and deals with them in the prisoner system working?

Mr DOWD: I think the evidence of the last witness was that lifers are generally not a problem within the prison system. There is the odd exception but generally they are better dealt with. So it is, I think, as good a

compromise as we can work out between community interests and the interests of justice of the victim and the offender.

Mr DAVID SHOEBRIDGE: What prompts the decision of the commissioner to reduce the classification of a prisoner? Can a prisoner bring the application or is it simply a question of the effluxion of time? How does it get before the commissioner?

Mr DOWD: It is a matter for the commissioner, under his guidelines, that he has set out, complying with those guidelines and, in the normal course, it is effluxion of time, as well as the progress of the prisoner within the prison system and the need for better education and training and rehabilitation.

Mr DAVID SHOEBRIDGE: Because we heard from Justice Action and others that lifers tend to have very restricted access to rehabilitation programs because, almost by definition, they are never within eight years of the end of their sentence. Yet I think the view of the three or four prisoners who came before us was that, if they got access to the rehabilitation programs earlier, they are more likely to do well, because they have longer to work with those rehabilitation programs in prison.

Mr DOWD: I think that is right.

Mr DAVID SHOEBRIDGE: Is it just a question of funding? What is it that is stopping the services being provided earlier?

Mr DOWD: Government is about priorities of government and allocation of funds. The Government—largely Treasury—makes decisions as to where money is spent. I can remember, as Attorney General, not getting to see the Premier or Treasurer at all to make submissions. So it is about, in effect, government determination to allocate funds. And the prison system is something that has to be administered, it is not a popular priority but that is what a just, democratic society is concerned about—the baddies as well as the goodies.

Mr DAVID SHOEBRIDGE: And politics tends to see spending $5,000 to reduce offending as a less palatable expenditure than $100,000 to punish offending.

Mr DOWD: Most prisoners get out and recidivism is something that we have to be very careful about. Most prisoners get out into the community and return to their family or otherwise. The better we rehabilitate everybody in the prison system, the less likely they are to further offend and harm the community.

The Hon. DAVID CLARKE: Mr Dowd, in your submission, one reason you give for rehabilitation being necessary is to make it safer for the community and that limited number of people who come in contact with the prisoner, such as other prisoners and guards. But conversely, it is important, is it not, to use reasonable restrictive measures, where necessary, to achieve the same result?

Mr DOWD: It depends upon what you mean by "reasonable restrictive".

The Hon. DAVID CLARKE: Well, allowing a prisoner to have a toaster and TV or not to have a toaster and TV. That would be a reasonable restriction, would it not?

Mr DOWD: As has been said, prisoners are sent to prison as punishment, not for punishment. And if incentives or benefits and so on, or taking away of benefits, is part of the disciplinary process, control process, then I have no problems with that.

The Hon. BRONNIE TAYLOR: Thank you, Mr Dowd. I want to pose something to you, I suppose, just listening here to all the evidence that we have had. There is a lot of conversation about the media and the shock-jock radio stations and what happens and community interest, community expectation, public opinion and then there has been talk of toasters and TVs, in terms of privileges. I think we all sit here in this controlled environment, in this room and what we hear is reasonable and we can see both sides and it is a privilege to be able to see and hear both sides. But my personal opinion—and many here may disagree with me—is that we do have an obligation to those in the community and we have an obligation to set rules as to how we think they would best want us to manage when elected by them. Surely we—politicians and all of the people who have given evidence today—have an obligation to convey that message a bit better. In your submission you say:

The CJC is concerned that the public opinion which has little understanding or indeed, cares little for the welfare of prisoners …

I understand what you mean in the sense that the judicial system always has to be impartial et cetera, but surely it is also our responsibility to give the reason that the person is getting a toaster and say, "Yes, they committed a horrific offence—there is no going back from that—but they have progressed this far and done this much," to counter people who say, "This terrible person got a toaster." Surely we—not just politicians and the media—also have a responsibility. It is easy to say, sometimes, that the media and the terrible shock jocks have blown everything up but often that does reflect public opinion. Regardless of the political spectrum you sit in, you cannot disagree with that. In my very long-winded statement I wanted to ask how we can we do that. In your learned opinion, do we have a responsibility to start doing that?

Mr DOWD: Very few shock-jock issues arise as a matter of general principle. They arise in specific cases. Of course, it is very easy—that is why I cited the McCarthyism of the 1950s, in the United States—in the very short term to build up public opinion on a particular case or a class of cases. Community expectations come from the community as a whole. Prisoners, as against life-saving health devices, get no priority at all in the minds of most people, but if you put a case reasonably to the community, expectations are that we will have as just and reasonable a prison system as an open democracy like ours should have.

I have been in prisons in many countries, in many parts of the world. If they were told that our prison system was in the top 10 per cent, most Australians would expect that, even though they may not be thrilled about the specific cases—whether Joe Blow should get another hour of exercise or a TV. Overall, the community expects us to be a just and humane society—and humanity is for every human being. We are in a so-called Christian society. A lot of people who have compassion and want people to rehabilitate, can, at the same time, get very angry. We are not obliged to be rational in our society. It is my view that you have a duty to be just to all of society. Balancing the priorities in the allocation of funds is a decision of government.

CHAIR: I am interested in that. A couple of the witnesses today have said that our current classification system is complex, and has not been reviewed in over 20 years. I am interested in your opinion as to whether it is complex and what recommendations you would like to see, if you think it needs to be reviewed.

Mr DOWD: Generally, considering the nature of the different sorts of prisoners and the complex issues involved, it works very well—except for the unreasonable power of the commissioner to ignore SORC and the other issues I have spoken about. And I think the Minister should not have the power, as given him by, I think, section 232 of the Crimes (Administration of Sentences) Act, to absolutely control and direct the commissioner, because Ministers can be subject to public pressures or the noisy community. There is what I call the "Gideon syndrome", creating the impression that the noisy minority is the silent majority.

CHAIR: Do you have an opinion about the role of victims, particularly in the review process?

Mr DOWD: I think they have an entitlement where they are likely to be at risk, or afraid of some person getting out. Then they are entitled to be told; otherwise, I think the Act is wrong in giving them entitlements to be shown the myriad things they will not understand, nor—because there is no legal obligation to be rational—should they be expected to understand. You have to take into account their views but they should not be informed in detail of what happens in the classification system, except for the reason I have said.

The Hon. DANIEL MOOKHEY: I have a question that flows from that answer. When you say that it should happen when a victim feels they are at risk, the presumption is that they feel that they are at risk but SORC and/or the commissioner feels that they are not. Presumably a life prisoner would not be released if they posed a risk.

Mr DOWD: With respect, the two are not mutually exclusive. People are entitled to be afraid, unreasonably.

The Hon. DANIEL MOOKHEY: That is the point.

Mr DOWD: The SORC process is very carefully worked out to only allow people to be released if there is no likely risk involved. The two views do not have to be the same. It is a different perspective.

The Hon. DANIEL MOOKHEY: Of course. Do you feel that when SORC makes a determination that a life prisoner does not pose a risk, and can therefore access C3 classification, that SORC communicates the rigour of that assessment appropriately to victims?

Mr DOWD: I do not think SORC should communicate with the victim. If the prisoner is being released—under C3, or under C2, where they can be released for a few days—the victim is entitled to be told by Corrective Services. They are entitled to be told that the person is likely to be out there in the community. They may want to make arrangements like moving interstate, changing their name or whatever, or just being a little more careful.

The Hon. DANIEL MOOKHEY: I have a final question. Do you think the rigour of the assessment process as undertaken is appropriately communicated to victims?

Mr DOWD: I do not know. I do not know the nature of the communication.

Mr DAVID SHOEBRIDGE: A victim should never be put in a position where they have a reasonable fear that if someone is going to be released they have to move home. A victim should never be in the position where they have a reasonable fear, should they?

Mr DOWD: As I said, people are not obliged to be reasonable.

Mr DAVID SHOEBRIDGE: That is the point, I think.

Mr DOWD: If people have an unreasonable fear they still should be told.

Mr DAVID SHOEBRIDGE: Notwithstanding all the evidence and the best considered advice, if they still maintain a fear, that fear should be respected.

Mr DOWD: That fear should be respected.

CHAIR: Thank you very much for coming today. Any additional questions that the Committee members may have will be sent to you through the secretariat. You will have 21 days to respond.

(The witness withdrew)

(Luncheon adjournment)

HOWARD WILLIAM BROWN, Vice-President, Victims of Crime Assistance League [VOCAL] sworn and examined:

CHAIR: Do you want to make an opening statement?

Mr BROWN: I certainly would. Four weeks ago I found myself in the District Court in relation to a sentencing matter in a child sexual assault case. Whilst I was waiting for my matter to be dealt with there was another prisoner before the court who had been convicted on 14 separate offences. The discussion was to how he should serve his jail term. His instructing solicitor obviously had not spoken with the defendant and he suggested that because His Honour had said that this person would require a jail term, that it may be appropriate that he serve that jail term by way of an intensive correctional order or home detention. The prisoner stood up straight away and said, "Your Honour, I'll take full-time custody. I don't want to do home detention."

My point is, punishment is relative. You and I may see the option of home detention as being a softer form of punishment but to this particular prisoner he saw home detention, to use his words, as "unconscious" but he meant unconscionable. The reason for that was because after he had been arrested he was evicted from his place. He and his family had to move in with his mother-in-law and he felt that by having to reside with his mother-in-law as part of home detention that would be even greater punishment than doing full-time custody. I think when we discuss the matters here relating to punishment we have to look at the relative factors relating to what is punishment. What we as victims sometimes see as punishment, or lack thereof, prisoners often have a completely different interpretation and see some of the forms of punishment that are imposed as being unconscionable.

I would also like to pick up on something that John Dowd said earlier in relation to Karl Kramer. Karl Kramer was the offender who shot and killed Michael Marslew in 1994 at the Pizza Hut at Jannali. Mr Dowd raised concerns over the fact that Kramer was denied a C3 classification which would have permitted him to participate in day release and work release, which is clearly a precursor for release to parole. The commissioner over-rode the recommendations of both the Serious Offenders Review Council and also the intention of the NSW State Parole Authority. What was not said, however, by Mr Dowd and I suspect because he is unaware, is that section 173 (b) and section 173 (c) of the Crimes (Administration of Sentences) Act which actually controls prisoners whilst they are in custody makes provision for what we call "manifest" injustice.

If the Parole Authority comes to the view that the lack of classification being awarded to a prisoner is manifestly unjust they are no longer bound by the recommendations of either the Serious Offenders Review Council or probation and parole officers. They would say, "We suggest this person not be released to parole because they have not done day release; they have not done work release." Mr Hutchins, who was here earlier this morning who I often oppose before the NSW State Parole Authority and with whom I get on very well, I should comment, is never backward in seeking remedy under sections 173 (b) and (c). I do not think Mr Dowd was aware of that. I thought I should bring that to the Committee's attention because there is a way to deal with what some people may identify as a recalcitrant Commissioner for Corrections.

The Hon. LYNDA VOLTZ: You say in your submission that, in essence, there is only a remote possibility of them ever being released into the community, that being when they are literally dying and being admitted to a hospital or a home for the specific purpose of awaiting that death. This morning there has been discussion about people sentenced to life sentences will never be released. The reality is that aged-care facilities are not in our jails. I assume when you talk about these people being released you are not talking about those who are sentenced to life?

Mr BROWN: I am actually referring to those people who are life: meaning life. The only exception under the Act is that they can be taken from a custodial centre to a hospice for the purpose specifically of dying. We have not had it happen yet and whether it does ever happen, but there is actually provision for that.

The Hon. LYNDA VOLTZ: The example given to the Committee was Neddy Smith with Parkinson's disease who was in a ward at Long Bay Hospital and was dying. He certainly was not released from the prison system.

Mr BROWN: No, that is right. Death literally has to be imminent. As to how they come to that determination—you may or may not be aware that I represented the Chang family, Dr Victor Chang's children,

relating to the release of the two persons involved in Dr Chang's death. Chiew Seng Liew was released by the New South Wales State Parole Authority because he had Parkinson's disease and they considered that his condition was such that his death was imminent.

The Hon. LYNDA VOLTZ: But he was not sentenced to life.

Mr BROWN: No, no. But he had life on parole. We are still waiting for him to die. He was just inadequately medicated and my understanding is that it was exactly the same position with Neddy Smith.

The Hon. LYNDA VOLTZ: My understanding from the talk this morning is that the New South Wales prison system has no aged-care facility within it.

Mr BROWN: That is correct.

The Hon. LYNDA VOLTZ: But the British corrections system does. Would your view be that, rather than the option of release, a much better option would be to purpose-build facilities for age care, particularly for these people who are by law required to stay in there, rather than what we have at the moment where eventually, of those 90, they will end up at some stage down in the hospital beds at Long Bay?

Mr BROWN: To be perfectly frank with you, my preference in relation to this matter is that I understand the current Government is giving very serious consideration to selling a great part of Long Bay jail and using the money from that to provide other services elsewhere. My preference would be that they extend the Long Bay hospital, where we currently maintain our really serious forensic patients, and add a ward to that particular facility so that it would still remain within the confines of a gazetted prison, but it would provide a full aged-care facility for any of the persons, not just those on life sentences but some people who would be life on parole.

The Hon. LYNDA VOLTZ: That is exactly what I am talking about. You would see that as a better option?

Mr BROWN: A much better option because, unfortunately, the circumstances that gave rise to this particular Committee are that there will be some people within the victims community who will fight a person being sent to a hospice, even if they are only going to be there for two days to die. People will oppose that.

The Hon. LYNDA VOLTZ: With illnesses such as dementia, you go into them over a period of time and you can have good days and bad days.

Mr BROWN: I am specifically talking about life meaning life.

The Hon. LYNDA VOLTZ: Yes. I am talking about those people as well. I think the example is the Iraqi who was released from the British jail system and who was dying of cancer.

Mr BROWN: Yes.

Mr DAVID SHOEBRIDGE: Libyan.

The Hon. LYNDA VOLTZ: Libyan. Sorry, Mr Shoebridge.

The Hon. DANIEL MOOKHEY: Thank you for your attendance today. Is there a widespread desire among victims to receive notification in the event of a prisoner's reclassification from the A to B category, not necessarily A and/or B to C category, as in from maximum to medium? Is there a widespread desire for there to be victim notification around that?

Mr BROWN: Yes. As a matter of fact, I heard Mr Dowd say that he thought that that was particularly unwise and perhaps unhealthy for victims. You will hear, after me, from Martha Jabour from the Homicide Victims Support Group. You will also hear from Mr Rolfe from Support After Murder. Most of the people who deal with victims on a regular basis will advise you that those victims that we assist, whose perpetrators are the subject of life meaning life or life on parole, always struggle with what is going to occur with the prisoner. The way we best support them is to ensure that we maintain counselling for them so that they can actually cope with the information that they receive.

One of the things that people need to understand, though, about victims is that we more than any know more about our perpetrators than even the courts. I am currently dealing with a matter involving a chap by the name of Neville Raymond Towner, who killed a young girl, Lauren Hickson, in 1989. Justice James redetermined his sentence in 2002 and placed him on a 20-year sentence when originally he had a life sentence. Mr Towner is yet to be released. I have fought his release to parole on three separate occasions.

Mrs Hickson is very disturbed by the entire process because she feels there is a lot of disrespect being shown to her deceased daughter. She desperately needs to know exactly what is going on with him at any given time because she was aware that the prison system was not even aware of some of Towner's antecedents because they were committed as a juvenile. We, as the victims, know exactly what our perpetrators have done. We need to know exactly where they are. There is nothing worse when you know that your prisoner is at Lithgow jail and you turn on the radio at six o'clock in the morning and they say, "There has been an escape from Lithgow jail."

The Hon. DANIEL MOOKHEY: In respect to the reclassification from category A to category B, I take it you do support a notification. But do you think also in addition to that there will be an opportunity for victims to makes submissions prior, to either the commissioner or the Serious Offenders Review Council?

Mr BROWN: I do, but can I say to you—and I hope you picked this up in the tone of my submission—that one of the reasons I believe that we had so much difficulty, which led to this particular Committee, is that I feel that Corrections has been particularly remiss in explaining to victims what is involved with incarceration. When you receive notification that a person has been changed in category, unless you know exactly what is involved with that person being in custody, you are going to find that process really disturbing. I think that is one of the main reasons that Christine Simpson was so upset by the process.

We had a meeting with Peter Severin post all the kerfuffle and even then—and I get on particularly well with Peter Severin—I did not believe that the commissioner gave a detailed enough explanation as to what is actually involved for people who are category A and category B prisoners. That is one of the things I think is really important. If the victims understand exactly what custody means and what occurs on a daily basis for a person who is a category A or category B, they can then make an informed submission in relation to that change in classification. That is the point. It has to be an informed submission.

The Hon. LYNDA VOLTZ: The essential distinction between categories A and B appears not to be in regards to anything to do with privileges; rather, it is to do with the physical structure of whether you have towers and high perimeter security fences.

Mr BROWN: And to be perfectly frank with you, it is more a management process than anything else. That is my point though. The majority of victims who had prisoners who were going from category A to category B had no idea what the difference in category actually meant. As Christine Simpson said, she wanted to ensure that Garforth was punished for what he did. She was of the view that by changing his classification there would be a reduction in punishment.

The Hon. LYNDA VOLTZ: I am just wondering whether notifying people that there is a change in classification would cause confusion as opposed to—

Mr BROWN: What comes first, the chicken or the egg?

The Hon. DANIEL MOOKHEY: Your point is in general everybody would be better off with access to more information?

Mr BROWN: Exactly. If the victims know exactly what was involved with custody with each particular category when that notification comes it is not confronting, it is not scary. They go, "Yes, okay, I knew that this was going to happen and I know what that process is." That is the really important thing. I do not believe it was done intentionally but this was done with a certain veil of secrecy around it and that heightened people's concerns about the manner in which it was done.

The Hon. DANIEL MOOKHEY: In general do you support the idea that the predominant purpose of the classification system ought to be prisoner control and not necessarily punishment?

Mr BROWN: No, my view is it must be all about prisoner management.

The Hon. DANIEL MOOKHEY: The punitive aspect of prison need not necessarily enter into the classification system?

Mr BROWN: It does not have to be part of the classification process because if you understand the difference between categories A, B and C you appreciate that as far as punishment is concerned there is literally no difference between category A and category B.

Mr DAVID SHOEBRIDGE: Thank you for coming today and for your submission. There has been an unfortunate mixing up in the public debate about privileges and classification. Do you agree with that?

Mr BROWN: I do. There is no question about that. That is one of the reasons why also in my submission I pointed out that it is very important that people understand why we use privileges and that they are in fact a management tool for the management of prisoners. It will bring no comfort to any victim whose perpetrator is the subject of a life sentence to know that they were a category A and yet still killed someone whilst in custody. If that happens to be a prison officer then that is a huge problem.

Mr DAVID SHOEBRIDGE: Which is why not only in your submission but also the Homicide Victims' Support Group have come and said that prison management is an important and separate consideration to punishment.

Mr BROWN: It is.

Mr DAVID SHOEBRIDGE: And part of an effective prison management system is allowing the prison authorities to grant and withdraw privileges.

Mr BROWN: Exactly. Can I say to you, without being overly dramatic, that I live five minutes from Silverwater jail and so at my local shopping centre I am constantly seeing prison officers. Regrettably, they all know who I am. I will see them and then all of a sudden they will be missing for four weeks. I am always a bit of a smartypants and I will say, "You guys seem to get a hell of a lot of holidays", and you find out actually they have not been on holidays they have been on compensation. You look at the rates of compensation within Corrections and they are all around assaults. Their average number of claims is far higher than the general community.

I am aware of a situation involving Ivan Milat where there was difficulty in managing him. His famous trick was that the prison officer would come to open his cell door and Milat would then cover him in his own faeces. You have to be able to control these people but you have to do it in such a way that you do not put your prison officers at risk. If you grant them a small privilege, and it may just be a sandwich maker, and they do something like that, you say, "Well, bye-bye sandwich maker." It gives you a capacity to control them. That is what it has to be about.

Mr DAVID SHOEBRIDGE: Because that is essentially a prison management tool the granting and removal of privileges really should be a matter between the prison authorities and the prisoners. You are not suggesting that victims should be consulted about sandwich makers or toasters or televisions?

Mr BROWN: I am not saying that they need to be consulted but they should be informed. They should know exactly what is going on with the prisoner. Can I be honest with you?

Mr DAVID SHOEBRIDGE: I hope so. That is the deal, I think.

Mr BROWN: We have, regrettably, in the last three months seen some circumstances of people escaping lawful custody under circumstances which in my view are completely appalling.

Mr DAVID SHOEBRIDGE: I think if they ask for eight bedsheets they should not be given them.

Mr BROWN: It should be a giveaway. But this is one of my points. With the exception of the 44 people who we have who are life meaning life in New South Wales, soon to be 45 if my information is correct in relation to an offender before the courts currently—

The Hon. LYNDA VOLTZ: We do not want to prejudge cases here.

Mr BROWN: No, far be it from me.

Mr DAVID SHOEBRIDGE: No, but I would be interested to get on notice your views about the privatisation of Long Bay too.

Mr BROWN: The difficulty is for everyone else and even those members of the cohort who will be serving a life on parole, it is vital when we are coming to a point of making any formal submission that we do so from a basis of informed knowledge. It is vital. In order for us to know that, we need to understand that if Ivan Milat was given a sandwich maker and that was removed why it was removed, because it normally would be removed because of his conduct and behaviour whilst in custody.

Mr DAVID SHOEBRIDGE: That information would be relevant at the time that you wanted to make a submission about classification, not while the individual management decisions are being made. That would be unworkable, would it not?

Mr BROWN: I do not know whether it would be unworkable, to be honest with you. I am not saying that it would necessarily have to be done every time the sandwich toaster is removed or granted or removed or granted, but at some point there has to be a process and a protocol developed so that victims can remain informed because they need to know exactly where they are just for their own emotional safety.

Mr DAVID SHOEBRIDGE: And it is horses for courses. Not every victim wants to have a blow-by-blow description about what the prisoner has been doing.

Mr BROWN: I should make that perfectly clear. This is a huge issue. Often victims will say immediately after a court process, "I don't want to become a registered victim. I don't give a ... what the person gets up to." Then their circumstances will change and they will say, "I want to go on the register." So we place them on the register, we assist in getting them registered. But we have a large number of people who say, "My life has been placed in turmoil by what has occurred to me. The matter is now done and dusted."

Mr DAVID SHOEBRIDGE: "I want to get over it."

Mr BROWN: "I just don't want to have deal with it, so I don't want to know." It can work against you, however, because you say, "Okay, I am not going to be a registered victim", and then all of a sudden you hear about a prison escape and you go, "Oh my God."

Mr DAVID SHOEBRIDGE: When I saw the flurry of uninformed media about the reclassifications I was very concerned that there had not been a clear statement from the commissioner and the Minister saying that this is what classification A and B means, there is no reason for victims to be concerned, this is not about privileges. Do you think there is an obligation on the government of the day to make it very clear what these changes mean and do everything they can to allay victims' concerns before it develops into a self-sustaining media hysteria?

Mr BROWN: I guess that was the original intent of what I was saying. If you inform victims from the outset then a change in classification and the understanding of what that actually entails is not going to distress a victim because they actually know what the process is.

Mr DAVID SHOEBRIDGE: When they get the call from the *Daily Telegraph* they can say, "I know what this means. You're wrong. This isn't about privileges. This is just about a classification A to B change."

Mr BROWN: That is exactly the point. I have to be honest with you though, there are circumstances where I have some real issues. I have a matter currently before the courts so I am not going to draw a great deal of attention to it. I certainly will not be naming names. But I opposed a person for release to parole in October of last year. The Serious Offenders Review Council had recommended that this person be released despite the fact that he had failed the Custody-Based Intensive Treatment [CUBIT] program. The State Parole Authority took the view that if SORC said it was okay for this person to be released then he should be released.

We opposed that release because of what we knew about the prisoner, but no-one within Corrections seemed to know. That guy last Thursday pleaded guilty to six counts of sexual assault and two counts of abduction. These are exactly the same offences that he committed eight years ago. That is the problem. When

we see things like that it is very difficult to have confidence in information that is coming from organisations like SORC and, obviously, from Corrections.

CHAIR: We will move to questions from Government members.

The Hon. BRONNIE TAYLOR: I will pick up from where you left off, SORC recommending a prisoner be released. How did you know the prisoner had failed the program? I understand if you do not want to give the details.

Mr BROWN: I have no problem with that; it is one of the huge issues I have. As a registered victim, if a prisoner is categorised as a SORC prisoner—in other words a sentence in excess of 12 years or a murder—we have a right under the Crimes (Administration of Sentences) Act to obtain reports that are going to be used by the State Parole Authority in order that we can make submissions before the State Parole Authority. It only applies to prisoners who are categorised by SORC. I have a case at the moment where a young man stabbed his ex-wife 21 times. According to Corrections, that is not serious enough to warrant him doing an anti-violence program. I have a real issue with that. Similarly, with the particular case I am talking about, he was a serious offender and when we got the reports from probation and parole they clearly indicated that he had failed CUBIT. That is how we were aware of it and it put us in a position to make a cognisant submission to the State Parole Authority. Their concern was that this prisoner only had two years left on his term and they felt it was best for him to be released into the public where he could be supervised. My argument was that you do not release him until he is fit to be released, and if that means he remains in custody for a further two years and we then make an application to the Supreme Court for a continuing detention order or an extended supervision order, so be it. He was a danger to the community; I was right.

CHAIR: For Hansard, could you explain CUBIT?

Mr BROWN: CUBIT is an acronym for Custody-Based Intensive Treatment. It is a sex-offenders program. Sorry, but when you are dealing with victims you become very aware of acronyms.

The Hon. BRONNIE TAYLOR: When SORC makes a recommendation and VOCAL does not deal with it, do you have a seat on SORC?

Mr BROWN: No.

The Hon. BRONNIE TAYLOR: What is the process for you to object to the recommendation?

Mr BROWN: It is through the State Parole Authority when the person becomes eligible for release. The difficulty we have—and I think Ms Jabour will be able to provide some additional information because fortunately for all victims she is a community representative on the NSW State Parole Authority and she will probably tell you that she gets a little annoyed when she is the only person opposing, but I do not want to put words in her mouth; Ken Marslew also happens to be a member—is there are times when recommendations are made that we as victims disagree with because it is clear these recommendations are being made in the absence of full knowledge of the offender.

The Hon. BRONNIE TAYLOR: We have heard differing evidence today on victims of crime being notified about a change in classification. Some groups say absolutely they should not, others say absolutely they should and some sit in the middle. You said some victims really want that information and I can understand that. I can also understand people saying, "You know what, I do not want to know anything," but that can change, as you said. Do we need to provide different information; give better clarity and a better framework for the information given to victims of crime to ensure that they can make it manageable? They need to be the priority.

Mr BROWN: I agree with your proposal but in all honesty I think we need greater education all round. I spend a great deal of time around the courts and see a lot of judges, especially in the District Court, who adjust sentences purely and simply because of what they understand to be custody. Yet a lot of judges have no idea what custody involves—none whatsoever. We need to educate them as well. It is not just victims who do not understand the category basis and what actually occurs in custody. When David Levine became head of the Serious Offenders Review Council, coming from the District Court, he said, "If I had known what was involved with custody I would have changed the structure of my sentences."

Mr DAVID SHOEBRIDGE: I think you could put another group in the category of those who do not know—politicians.

Mr BROWN: That goes without saying, does it not?

CHAIR: On that, do you think the community as a whole would be aware of what it means? We hear a lot about community expectations.

Mr BROWN: The community have no idea about what goes on in custody. They have no idea what prison life is like. In my submission I draw your attention to the fact that high-end prisoners are only out of their cells for roughly 6.2 hours a day. If you talk to people such as our shock jocks and television journalists, they tell you that prison is basically a motel. It is nothing like that and I think people do not understand what is meant by the expression "deprivation of liberty". That is what custody is all about. If you need to leave here right now, you just excuse yourself and go. If you are in prison and you want to leave, you have to find a prison officer and say, "Excuse me, sir, can I leave?" or "Excuse me, ma'am, can I leave?" If they say no, you do not. People do not understand that custody is not the Hilton; it is custody and most people have no concept of what it involves.

The Hon. DAVID CLARKE: Mr Brown, earlier today—I do not know whether you were here—we heard evidence from Mr Collins from Justice Action.

Mr BROWN: I did see some of Mr Collins' evidence when it was being streamed.

The Hon. DAVID CLARKE: In Justice Action's written submission it is stated:

> Whether a prisoner is serving a life sentence or not, every prisoner is entitled to the prospect of release.

I put to Mr Collins, "Are you saying that you can think of no cases where a life sentence should actually mean a life sentence?" He said, "Absolutely". What is your response to that?

Mr BROWN: I regrettably have to deal with Mr Collins on a pretty regular basis. I have to say that some of his ideas are excellent and some of them fall at the other end of the spectrum.

The Hon. DAVID CLARKE: Which end does this one fall in?

Mr BROWN: As far as I am concerned, he has no idea of what he is talking about. Can I be honest with you? As a male I think every one of us males has no concept of what it is like for a mother to lose a child. I have never given birth to a child. If you look at people like Peter and Christine Simpson, Christine gave birth to Ebony. There is a connection between a mother and a child that no man will ever experience. When you take a child's life, and when you take a child's life in such a vicious and heinous way, you have lost all entitlement to any degree of leniency or mercy. You die in jail, and so it should be.

The Hon. DAVID CLARKE: You have heard others today giving evidence that they do not believe that victims should know about the change of classification of perpetrators of the crimes against them. Those you represent would be outraged by that, would they not?

Mr BROWN: Of course they would because—and this is one of the points—victims know their perpetrators better than anyone. They know them better than their lawyers and better than their jailers. One of the few things that victims hold onto is that after a person has been sentenced, they may have very few redeeming features but just to know that the person is being compliant whilst in custody gives you some level of solace that at the end of all the effort you have gone through in all the mentions, arraignments, during the trial and appeals process, there is some small redeeming feature that at least the prisoner is being compliant. That gives victims some solace.

CHAIR: Unfortunately time for questions has expired. Any additional questions that Committee members have will be sent to you and you will have 21 days to respond. On behalf of the Committee, I thank you for appearing today.

Mr BROWN: Many thanks.

(The witness withdrew)

MARTHA JABOUR, Executive Director, Homicide Victims' Support Group Australia Inc., and

GARRY CONNELL, Member, Homicide Victims' Support Group Australia Inc., sworn and examined:

CHAIR: Thank you very much for appearing here this afternoon. I invite you to make an opening statement before we commence questioning.

Ms JABOUR: I thank the Committee for giving us the opportunity to come here and give evidence today. This topic is clearly highly emotive and very important to family members in the Homicide Victims' Support Group. This support group was set up in 1993 by the parents of Anita Cobby and the parents of Ebony Simpson as a result of their daughters being murdered and them finding there was no structured support available for family members in the State of New South Wales.

The group has three main aims, one being to support the family members of homicide victims throughout the State. We have a working partnership with the Attorney General's Department and the New South Wales Police Force whereby with every homicide case within 48 hours the Homicide Victims' Support Group is notified so that no family misses out on the opportunity to get information about support and what their entitlements are in the State of New South Wales. We also provide a lot of information, which is our second aim. Our third aim, and something which is very important to family members, is the area of reform and being able to verbalise for committees like this one the impacts of decisions made on family members and their day-to-day life.

Mr CONNELL: I would also like to make an opening statement. I would like to take a few minutes and give the Committee an overview of my involvement in all of this. In August 1978 I was a 17-year-old kid going off to school. I said goodbye to my mum, brothers and sisters. But during that day when I was at school some pretty terrible things happened. A guy called John Cribb broke into our house. He kidnapped my mum, my 10-year-old sister and my four-year-old brother. He abducted them and drove probably for about 12 hours. During that time he raped my mum in front of my brother and sister. He then tied them up. He came back at midnight and repeatedly stabbed them to death. He put their bodies in the boot of his car and continued to drive around for three days. I had no experience with homicide before this. One of the points I want to make is that this is not something people sign up for—you become a victim as a victim.

I was 17 and I went and got a job. About five months later, in April 1979, I was driving to work one day. I had only been working for about two months. I switched on the radio to listen to the eight o'clock news and I heard that John Cribb had escaped. He was on the run together with two other murderers. For three weeks my family lived in fear. Was he going to come back? Was he going to hurt us again? We had no connection to him, but that is what I was thinking as a 17-year-old, and I have three younger sisters as well. In 1993 I sat opposite him in a court when he applied for truth in sentencing. At the time he had a whole stack of character witnesses who said that he was a converted Christian, that he was reformed and that he was rehabilitated. Fortunately, the court proved that that was not the case. In fact the justice found out that he had presented a whole lot of grotesque lies at that time. He said that my sister was his daughter and that he had been having an affair with my mother. This continued on. It was proved to be absolute crap.

In 2008 my family suffered more grief when once again he applied for truth in sentencing—although he backed down at the last moment. Then of course two months ago I had a phone call from the *Daily Telegraph* saying, "Do you realise that the guy who has done all of this, and who you thought was in maximum security, is in minimum security? How do you feel about that?" So that is my story and that is why I am here. I have read all of the submissions. I was vocal when I was contacted by the *Daily Telegraph*. I must say that a lot of that was an emotional response. I have now stepped back and had a look at this. I have been here for about 20 minutes. I listened to the previous speaker and I agree with most of what he said.

Why do I have an interest in reclassification? Why would a victim want to know? I think one of the really important things is that the last memory you have of your loved ones, unfortunately, is the moment they were killed; and that will always then be linked to the offender. As a result, for many years after that—and it was 30 years ago so maybe not so much now—I would hear the word "mother" and immediately think of my mum and her death, and then I would think, "What is that mongrel doing now? Where is he? What is life like for him?" To be honest I would picture almost killing him. Obviously time moves on et cetera, but I think that link is always there.

I think part of what I experienced the other day when I heard those things from the *Daily Telegraph* was that I wondered: What is C1 classification and what is A1? When I hear "minimum security" I think of a hobby farm where he is milking cows and growing vegetables. Clearly I know that is not the case. I believe the first step is education for the victims, and I think there should be a victims' register. I am starting to go on a bit now so I will make one more point and then the Committee can ask some questions. I think everyone reacts differently. I have three sisters still alive. One of them has spent most of her life on the other side of the world and not on any social media, because she just wants to be away from it all. At the age of 17, would I have gone on a victims' register if I had had the opportunity? My dad cried nearly every day for a year so he would not have wanted to go on a victims' register. I would have been too young to. But now I am interested. Now I do want to know. So I believe education is the first part, and that has certainly not been available before; and then it moves on from there. I do not want to take up too much time so I invite the Committee to begin questioning.

CHAIR: Thank you for appearing today.

Mr DAVID SHOEBRIDGE: If there is anything that you feel you want to say that you have not yet said then I am sure all Committee members would be happy to give you some more time to say those things now.

Mr CONNELL: Okay, having read the submissions, and I did not write a submission myself, my recommendation would be that education is important. I heard someone say before that politicians probably do not know what the inside of a jail looks like. My knowledge of jail comes from American television shows. If I did understand there is really no difference between A and B classifications then that would be a bit of a help. I think that is an important step. When there is a homicide there should be contact with the family to say, "Look, I'm not sure if you're interested but this is what the inside of a jail looks like, this is what the perpetrator is going to experience, and we intend to contact you whenever there is a change. The reason for this is that maybe it is part of your healing process. Maybe we understand that that is what you are thinking about all the time—what is happening to the perpetrator."

You do not have the right to say that the perpetrator should be put here or he should be put there; but you do have the right to at least be informed of what is happening now. I think that is really important. I think just having a perspective of what life is like in prison is important. Certainly in terms of release, and the question the Hon. David Clarke just asked about what the other witness said, I am a big believer that if someone is sentenced to life imprisonment for that sort of heinous crime then they should stay in prison for life.

The Hon. LYNDA VOLTZ: I would like to start off because I have something to say. Mr Connell, I just want to say to you that there is a reason why politicians have supported life sentences—we understand that these are the most heinous offenders around. In fact there is one person on this list whom I have given evidence against, alongside my former parliamentary colleague Mr Paul O'Grady. So we do understand that. I have also worked in prisons, not in civilian jails but in military prisons. So I do have an understanding of the prison system. So do not be under any illusion—politicians have given life sentences to these people because we think they are the most heinous offenders there are. Do not be under any illusion that we think anything else of them. I wanted to ask you about the *Daily Telegraph* and the information they provided to you about the offender. Have you clarified whether that was the classification?

Mr CONNELL: No. The *Telegraph* contacted me and said, "Do you realise he is in minimum security?" First of all they said, "Can we come and see you?" I said, "Sure." They told me what had happened and I wanted to do everything in my power to try and perhaps correct what had happened or to find out more about what happened and the *Telegraph* were the people who were doing the talking. I was told it happened some 15 years ago he was moved to a C1 classification. I have not been told by anybody else if that is correct.

The Hon. LYNDA VOLTZ: You have no other information other than the *Daily Telegraph* has told you that story?

Mr CONNELL: No, that evening I was contacted by the Department of Public Prosecutions [DPP], had a phone call from the DPP to say, "Are you aware he has been reclassified?" I can't remember exactly what they said. I was pretty emotional. They said, yes, he had been reclassified. I said, "No, I was not aware." I have since met with the commissioner and he has talked through some of that stuff.

The Hon. LYNDA VOLTZ: That is your understanding now, that is his classification?

Mr CONNELL: I know he has been moved back—again according to the *Telegraph*. That the nine prisoners, the Anita Cobby killers as well, have been moved back to maximum security. That is my understanding.

The Hon. LYNDA VOLTZ: From the *Telegraph*?

Mr CONNELL: I think the commissioner stated that as well.

Ms JABOUR: That's correct.

The Hon. LYNDA VOLTZ: Ms Jabour, one of your recommendations is that you would like to know of changes to their day-to-day life within the prison. Given that every time you receive information about classification it is a tremendous strain, it is really the day-to-day changes that you need to know about, things like C1 classifications. It is not if they are still manacled, if they have to be accompanied by three people, if they are still not allowed any work release, or any of those privileges—that you do not care about—it is the day-to-day life stuff that you need to know changes to?

Mr CONNELL: That's correct.

Ms JABOUR: That's correct. As Mr Connell has talked about, the sentence is not the final part of the process for family members. The sentence is the beginning of another process. If there was an information package at that point after sentence that gave family members an idea of the day-to-day: what the different classification categories mean; what they are entitled to within those categories; what a jail looks like; where they might sleep; what are the facilities that they will be able to partake in; and, the activities. At the start that is information that would be helpful for the families. As in, day-to-day down the track—absolutely not. Just in the initial phase.

The Hon. LYNDA VOLTZ: If they were given a package following sentencing saying moving from A to B does not make any difference to their day-to-day life, it means we can put them into two extra jails, but it is when they move to category C that it is going to change, victims would then understand explicitly what that meant?

Ms JABOUR: That's right.

Mr CONNELL: Even the fact that it is likely to happen. It is quite likely that after X period of time they may move from A to B.

The Hon. LYNDA VOLTZ: Twenty years down the track.

Mr CONNELL: Yes.

The Hon. LYNDA VOLTZ: We had some evidence that some life sentences required rehabilitation that could only be done under certain categories. That explanation could help as well.

The Hon. DANIEL MOOKHEY: In your submission you say that life sentence inmates should be precluded from being reclassified to C1 level or lower?

Ms JABOUR: That's right.

The Hon. DANIEL MOOKHEY: That is, at best, a person is able to obtain a B classification?

Ms JABOUR: That's correct.

The Hon. DANIEL MOOKHEY: Therefore, the programs that are only accessible to C1 level would not be available to life sentence inmates?

Ms JABOUR: Our thoughts are that if they got to C1 it would mean they are taking the spot of perhaps a prisoner that would be looking at being released back into the community. The programs that we believe life sentence inmates should be doing are programs that are going to help them rehabilitate and form a new life

within the jail system, because that is what they need rehabilitation for, the fact that they will be in prison for the term of their natural life.

The Hon. DANIEL MOOKHEY: I understand that. In so far as the recognition of the victim perspective and the classification system is concerned, in addition to notification of a change you would support the opportunity for victims to make submissions?

Ms JABOUR: No, we would not. Not in the sense that victims would be asked whether the classification should be lowered or not. I think if family members and victims were given the explanation of what classification was about from the beginning and then when the classification was going to be changed what that actually means it should be left up to the authorities within the prison system.

The Hon. DANIEL MOOKHEY: Arising from that, presumably it is the basis of your answer that you see that it is a control device for a prisoner. One thing you do mention in your submission is that you would like it to be adjusted so that reclassification can include retributive purposes?

Ms JABOUR: That's correct.

The Hon. DANIEL MOOKHEY: Can you explain how you would like the classification system to be used for retributive purposes?

Ms JABOUR: Purely as a management tool for the authorities within the prison system.

The Hon. DANIEL MOOKHEY: Not for the crime itself but for the conduct of the prisoner in prison.

Mr DAVID SHOEBRIDGE: Thank you both for coming. Firstly, dealing with your case, when you were 17 you did not want to be in a position where you had input into what was happening with the sentencing and the way that this man was being dealt with, but at a later point in life you realise you do. Can you think of a way that victims can have that change recorded? Should it be up to the victim to come forward and say, now I want to be heard?

Mr CONNELL: I think, first of all, most people are not aware it exists. You are not in a head space that that is what you are thinking of. I think the first thing is that it should be something you opt out of rather than opt in. I think everyone should have an education pack to say—

Mr DAVID SHOEBRIDGE: This is what you can do.

Mr CONNELL: And these are the reasons. Maybe somebody should be writing and saying these are the reasons why it may not seem really important now but in a few years time—

Mr DAVID SHOEBRIDGE: You might want to come back.

Mr CONNELL: —blah, blah, blah, so hang onto this and contact us at any time.

Mr DAVID SHOEBRIDGE: Other people have said that the Corrective Services website should have something specifically identified for victims such as a point where you can go and start accessing that knowledge from the website.

Mr CONNELL: That possibly could be as well.

Mr DAVID SHOEBRIDGE: Neither of you is saying that victims should be the ones making the decisions about classifications. You are both saying you want to know what is likely to happen and what the real effect of it is on the ground, is that right?

Ms JABOUR: That's correct.

Mr CONNELL: Yes.

Ms JABOUR: Just about the information on the website, I know from personal experience not all family members are able to access that information. We have had quite a discussion about who would give that

information to family members in the first instance and we believe it would be really important that that information is given to family members and to victims at the time right after sentence. Every criminal proceeding has a solicitor; every criminal proceeding has a Crown Prosecutor. So maybe it could be the role of the solicitor within the DPP to give that package to family members and to say, "Our process is over now but here is this package that will help you into the next phase."

Mr DAVID SHOEBRIDGE: Maybe it should be the role of victims services not to just hand you a brochure and say, "It's all in there." But to sit down with the families and say, "We have a bit of time, I want to sit down and talk you through this. This is what is likely to happen over the course of the offender's sentence." So the information is actually disseminated, because if you just give someone a brochure, particularly at a stressful moment when they see the perpetrator sentenced, it might bounce off.

Mr CONNELL: I think it is probably both. They should make the offer to sit down and talk. Again, if I look back at my dad then that would have been the last thing he would have wanted. The fact that he had a pack, he could have put it under the bed—

Mr DAVID SHOEBRIDGE: He could reengage when he wanted to?

Mr CONNELL: Correct.

Ms JABOUR: In an ideal world, it would be great to think that victims' services covered the whole State, but they do not. Trials are held across the State. That personal contact with family members at that time—being given a package that has all the information they need—may mean that they can call victims' services and have a follow-up.

Mr DAVID SHOEBRIDGE: But there will be a prosecutor everywhere and that is why you put forward that option.

Ms JABOUR: No matter where you are in the State, you will have that consistent contact with families.

Mr DAVID SHOEBRIDGE: You have both acknowledged that the prison authorities need the capacity to grant and withdraw privileges to manage the prison population.

Mr CONNELL: Yes.

Ms JABOUR: Absolutely.

Mr DAVID SHOEBRIDGE: Do you see any role for victims in the granting and withdrawal, or do you want to be informed about any substantive change? What role do you see for victims in that?

Mr CONNELL: It depends on the individual. I do not want to get involved; I just want to see justice done. Part of that justice is me knowing that that person will be in prison within four walls and with a security tower rather than on a hobby farm somewhere.

Mr DAVID SHOEBRIDGE: Have you had explained to you what category C classification means?

Mr CONNELL: I have now.

Mr DAVID SHOEBRIDGE: Would you be as outraged now about the perpetrator being in category C as you were when you got the telephone call from the journalist from the *Daily Telegraph*?

Mr CONNELL: I am still not comfortable with the C classification. There is not much difference between categories A and B, but my understanding of category C is that it is "one step closer to the door". That is when you start to get rehabilitation programs. To me rehabilitation is about fixing somebody and getting them back to good health so that they will okay to re-enter society. I do not think those courses are available to category B prisoners, so I do not believe that lifers should have exposure to that.

Mr DAVID SHOEBRIDGE: Is it about access to the courses or the nature of the confinement? What is your concern?

Mr CONNELL: Again, I am not 100 per cent sure about the nature of the confinement because I still have not seen anything. It has only been verbalised. It is a little bit of both. I also think the type of crime committed is an issue. These are the worst cases. There are only a certain number of places for people to do rehabilitation courses. Should these worst-case people be given an opportunity to do them rather than someone who has stolen a car?

The Hon. DAVID CLARKE: Mr Connell, you shared with us the tragic circumstances surrounding the murder of several members of your family, how you learnt about the perpetrator's reclassification, and how you lived in fear when you heard that he had escaped. What do you say to those, including some who have given evidence today, who do not believe that victims should be told about a change in a perpetrator's classification? What would you say to them?

Mr CONNELL: It comes down to two things. As I said at the beginning, unfortunately you lie awake for hours and hours thinking about that person because they are the link. It is that fear of not knowing and wondering about what is happening. It is part of the healing process for the victim to know that that person is in Goulburn or Long Bay, although I do not know the difference between them. It is about knowing they are at that venue or that venue. That helps me.

The Hon. DAVID CLARKE: A couple of submissions state that lifers' privacy should be respected. Do have any comments to make about that?

Mr CONNELL: I could say a lot, but it is pretty emotive. I disagree.

The Hon. DAVID CLARKE: You disagree.

Mr CONNELL: He did not show my mum much privacy when he raped her in front of my brother and sister.

CHAIR: Thank you for appearing before the Committee today and for giving evidence. On behalf of the Committee, I extend our condolences to you and your family.

Mr DAVID SHOEBRIDGE: Can we reach you through Martha?

Mr CONNELL: Yes, most definitely. As I said at the very beginning, this is not something you put your hand up for. However, I am involved, and if I can help I am more than happy to do so.

Mr DAVID SHOEBRIDGE: I appreciate that.

CHAIR: I am sure members will want to ask supplementary questions. They will be sent to you by the Committee staff. Thank you again.

(The witnesses withdrew.)

PETER ROLFE, President, Support After Murder Inc., sworn and examined:

CHAIR: Do you wish to make an opening statement?

Mr ROLFE: I am here because on 2 August 1994, my best friend and partner Stephen Dempsey was murdered at Deep Creek, Narrabeen, by Richard Leonard. Stephen's body was cut up to transport to Leonard's flat at North Narrabeen and stored in a refrigerator for approximately 3½ months. Leonard then murdered taxi driver Ezzedine Bahmad at Collaroy Plateau, stabbing him 37 times. Leonard pleaded guilty to Mr Bahmad's murder and was found guilty of Stephen's murder and was sentenced to life in prison. I reiterate the comments of Garry Connell about the op-in/opt-out scenario. It is 21 years since Stephen and Ezzedine were murdered and I have just gone on the victims' register. I did that at the suggestion of Christine Simpson. I am pleased that I did because at the time of the murder I was in no state emotionally even to contemplate doing so. If it had been an opt-out scheme rather than an opt-in scheme, I would have been on it automatically and I would have known what I know now.

The Hon. LYNDA VOLTZ: Thank you for appearing before the Committee. I assume that you heard the evidence of the last group that appeared before the Committee.

Mr ROLFE: Yes.

The Hon. LYNDA VOLTZ: I refer to the opt-out and opt-in arrangement. Some people are in no state at the time to want any knowledge of the outcome or anything to do with the perpetrator's life. However, they may later be in a position to think about what they should do. Is it better to have an arrangement whereby a victim is given a package containing information rather than having them automatically in and having to opt out if they do not want to know when they are in no emotional state to deal with it?

Mr ROLFE: I have not been given a package of any description.

The Hon. LYNDA VOLTZ: I know. There is not one now, but that may be a recommendation. I do not want to pre-empt anything the Committee might come up with, but that suggestion has been put forward.

Mr ROLFE: Yes. I think there should be an opt-out option, plus a package at the beginning.

The Hon. LYNDA VOLTZ: Do you think that for some people, particularly young victims who are emotionally distressed, it may present difficulties if they have to opt out of the system?

Mr ROLFE: No, I do not think so.

The Hon. LYNDA VOLTZ: It would have been better for you to have been in the system from the start?

Mr ROLFE: Yes.

The Hon. LYNDA VOLTZ: And to have had the ability to opt out when you had more time to think about it?

Mr ROLFE: Yes.

CHAIR: Would you explain the process that you have had to go through to obtain information?

The Hon. LYNDA VOLTZ: To opt in.

Mr ROLFE: Yes. I hope I have got this right—opt out and opt in.

Mr DAVID SHOEBRIDGE: The opt-out system is that you are enrolled by default unless you choose not to be enrolled. That is what you are saying.

Mr ROLFE: That is right. I filled in a form for the victims register and posted it. I did not get a response for two months. I rang them and told them I had not had a response. They said, "We sent you a

response a week after your application was lodged." They emailed me a letter confirming that I was on the register. They also told me what classification Richard Leonard was. I think it is B1. I have gone from there.

The Hon. DANIEL MOOKHEY: Mr Rolfe, I extend my condolences to you for your loss. What are your views on the magnitude and scope of victim inclusion in the reclassification system? In your submission you called for a notification requirement prior to any reclassification being considered. Do you or members of your group want the opportunity to make submissions to any reclassification or do you think that in general there is a preference to allow that to be left to the prison management?

Mr ROLFE: I think it should be left to the prison management, but I think we should be notified of that change by phone, email or letter.

The Hon. DANIEL MOOKHEY: When you say notified of the change, do you mean from category A to B—that is, from maximum security to medium security—or do you think it should be at every level?

Mr ROLFE: I think to cover all things it should be at any level.

The Hon. DANIEL MOOKHEY: Okay.

The Hon. LYNDA VOLTZ: When they notified you of the classification of the offender, did they explain to you what that classification meant?

Mr ROLFE: No. I really have no idea what I am talking about.

The Hon. LYNDA VOLTZ: The classifications A and B are essentially the same except that A requires a prison to have towers and maximum security fences. B means that it does not need the towers and maximum security fences, which provides different options for prisons. The prisoner's day-to-day living, the way they are restrained and the number of officers who accompany them is exactly the same. It is only at category C that there are changes in privileges.

Mr ROLFE: I understand that privileges are used as a tool to control prisoners.

The Hon. LYNDA VOLTZ: In category B they would have no privileges.

Mr DAVID SHOEBRIDGE: Mr Rolfe, were you invited to a meeting with the commissioner recently to talk about these issues?

Mr ROLFE: No. I had not got on the register by then.

Mr DAVID SHOEBRIDGE: How long ago did you register? You do not need to be precise. Was it a couple of weeks ago or a couple of months ago?

Mr ROLFE: As I said, I applied about four months ago. I did not get an answer to my application until later.

Mr DAVID SHOEBRIDGE: Once you registered, did you get an email back—or no email?

Mr ROLFE: I did not get anything back, so I rang them and told them I had not had a response to my request. They said they had sent the response out a week after I had applied.

Mr DAVID SHOEBRIDGE: They eventually emailed you the letter saying that you had been registered.

Mr ROLFE: Yes.

Mr DAVID SHOEBRIDGE: And that was it.

Mr ROLFE: Yes.

Mr DAVID SHOEBRIDGE: No information about the offender.

Mr ROLFE: No, so then I rang again to check where he was. I say in my submission:

> We feel sure that taxpayers money spent on these courses—

that is, prisoners doing certain courses—

> would be much better spent on the prison system for example employing more people in the Victims Register Department.

They are so short-staffed that it is embarrassing.

Mr DAVID SHOEBRIDGE: If the Serious Offenders Review Council had considered the evidence of psychiatrists, prison officers and the prisoner and had formed the view that, after 20 years in jail as a classification A and B prisoner, the offender could be safely moved to a category C—they would still be confined to prison—and was firmly of the view that they were not an escape risk, would that offend you in principle? Do you think that should be up to the prison authorities to manage?

Mr ROLFE: Richard Leonard will never be classified below a B. My knowledge is that he is transferred from Goulburn to Lithgow to give the prison warders at Goulburn a break and then from Lithgow to Goulburn to give the prison warders at Lithgow a break.

Mr DAVID SHOEBRIDGE: I am not asking about your specific circumstances. Let us assume that there is a life prisoner who has committed a heinous crime and who, after 20 years in jail, has proven to be a model prisoner. Suppose he has shown an acknowledgement of the wrong and has shown good behaviour and cooperated with prison authorities. Do you find it offensive in principle that that prisoner could be reclassified to category C, retained in confinement but within the conditions of category C?

Mr ROLFE: No, I do not.

Mr DAVID SHOEBRIDGE: Those kinds of decisions should be the job of the prison authorities, based on all that evidence.

Mr ROLFE: Yes.

Mr DAVID SHOEBRIDGE: We should not be using the classification as a punishment tool. It should be a prison management tool.

Mr ROLFE: Exactly.

Mr DAVID SHOEBRIDGE: Correct me if I am wrong, but the small comfort that you would get is that Richard Leonard has been put away for life. You want him deprived of his liberty for life, but how that is done is a matter for the prison authorities.

Mr ROLFE: Yes.

Mr DAVID SHOEBRIDGE: As you sit there now, are you aware that there is a distinction between classification and privileges? The idea of whether someone gets a toaster or a television is not closely related to classification.

Mr ROLFE: Yes.

Mr DAVID SHOEBRIDGE: Is that something you have slowly become aware of?

Mr ROLFE: Yes, it is.

Mr DAVID SHOEBRIDGE: Do you think that victims should receive that information up-front from the authorities?

Mr ROLFE: Yes, of course we should.

Mr DAVID SHOEBRIDGE: Did you read the series of articles that have dealt with this issue in the past six months?

Mr ROLFE: Of course I did.

Mr DAVID SHOEBRIDGE: Did you find them informative or did you have to find the facts yourself afterwards?

Mr ROLFE: I have been a very good friend of Christine Simpson for 20 years.

Mr DAVID SHOEBRIDGE: You fact checked

Mr ROLFE: Yes. I supported Chris through her ordeal with the Garforth business. I spoke to her on Friday and told her I was coming here today. She wished me well. Someone gave evidence earlier that Christine had been informed prior to the *Daily Telegraph* releasing information. My information is that she was not informed before that. She did get a phone call from the Victims Register and was told that it was going to happen but it was not—

Mr DAVID SHOEBRIDGE: I for myself would make this an open invitation for her—if she wants to put in a late submission I am sure we would consider it.

Mr ROLFE: Right.

The Hon. DAVID CLARKE: Mr Rolfe, in your submission on behalf of the organisation of which you are president, Support After Murder, you say:

> We feel that there should be no change to the classification of inmates serving a … sentence of "Life Imprisonment". However if there is to be any change in classification the registered victim should be consulted and should be involved in the process.

In view of your organisation's submission, what is your response to the submission of Justice Action, which says:

> Whether a prisoner is serving a life sentence or not, every prisoner is entitled to the prospect of release.

When I put to the president of that organisation, "Are you saying you can think of no case where life sentence should actually mean a life sentence?" the response was, "Absolutely." Do you have a response to that? Do you also have a response to several submissions that we have received which in effect say that people such as you should not be told of the classification details of the murderer of your friend and partner, Stephen Dempsey?

Mr DAVID SHOEBRIDGE: I think they are two different questions.

The Hon. DAVID CLARKE: They are two different questions, if you would like to take them one by one. First of all, what is your response to the Justice Action statement:

> Whether a prisoner is serving a life sentence or not, every prisoner is entitled to the prospect of release.

To which I was told there were no exceptions.

Mr ROLFE: Richard Leonard, when he murdered my partner Stephen Dempsey, shattered the lives of an enormous Maori family in New Zealand; he shattered the lives of my family and friends in Australia. When he murdered Ezzedine Bahmad he stole the life of a father of seven children and made a widow. Those seven children and the widow used to sleep together in one big bed because they were terrified that someone was going to come and get them. I am sorry, Justice Action, it is not right; it is not on.

The Hon. DAVID CLARKE: Thank you. What is your response to those submissions that we have received, including verbally here today, that say in effect that people such as you should not be told of the classification details of, for instance, the murderer of your friend and partner, Stephen Dempsey?

Mr ROLFE: Well, words fail me. I totally disagree with it.

The Hon. DAVID CLARKE: That would be putting it mildly, wouldn't it?

Mr ROLFE: Exactly.

The Hon. DAVID CLARKE: Thank you.

CHAIR: Further questions?

Mr DAVID SHOEBRIDGE: Mr Rolfe, in terms of the best way that you could have had information about what would happen over the course of the sentence of the perpetrator, do you think that there would have been some benefit, at the time of the trial, once the sentence is handed down, of having part of the prosecutor's job be to sit down with you and talk through these matters with you? Do you think that would be a useful option?

Mr ROLFE: The prosecutor, Chris Maxwell, has become a very close family friend of both me and the Dempsey family in New Zealand. I think Crown Prosecutors have enough on their plate and the Department of Public Prosecutions [DPP] has enough on its plate. I think court officials and counsellors could sit down with victims services—I think there are so many other people that could sit down and explain the situation.

Mr DAVID SHOEBRIDGE: Often the one time you can guarantee that you will have an official and the family and the victims there is at the time of sentencing. Do you think they would be at all receptive—that is what I am asking. Martha Jabour, whose opinion in matters I respect greatly, was saying that victims services are not all around the State but there is always a prosecutor there in these moments, so having the prosecutor do the counselling would be useful—you say a court official. Do you think having it at the time of sentencing is at all appropriate?

Mr ROLFE: Can I take that on notice?

Mr DAVID SHOEBRIDGE: Yes, do. Because it may actually be the worst time or it may be the best time—I do not know. You have been through the process; I have not. And maybe it is good for some people but not for others.

Mr ROLFE: Yes.

The Hon. LYNDA VOLTZ: That would be good if you could think about what the best outcome would be.

Mr ROLFE: Yes.

CHAIR: Are there any particular recommendations that you would like to see this Committee consider in this inquiry?

Mr ROLFE: Can I take that on notice too?

Mr DAVID SHOEBRIDGE: And, for the record, we are not here to review the issue of life sentences, whether they are good or bad—that is not our remit. It is about how victims should interact on classification and how the classification system should work. We are not here to review the concept of life sentences.

Mr ROLFE: Right.

The Hon. BRONNIE TAYLOR: Regarding the concept of making the Victims Register an "opt out" rather than an "opt in" system, are you saying that if you had had the opportunity to be on the register from the beginning by being automatically added to it you would have had better communication and that would have assisted you in this whole process?

Mr ROLFE: Well, I might have been at that meeting with Mr Severin in July.

The Hon. BRONNIE TAYLOR: Okay. Thank you.

CHAIR: Thank you very much for coming this afternoon and for taking the time to appear. You will have 21 days to respond to the questions you have taken on notice. If there are any additional questions the Committee members have to ask, they will also be forwarded to you. Again, thank you for coming.

Mr ROLFE: Thank you.

(The witness withdrew)

(Short adjournment)

PETER SEVERIN, Commissioner, Corrective Services NSW, sworn and examined:

ANNE-MARIE MARTIN, Assistant Commissioner, Offender Management and Programs, Corrective Services NSW,

ALLISON DAVIES, Victims Support Officer, Corrective Services NSW, and

CHRISSY WAGEMANS, Acting Coordinator, Child Protection Coordination and Support Unit, Corrective Services NSW, affirmed and examined:

CHAIR: Would anyone like to make a statement before we commence with questions?

Mr SEVERIN: We are happy for questions to commence straightaway.

The Hon. LYNDA VOLTZ: Thank you all for coming. I wish to clarify the security classification system. You have category A, B and C. This morning I was informed by the Serious Offenders Review Council [SORC] that the difference between category A and B is not about privileges but the level of security, whether there are high tower fences, security screens, and once you get to category C, privileges and conditions change; is that correct? Can you give us a brief precise?

Mr SEVERIN: In essence the explanation that you were offered this morning is accurate. The difference between category A and B is largely the level of supervision and control that a person needs to be subjected to within a secure environment, so the physical arrangements are very similar for maximum security and medium security, A and B. There are very subtle differences between different institutions, for example, the Junee Correctional Centre is a medium security classified facility and it has a slightly different standard of physical security to Goulburn Correctional Centre, for example. However, we would consider them all as secure custody facilities where there is always at least one layer and a number of detection barriers between the prisoner and the outside world, in most cases, two, if not three of those barriers. The C classification is one where you have the ability to be in physically different environments with, in some cases, significantly reduced levels of physical security around you. The C classification, again, has various gradients within it, from C1 to C3, without going into all the detail, but essentially it is from a minimum security but still a very much supervised environment to a minimum security unsupervised environment for C3, where you can also partake in release-to-work activities, weekend leave, et cetera. That, of course, does not apply to any life sentence prisoner.

The Hon. LYNDA VOLTZ: Insofar as the victims register is concerned, it is category C when you notify victims of changes, is that correct, but you do not notify them on categories A and B?

Dr MARTIN: That is correct, yes.

The Hon. LYNDA VOLTZ: Are the processes explained to people on the victims register? What has been a concern is that prisoners are being reclassified, possibly in the way we are talking about, and victims do not understand what the reclassification means.

Dr MARTIN: It is explained, but I will refer to Allison Davies to explain the actual process around initial contact and the information provided to registered victims.

Ms DAVIES: In the last four years we have been doing much better case management with victims. We are having a lot more verbal contact with them at the time of registration, so every newly registered victim will have a phone call as well as letter confirming that they are on the register. At that time, we will explain to the person the information we have to tell them and at what time. We will then explain the classification system, to a degree, and advise victims that if an offender was due to be considered for a classification which would allow them to participate in external leave, we will advise them at that time and they will have an opportunity to put forward a submission.

The Hon. LYNDA VOLTZ: Would they receive that in writing?

Ms DAVIES: Yes.

The Hon. LYNDA VOLTZ: Would the victim of an offender who is subject to a life term be given the explanation that those people would not be exposed to work release?

Ms DAVIES: Yes. A lot of the victims registered against the lifer inmates have been on the register for some time. We make it a point, as I say, calling every newly registered victim. I cannot comment on what information was told to victims some time ago, as the register has been operating for some years now.

The Hon. LYNDA VOLTZ: Could you provide the Committee on notice with a copy of the written advice that you give to victims when they are registered so we can see exactly what advice they are receiving?

Ms DAVIES: Yes.

Mr SEVERIN: If I can add to the response by saying that when we met with victims of life sentence prisoners, it became quite evident that they had—and I think very legitimately so—a concern of not having any interaction because, technically, if somebody does not ever get out—there was no policy requirement, as it stood at the time, for the management within maximum security-type environments to engage in any dialogue with the victim. There was certainly, for me, a very strong learning in the context of saying, regardless of the fact that these persons will never set foot outside a prison and therefore will never reintegrate into the community, there is still some level of dialogue that victims should be afforded, if they wish so. Some victims do not want that. They simply want to be on the register, that is it, but others like to hear from the system—not necessarily in relation to the particular offender but in relation to the classification system that we operate. That is something that we have, subsequently to that meeting and in dialogue with those victims, taken on board and have changed our processes.

The Hon. LYNDA VOLTZ: I do not know whether you can provide this, but can I ask that you take on notice to provide the Committee with any category 1 inmates—the 41 inmates—or any category 2 and category 3 inmates who may have been classified below A and B? Is it possible you can provide that on notice in confidence to the Committee?

Mr DAVID SHOEBRIDGE: The natural lifers, cement lifers and those eligible for redetermination.

Mr SEVERIN: We can provide that in confidence.

The Hon. LYNDA VOLTZ: Does anyone else want to ask about classification while we are on that topic? I will ask another question: Another concern that was raised this morning is the likelihood that people who may be on life sentences, given that eventually these people become quite aged, may end up in a hospital bed or a hospice outside the prison system. My understanding from the Serious Offenders Review Council [SORC] this morning was that there is no ability within the prison system for aged care, other than the Long Bay hospital ward. What is the long-term plan for Corrections for dealing with life termers, so that the victims can feel secure that they will remain within the prison system?

Mr SEVERIN: Again, a relevant issue for us, dealing with a rapidly ageing population and, for a range of reasons, we also get cohorts of older men in particular into the system. So there are plans, which are yet to be considered by government, to have designated units and areas designed for the care of aged and frail prisoners into the future, away from the Long Bay complex. These arrangements will still be secure custody arrangements because we need to be able to accommodate anybody in those facilities. They are quite specialised in the way they need to be managed. They are not simple units, like a normal mainstream correctional unit. But we, as much as every other correctional system, need to make plans and have plans under way to change and increase the ability to manage aged and frail people in custody. We are doing that at Long Bay at the moment but Long Bay will not be sufficient, moving forward, as the only place where we can cater for this particular cohort.

Mr DAVID SHOEBRIDGE: It is also very expensive, isn't it, the way you do it at Long Bay? It is a maximum security facility which is enormously expensive to maintain.

Mr SEVERIN: The unit is within Long Bay and it is staffed according to the need of the inmate. It would be very expensive if you were to build dedicated maximum security-type facilities for the aged and frail, so we would always look at an arrangement within existing perimeters where you have those costs anyway. So there would not necessarily, as a result of the security classification, be added costs. The added costs are because of the very high needs that these aged and frail people have, requiring specialist care and a different profile of staff.

Mr DAVID SHOEBRIDGE: It is a highly secure facility, with all the high-level, maximum security. Yet, when you go in there, there is a whole group of inmates who are so frail that they have trouble getting out of bed. What is the rationale for spending all that money, all those resources, on 30-foot high walls, razor wire, biometric security—layers and layers of security—when the inmates have trouble getting out of bed, let alone escaping out of jail? Why are we doing that?

Mr SEVERIN: The rationale, as I understand it—and it is obviously a unit that has been there for quite some time—is that it is co-located to the Long Bay hospital. So you have immediate access to hospital care and it makes good sense to have that co-located.

Mr DAVID SHOEBRIDGE: Do you say it makes good sense to put extremely frail, elderly inmates in that level of security? You do not think there is a more rational application of scarce tax dollars or that you should be putting in place a more rational way of dealing with it?

Mr SEVERIN: It makes very good sense to have a high-need and high-care unit co-located with a hospital.

Mr DAVID SHOEBRIDGE: Could you give the cost per day for the inmates in that?

Mr SEVERIN: I would have to take that on notice.

Mr DAVID SHOEBRIDGE: I am happy for you to take it on notice. How many of them are elderly and frail?

Mr SEVERIN: They would all be elderly and would all be frail in that particular unit.

Mr DAVID SHOEBRIDGE: Are any of them a serious escape risk?

Mr SEVERIN: The issue here is not about the physical environment, it is not to stop that cohort of offender from escaping.

Mr DAVID SHOEBRIDGE: So why the razor wire, the biometric security and the layers and layers of security, if not to do that? What is that for?

Mr SEVERIN: It is to adequately cater for their requirements and their needs. So it is basically an environment that yes, it is very secure and it accommodates a whole range of other cohorts within that environment. But it is co-located to the hospital so we would otherwise—and I am not suggesting, as I have mentioned before, that this is the only option going forward—but we would otherwise have to recreate a hospital somewhere else or obtain access to that medical specialist care. We would need to move people through the community to access that service. That does not actually exist anywhere else and it would be very expensive to replicate.

Mr DAVID SHOEBRIDGE: You might perhaps, on notice, give the details of the number in the prison hospital, in the maximum security facility, those who are frail and those who are not.

Mr SEVERIN: In the hospital itself, plus the unit that is co-located?

Mr DAVID SHOEBRIDGE: Yes.

CHAIR: You may want to break that down also to lifers.

Mr SEVERIN: Yes.

The Hon. BRONNIE TAYLOR: Thank you for coming today. My question is directed to Ms Davies. We have heard a lot of evidence today from different sources but there does seem to be a theme with the victims groups and one thing that was mentioned was an opt-out system, rather than an opt-in system. But my question to you is, what are we doing? Because the other thing I think that was poignant was someone who said that perhaps at the time that the terrible offence was committed against his family, it was not an option for him or his dad. He spoke about wanting to be on the Victims Register now that he is someone who is making a huge

contribution, in terms of being here today to give evidence and his involvement, he is interested. How are we catering for people who, perhaps at the time of the crime do not want to be involved, but then it is important that they have that option. There was someone else who did not know that the option existed. I want to know what you are all doing to make some improvements so that we are looking after these people who should be at the centre of our care.

Ms DAVIES: It is a good point you make. We are looking at that. Currently the Victims Register is opt-in, so you need to know about us and you need to have the information to contact us and to get your name placed on the register. We are looking at the feasibility of an opt-out system, in particular with serious offenders, lifers, those sorts of things. I have the figures for the serious offenders, if you did want them.

It is a really good point. I think we are doing a lot of work within the register to provide information to victim support groups. We have done presentations to the Department of Public Prosecutions, the Witness Assistance Service and the police. We have recently done a presentation with Victims Services and Support, the Support Coordination Team, who have every victim coming through. They case manage every victim in New South Wales.

You make a good point. I think the way we operate at the moment is that it is opt-in and certainly we could take advice whether, if it is deemed appropriate that it is an opt-out, then that is something we could look at.

Mr DAVID SHOEBRIDGE: But Mr Rolfe opted in four months ago and he said he did not get anything. He did not even get the letter and then, when he chased the contact, he got given an email simply saying that he had been registered. But he did not get a phone call or anything. Did you hear Mr Rolfe's evidence?

Ms DAVIES: No, I did not. I am aware of the case.

Mr DAVID SHOEBRIDGE: You said everyone gets a phone call; he did not get a phone call.

Ms DAVIES: He was called. I can guarantee that that call was made. We may not have spoken to him at that time but we certainly followed it up with him later and we certainly followed it with an email and a physical letter to him.

Mr DAVID SHOEBRIDGE: Well, despite your contacts, he had no idea.

Ms DAVIES: Yes, I am aware he was not aware of the register until very recently.

The Hon. BRONNIE TAYLOR: Obviously we are talking about classifications a lot today, and one thing that has come through for me—and I do not have a lot of experience with this, so just in hearing the evidence today and reading the submissions—we talk about classification, which is a specialised thing that you all probably understand really well. But do you think it is fair to say—and I am happy for you to say no—but we have to look at the information that we are providing to the victims and the information that they actually want. It is fine for us to say, "We are going to reclassify this person that did this hideous crime to your family and we are moving them from an A1 to an A3C", or whatever it is. How meaningful is that? Do we need to start looking at not the quantity or how we think we should provide the information, but to what is valuable to the victims?

Mr SEVERIN: Absolutely, and can I say that is one message that was loud and clear in our dialogue with victims of lifers. But it is equally relevant to any other victim who is registered. One of the more subtle improvements that we are making is, we are having a good look at the way our standard template letters are worded. They are quite bureaucratic and they assume that people know more than they really know. It was very much highlighted by the fact that, once you actually explain what a classification really means, it actually is very positive, in the context of not being re-victimised, not reliving the trauma that you went through when the offence against your family occurred.

So I totally agree, we need to carefully look at how we can more effectively communicate with victims in a way that is meaningful to them and how we can learn also from the feedback from victims. So we want to have six-monthly meetings now with victims organisations, victims of crime, and others in that space. The victims themselves identified that they would like others to come along, like the DPP or maybe some other representatives from the criminal justice system, to explain to them what is happening.

One of the observations that victims have made is that, ideally, they want a one-stop shop. They do not want to deal with the victims' focus in the courts, then victims' focus in police, then victims' focus in Corrective Services. That may not be immediately achievable, but we can align the way we communicate the message and engage.

Mr DAVID SHOEBRIDGE: Mr Severin, do you agree that you have an overriding obligation to administer the prisons in accordance with law?

Mr SEVERIN: Absolutely.

Mr DAVID SHOEBRIDGE: Do you accept that when, in July 2015, you changed the classification of 12 life prisoners, that you did it contrary to your legal obligation to seek and to consider the recommendations of the Serious Offenders Review Council before you did that?

Mr SEVERIN: That is accurate. It was subsequently clarified with the chair, Judge Blanch. It is certainly an area where there was an oversight on my part.

Mr DAVID SHOEBRIDGE: It was an oversight with very real consequences for 12 individuals, where, contrary to law, off your own bat, without seeking the advice of the Serious Offenders Review Council, you changed their classification.

Mr SEVERIN: I did so. Ultimately, under the law it is my sole discretion. The Review Council obviously provides me with an input that I need to take into consideration, and always do. Ultimately, it is the Commissioner's discretion and responsibility to determine—

Mr DAVID SHOEBRIDGE: But it is meant to be informed discretion. You are meant to seek the views and recommendations, not just whatever your gut decision is one night. You failed to do that.

Mr SEVERIN: I have subsequently, obviously, been provided with the input form the Serious Offenders Review Council, and have confirmed the decisions that I made at that point in time.

Mr DAVID SHOEBRIDGE: Before you made that decision in July—and you sent the 12 letters off—did the Minister speak with you about this?

Mr SEVERIN: The Minister certainly spoke with me in the context of classification of those prisoners.

Mr DAVID SHOEBRIDGE: Let us be clear here. There was a brouhaha in the *Daily Telegraph*. It was going off in shock-jock world. Did the Minister call you up and say, "What is going on here?"

Mr SEVERIN: The Minister certainly had discussions with me in relation to the classification system for life-sentence prisoners.

Mr DAVID SHOEBRIDGE: Did he tell you to fix it and reclassify them?

Mr SEVERIN: No, he certainly did not.

Mr DAVID SHOEBRIDGE: Did he give you a direction under section 232?

Mr SEVERIN: No, he did not.

Mr DAVID SHOEBRIDGE: Did he tell you, "You need to fix this problem with these 12 lifers; do something." Did you tell him what you were going to do?

Mr SEVERIN: No. He outlined his concerns about the reaction of victims and the fact that we had not properly considered the concerns of victims in making that decision to reclassify downwards. Based on the fact that victims expressed such strong sentiments at the time, and also on the requirement that I have under section 198 of the Act to ensure that the community must have confidence in the administration of justice—

Mr DAVID SHOEBRIDGE: The community would have a lot more confidence, would it not, if you complied with the law and did not break it when you making these kinds of determinations? That would create a lot more confidence in the community, would it not?

Mr SEVERIN: As I mentioned, I certainly acknowledge the fact that I did not seek the advice from SORC at the time—

Mr DAVID SHOEBRIDGE: You broke the law.

CHAIR: Mr Shoebridge, if you are going to ask a question of the Commissioner, please have the respect to allow him to answer the question.

Mr SEVERIN: That was well reported by the Inspector of Custodial Services at the time, who did an investigation into this matter. I have never denied that.

The Hon. LYNDA VOLTZ: I would like to follow-up on what Mr Shoebridge was asking. If you had reclassified any of those 12 to category C1, would you be required to notify the victims register?

Ms DAVIES: The point where we notify registered victims is when an inmate is to be considered for external leave programs. No lifers are ever to be considered for external leave programs. They may progress to a C1. The minimum security classification has three bands: C1, C2 and C3. C3 is a classification which allows offenders to participate in external leave.

The Hon. LYNDA VOLTZ: When would you notify victims of a change of classification?

Ms DAVIES: We do not. As far as classification goes, under the current policy and under current legislation, we would not inform a registered victim of a decision to change classification.

Mr DAVID SHOEBRIDGE: That is because none of them is ever leaving the prison as a result of reclassification at any point.

Ms DAVIES: Absolutely.

Mr DAVID SHOEBRIDGE: They are always, in your mind, in a secure environment, where they are at no risk to anybody.

Ms DAVIES: Correct.

CHAIR: Are there other cases or other jurisdictions where victims or the community are advised of reclassification from maximum to medium?

Mr SEVERIN: No; not to my knowledge. The practice that our victims' register is following is consistent with other jurisdictions. There are some jurisdictions that do not notify at all. It is only when the person is being considered for parole that victims are engaged. Following the dialogue with victims, I certainly believe we need to engage in a meaningful way throughout the process. This is current practice; we are not bound to that by law. We can change the practice and have different levels of engagement. My commitment to victims when we met, and in subsequent discussions, is that we want to make sure that they feel satisfied with how Corrective Services is administered in the context of their status as a registered victim.

CHAIR: There has been some confusion over the classification and the routine, rewards and various other things that happen. Could you give us a bit of an overview—I am happy for you to take this on notice if the answer would be too detailed—of the clear difference between maximum, medium and low security.

Mr SEVERIN: I can refer to an appendix that we attached to our submission.

CHAIR: Can you tell us, also, how that might impact on the daily routine.

Mr SEVERIN: Sure. We might have to take the detail of daily routine on notice.

CHAIR: That is fine.

Mr SEVERIN: In the submission that we provided, annexure B on page 7 outlines the classification system. The various categories in the maximum security classifications always include multiple perimeter fences, multiple detection systems, towers et cetera. In relation to the prisoners' daily routines, they are highly regulated and very strictly monitored. They are allowed to work. They are allowed to participate in education programs. Life sentence prisoners would not be allowed to participate in therapeutic intervention because there is no point in addressing criminal risks because they are never going to be released, unless there is an imminent risk of them behaving in a criminal way towards other people in custody. So if somebody is extremely violent we would probably look at their participating in some violence intervention. It is only for internal purposes; never for purposes of being in the community.

In the medium-security environment access would be to a slightly larger suite of work assignments. In some cases we would not allow a maximum security prisoner to work in certain workshops where we have dangerous tools and other pieces of equipment. The fact is they all have to work. The principle is that we want people to be meaningfully engaged. We also want them to do something to earn their keep. So work is not simply something that is a privilege. It is also an obligation that inmates have in custody.

The medium-security physical environment is very similar to maximum security. Most of our facilities that are maximum security also house medium security inmates. There are a number of dedicated medium-security facilities, such as Junee, where the physical security is slightly less. It is subtle, but it is slightly less. Minimum security inmates obviously have access to a whole range of other work assignments. They can work outside the perimeter once they are in the second category and inside the perimeter they can work in any workshop, regardless of the type of work that is undertaken there. They can also work in physical environments that are away from the prison by being escorted to the secure workshops which we have in some places. So there is a greater degree of movement possible because of the lower level of risk. Is there something else?

Dr MARTIN: No, Commissioner, you have not missed anything. I think the point that I have taken away from the more recent communication with victims of crime and the relevant support groups is that there has, as you have pointed out, been some confusion about the security classification system—which is a description of the security parameters including the number of fences, surveillance and static and dynamic security—as opposed to the activities within those. In that space then a different principle, as the Commissioner said, around driving self-sufficiency, reducing costs within the system, reducing costs to other inmates and to staff. That is a very different model. We have undertaken to improve the communication around that in simple terms so that that is clearly understood into the future.

The Hon. BRONNIE TAYLOR: We talk about community expectations, what the community wants, if a shock-jock radio message has put it into a frenzy, victims and about reclassifications. The Committee heard evidence from the Victims of Crime Assistance League, who said:

> Most victims of a crime have no concept as to what is involved when a prisoner is incarcerated. The general view being that prisoners are fed three meals a day, have access to television, computers et cetera.
>
> I doubt that any prisoner would agree with such a description. Might I say, however, I feel that department has been quite remiss in not publicising what the life of a prisoner is really like, and such publicity may dispel some of the myths about.

When we talk about community expectation and information, which I think we have a real obligation to honour, perhaps our messaging in terms of information with victims and letting people know what actually happens is not getting through. It is a perception that it is actually not so bad in prison. We need to communicate that better, do we not? Prison is tough and the expectation is that these people are serving time for a crime and it is a punishment? How do you respond?

Mr SEVERIN: I think they are very legitimate observations. The prison system has traditionally been very much out-of-sight, out-of-mind and unfortunately always attracts negative headlines when something goes wrong. Is it one of our strategies to communicate far more intensely and, first of all, within criminal justice but also within the broader community on the things that we are actually doing, but also on the reality of prison life. For me, it is very important that prisons do not define themselves as closed shop but that we are part of mainstream human service delivery. We are dealing with the whole person—no other service does that. We are dealing with any aspect of a person from health to education, to mental health, to drug and alcohol issues, to housing when they get out, to basically everything.

Of course the significant majority of people who are in custody will get out so ultimately they become citizens again. So I certainly consider that that is an area where we need to focus stronger on. How can we, in a meaningful way, share with the community what it is really like? I would also freely admit that in some cases that may not have occurred because it will inevitably be used by certain sections of the media to come right back at you. So it is always something that we need to be very considerate about. Also what we cannot underestimate is that every time we talk about a particular person, not that we as a department talk about a particular person but about a situation involving a particular person in custody, it really has an impact on victims. It almost re-victimises people so we need to be "mindful" of that. Fundamentally, I totally agree with your suggestion and also the suggestion from the league.

The Hon. BRONNIE TAYLOR: It is also community and a victim. What is coming through today is that they need to know that there are serious repercussions. I think the community has a right to know that?

Mr DAVID SHOEBRIDGE: Maybe you could start by showing this Committee what A1, B and C classifications are and arrange for this Committee to see it for itself?

Mr SEVERIN: Yes, absolutely. I can talk about it.

Mr DAVID SHOEBRIDGE: Talking about it is not really the same, is it?

The Hon. LYNDA VOLTZ: The Committee will decide that and put in a request.

Mr SEVERIN: I have been contacted by—

CHAIR: It is a matter for the Committee to decide.

The Hon. LYNDA VOLTZ: The other reality is the complexity of keeping control of a prison system. I have worked in military prisons where it is possibly a lot easier, given a Defence Force discipline Act and people will do what they are told. Prisons are probably the most complex areas to keep control. I guess the other problem is how important is the classification system to control the prison environment, particularly for prison officers who are possibly best placed to understand what mechanisms make people tick. In the Army we used specific methods to get people to do what we wanted them to do and, I assume, the same operates in the prison system?

Mr SEVERIN: It does. A classification system serves a number of purposes. It first and foremost serves the purpose of moving people through the system to prepare them for release, and does that commensurate with the level of risk that they are posing as they progress through the system. It also is clearly aimed at controlling a person within the system, so this is not about their needs, it is about their risks. What we need to acknowledge in this context is that whatever we do, we need to endeavour to place a person in the right environment so that they are not over- or under-classified. If somebody requires a very high level of control that is the level of control they should be placed at. If the person does not require that level of control they should have the opportunity to progress.

It is slightly different with lifers because they will never progress past a secure custody environment. But within that there is certainly room to say, "Now risk is still a relevant principle" and if somebody does not require the level of control that somebody else requires then they should not, as a matter of principle, just say "This is the level of control we are always going to exercise over you while you are in custody." In saying that we still will not have a separate classification system for life-sentence prisoners but, I think, what we certainly can do, and I also look forward to the recommendations and findings that will come out of this Committee, is identify are there opportunities to meet the requirements of the legislation and give the prison system an opportunity to dynamically manage people rather than simply statically, but do that in the context of full community confidence.

Mr DAVID SHOEBRIDGE: In terms of risk and the need to exert control over prisoners, that many times has a minimal to do with the reason why they are in jail in the first place. Someone might be in for a relatively more minor offence for a two-year jail sentence and be a far bigger escape risk, a far bigger violence risk than somebody who is a lifer, and may be well and truly institutionalised and be one of your model prisoners. Is that right?

Mr SEVERIN: That is absolutely possible, yes.

Mr DAVID SHOEBRIDGE: Ideally Parliament should be giving you the flexible set of tools that you need to manage the prison population in accordance with the risk and the control that you need rather than some sort of arbitrary criteria that we impose upon you?

Mr SEVERIN: Yes.

Mr DAVID SHOEBRIDGE: When we are talking about lifers, there is nothing from a management perspective inherently problematic, if they are of proven good behaviour, they are not an escape risk, they have complied with the relevant internal requirements year after year, in giving them a C1 category, is there?

The Hon. LYNDA VOLTZ: Apart from community expectation?

Mr DAVID SHOEBRIDGE: I am talking about from a prison management perspective.

Mr SEVERIN: Just talking about the tools that we have; we have an Act, we have a very good classification system, I think, and we do have criteria that we need to very carefully consider and community expectation is one of those criteria. I had no hesitation to change the classification for this cohort at the time I did for exactly those reasons. That being said, of course, every system needs flexibilities to be able to manage risk appropriately. I need to balance all of those criteria that are part of the consideration that we have to make with expectations of the community, which is one of the considerations, victims' expectations and a range of other things. So, yes, we do want flexibility. I believe that the Act allows us that flexibility. At this point in time I have not reclassified any of those people that were increased in their classification in July, pending further consideration.

Mr DAVID SHOEBRIDGE: You say pending the outcome of this Committee's report, in part.

Mr SEVERIN: It would be in part, certainly, guided by that.

Mr DAVID SHOEBRIDGE: I am asking for your guidance and assistance from a prison management perspective. There is nothing inherently wrong, provided that you satisfy yourself as to the risks and as to the behaviour the prisoner. There is nothing from a prison management perspective inherently wrong with categorising life prisoners as C1.

Mr SEVERIN: I do not think it is a question that I can answer with yes or no because C1 in itself has different connotations. I would still believe the main criterion is a secure custody facility and secure custody management arrangements. I would not like to see a life sentence prisoner on a C1 classification being able to sort of walk from a gate to another secure area loosely supervised, really because of public concerns—and rightly so.

Mr DAVID SHOEBRIDGE: The inmates would need to be confined by a secure physical barrier comprising at least one perimeter fence with detection systems at all times. That is what C1 is.

Mr SEVERIN: That is when they are in their accommodation area. That is correct, yes.

Mr DAVID SHOEBRIDGE: Provided that was in place and those other matters were ticked, I am asking you for your evidence as to whether or not there would be circumstances where that would be appropriate to have a life prisoner classified a C1.

Mr SEVERIN: If we strictly look at the physical restrictions—that is, the physical restriction that is absolutely minimum—and if we ignore all the other arrangements that could go along with this classification.

Mr DAVID SHOEBRIDGE: Give me all of them that we should be concerned about.

The Hon. LYNDA VOLTZ: For example, would work release be part of that?

Mr DAVID SHOEBRIDGE: We are not talking work release and C1 has no work release. They are never released from the facility. I am talking about the C1 classification. What are the other considerations you would have in mind?

Mr SEVERIN: As I mentioned, there are certain considerations in relation to work placements due to physical arrangements within our system. There are other considerations that I would have to take on notice—the detail of it.

Mr DAVID SHOEBRIDGE: I think it is important because you are waiting for our recommendations.

CHAIR: The Commissioner has said that he is happy to take that on notice. Just in relation to that, a witness previously said that when they moved to the C1, C2 and C3, it is on the view that it is effectively a five-year period because they will then be released. Is that correct?

Mr SEVERIN: That is correct, yes.

Mr DAVID SHOEBRIDGE: But no lifer has ever moved past C1.

Mr SEVERIN: No lifer has moved past C1.

Mr DAVID SHOEBRIDGE: So this is all academic.

The Hon. LYNDA VOLTZ: No, because C1 is what you are talking about.

Mr DAVID SHOEBRIDGE: But not C2 and C3.

CHAIR: But that is my point. You move to C1 with the aim that they will work towards being released within a period of time.

Mr SEVERIN: That is the intention of the classification. There were two prisoners at the time when the decision was made who had progressed to a C1 classification. They were both regressed. One was placed there by my predecessor. One was placed there on my decision-making. They were the only ones. Everybody else was a B classification—or the vast majority A2.

The Hon. LYNDA VOLTZ: Just explain this to me. If there had not been the furore by the shock jocks and you had not had the phone call, given that you made that classification, would you have reviewed it?

Mr SEVERIN: If I would have not been made aware of the significant community concern expressed by victims to us in particular and the resultant community concern, I would have in all likelihood not have reviewed that decision at that point in time. I have been very clear about that in my communication with the Serious Offenders Review Council. They were the two reasons, in accordance with legislation, that motivated me to take an immediate look at these cases and satisfy myself that the community concern expressed, particularly the concerns expressed by victims, were serious enough for me to say we really have let the system down here and we need to have a look at the policy, review the policy, and then make fresh decisions.

The Hon. LYNDA VOLTZ: Given that a fundamental tool of the control of the prison system is how you classify these inmates and how you deal with them, what are the ramifications of responding to those concerns on the control and order within the prison system? If you are doing it in this instance, what are the other instances in which you would do it?

Mr SEVERIN: I have not had to, to the best of my recollection, regress anybody else who is a lifer in that classification since I have been in this position, but there could be situations where a prisoner incurs a breach of discipline or infringes prison rules.

The Hon. LYNDA VOLTZ: No, but say the community then gets outraged about people who are on 20-year sentences. If community concern is the standard by which you review, where are the limitations on that, given that your primary role is using, effectively, tools towards rehabilitation and control within the system?

Mr DAVID SHOEBRIDGE: Ideally our prison system would not be driven by the *Daily Telegraph*.

Mr SEVERIN: I do not think that you can ever have a source of hard-and-fast rule in the context of what constitutes sufficient community concern. It is a judgement. Classification essentially is guided by the judgement of the decision-maker. In this particular instance at that time I was comfortable with making the decision that, based on the concerns expressed by the community and the concerns expressed by Victims of

Crime, it was sufficient for me to say that we would regress. I made it very clear to every individual that that was not the result of their management in custody—because they had not given personally any reason for their reclassification. It was based on those particular criteria, which are very important under the relevant section of the legislation.

The Hon. LYNDA VOLTZ: But when you made the initial decision to classify one lifer down to C1, did you seek the opinion of the Serious Offenders Review Council at that time?

Mr DAVID SHOEBRIDGE: You complied with the law there.

Mr SEVERIN: Always, yes. That is the normal process.

Mr DAVID SHOEBRIDGE: Not always. That is not quite true, is it? You do not always seek SORC. You did not in July.

Mr SEVERIN: As I mentioned, the question was—

The Hon. LYNDA VOLTZ: What I was trying to ascertain was that at the time you originally reclassified, you sought SORC's advice.

Mr SEVERIN: That I reclassified upwards in July?

The Hon. LYNDA VOLTZ: No, before that, when you reclassified down to C1.

Mr SEVERIN: Yes.

The Hon. LYNDA VOLTZ: You sought SORC's advice?

Mr SEVERIN: That is correct.

The Hon. LYNDA VOLTZ: And that was their advice?

Mr SEVERIN: That was their advice.

The Hon. LYNDA VOLTZ: Then you overturned that advice and reclassified back up, without seeking their advice.

Mr SEVERIN: That is correct which, obviously, was a failure on my part in that context, which I then subsequently rectified.

Mr DAVID SHOEBRIDGE: Could you provide this Committee with the paperwork that shows the rectification—how you went back to SORC and the advice you got from SORC—so that we can satisfy ourselves?

Mr SEVERIN: I would have to take that on notice and just get some advice as to whether that is the type of material that can be made available.

Mr DAVID SHOEBRIDGE: It could be provided on a confidential basis, if needed.

Mr SEVERIN: It could only be provided on a confidential basis.

Mr DAVID SHOEBRIDGE: Commissioner, 5.9 of the Inspector of Custodial Services report on lifers' classification and regression has four of the 12 inmates who are on C1 classification: one who had been on C1 since 1986; one who had been on C1 since 1987; one who had been on C1 since 1993; and one who had been on C1 since 2007. Is that not right?

Mr SEVERIN: I would have to take that—to the best of my recollection it was two, but it could have been four at the time.

Mr DAVID SHOEBRIDGE: You also said that one of them was a classification made by you.

Mr SEVERIN: One of them that was the —

Mr DAVID SHOEBRIDGE: When did you start being the Commissioner?

Mr SEVERIN: —classification decision. Just let me have a look.

Mr DAVID SHOEBRIDGE: None jumps out as being ones that you made?

Mr SEVERIN: I am pretty sure—I am absolutely certain —that I made one of those decisions. This might be an inaccurate table. I would have to look at that.

Mr DAVID SHOEBRIDGE: Could you look at this table and clarify it?

Mr SEVERIN: Yes. I certainly made one of those decisions some time earlier this year, I think.

Mr DAVID SHOEBRIDGE: But from a prison management point of view, none of them—not one of those 12—had a single issue raised with you about their behaviour or about the appropriateness of their level of classification from a prison management point of view. It was all going well from a prison management point of view, was it not?

Mr SEVERIN: There was no issue, as I mentioned earlier—and I outlined this to the persons affected—in relation to their management which gave rise to me making that decision in July.

Mr DAVID SHOEBRIDGE: For those prisoners, it would have come as a very arbitrary change in their circumstances. They had been doing everything required of them under the prison system and everything required of them under the classification system, and then they get a letter that says that, based on significant concerns expressed by Victims of Crime and other members of the community, notwithstanding it is not a result of their conduct or behaviour, they are all being reclassified. Those kinds of arbitrary decisions are a problem in a prison, are they not, because it gets rid of the sense of an expectation of fair process?

Mr SEVERIN: I would not necessarily subscribe to that interpretation, but the decision was motivated by other factors than their behaviour or management arrangements in custody. Obviously that was communicated to them. There has been subsequent communication about processes in the future. SORC has been communicating with them as far as I am aware. I have subsequently received submissions from SORC, which I duly considered and I upheld my own decision from July. Obviously, there will be further reviews done in the future.

Mr DAVID SHOEBRIDGE: You say you have received further submissions from SORC. You made your initial decision without the input of SORC and you then retrospectively sought the views of SORC?

Mr SEVERIN: That is correct.

Mr DAVID SHOEBRIDGE: And you say that they gave you some comfort. Have there been submissions since then from SORC?

Mr SEVERIN: Again, I need to check the details there, but I am quite sure I received a submission on not all of them but the majority of the inmates from SORC.

Mr DAVID SHOEBRIDGE: What was the submission from SORC? Was it to reclassify them?

Mr SEVERIN: I would have to take that on notice.

Mr DAVID SHOEBRIDGE: Did you agree or disagree with the recommendation from SORC?

Mr SEVERIN: I did not change my decision from July. Once I received the SORC recommendations I upheld my decision, as I mentioned.

Mr DAVID SHOEBRIDGE: Could you please provide us with the SORC recommendations and your decision?

Mr SEVERIN: Like I said before, I would have to take some advice on that.

The Hon. LYNDA VOLTZ: You held a meeting with Victims Register members last year or this year?

Ms DAVIES: There was a meeting with victims' representatives and victims of lifers in August of this year.

The Hon. LYNDA VOLTZ: Given the concerns that still appear to be out there in regards to a better understanding, would it be appropriate for there to be a regular morning or afternoon tea biannually where people could come to get an update on information and issues that have changed? Have you ever considered that kind of involvement so that people can come and get the briefing on information and ask the questions or not as the case may be?

Dr MARTIN: What we have agreed to in terms of that workshop are a few things. We are looking at our current forms and with the current registration system incorporating questions so that our level of communication meets their need. We have had a blanket sort of level of responding to victims of crime in the past, so we are looking at changing that. That also allows people who after a period of time do not want to be on the register to then have their status reviewed and updated. We are looking at our current internet page, which at the moment has been not very user friendly in terms of navigating through the system. We are updating that. We did agree to biannual workshops and we have got another one that we will be bringing on board in February next year. Also, more broadly, in terms of our forms we are trying to look at the language that we use there and in our correspondence around it. We will be consulting with victims support groups around that perhaps to make them more personal and meaningful to the people that receive those letters.

The Hon. LYNDA VOLTZ: What does a workshop involve?

Dr MARTIN: What was expressed at the last meeting, we will have some victims of crime there and victims support groups. There were also some questions in terms of understanding the judiciary and the prosecution process. There were some concerns raised about that. We will continue to provide information around our security system and the programs we provide as well as some information to them based on their needs.

The Hon. LYNDA VOLTZ: It is more about the breadth. I get the impression that some people are in the loop and a lot of people seem to be out of the loop. It is more the breadth of saying that here is a place that you can go every year or every second year and here are the guys who can answer your questions. Forms are nice and the internet is good for some people but there are people, particularly older people, who will not use it.

Dr MARTIN: That is a fair point. One of the people who attended the last workshop also spoke about could there be a way of accessing more detailed information remotely through the internet which at the moment we do not have the system to provide. That workshop included individuals and support groups all related to homicide, that particular matter. But there is whole range of a large number of registered victims that we have communication with that are not related to the homicide group. There are some gaps at the moment and we do need to look more at what are the needs of that whole group and be able to respond better to their questions.

Mr SEVERIN: What we also clearly identified is that we need to have more telephone contact. Rather than just having a letter there needs to be more opportunity for victims to call and know that there will be somebody that will deal with the issue. The group is doing that exceptionally well already and we get very good feedback, but that is certainly an area that we can improve because, like Dr Martin said, the forms are pretty formal. They will be more standardised in a better way, but there will still be forms. The direct contact, I think, is important, plus those biannual forms.

The Hon. LYNDA VOLTZ: Could you also provide us on notice with copies of the forms as they currently are? If you have any draft forms ready can we have copies of those as well?

Dr MARTIN: That is fine.

Mr DAVID SHOEBRIDGE: Is there currently a phone number that victims can access?

Ms DAVIES: Absolutely.

Mr DAVID SHOEBRIDGE: Is it prominent on the website?

Ms DAVIES: It is. On the Corrective Services NSW home page there is a direct link to the Victims Register with our contact details.

CHAIR: Some submissions have made the statement that the current classification system in too complex in New South Wales. Do you have a view on that or do you think the various levels are beneficial?

Mr SEVERIN: The levels are beneficial. Within the levels all the subgroups are quite complex. But this also takes us well away from the issue of lifers. There are a range of subsystems that deal with people who require different levels of protection. There are different designations in accordance with their external security threats, et cetera. What we are aiming for is a broader policy agenda, but there is no time frame for it at the moment. It is to actually look at streamlining that, looking at what other jurisdictions are doing and identifying if there are opportunities to improve. Streamlining is really the best characterisation. The system is not broken but it is quite complex and manoeuvring around it at times—and, again, this is not necessarily an issue relating to lifers but an issue relating to another large group of people—can be very, very difficult.

CHAIR: Do you know how many women are serving life sentences and if there is a difference between the classifications for men and women when dealing with life sentences?

Mr SEVERIN: There is one woman currently serving a life sentence and there is no difference. It is just that the classification there goes from category 1 to category 5. I would have to take on notice the classification of the woman but she should be at the same sort of category 4 level, I think, which is the same as the A2.

Mr DAVID SHOEBRIDGE: The Prisoners Legal Service from Legal Aid say that when they want to get access to the records of a prisoner in order to review the classification determination they are forced to go through a Government Information (Public Access) Act [GIPA] process with Corrective Services and wait the time for a GIPA, have the formalised process and eventually get a response. Surely that is a ridiculously bureaucratic process to engage in. Surely there should be some protocol between Corrective Services and Legal Aid to allow for the ready provision of that information without GIPA?

Mr SEVERIN: That is certainly something that I have no knowledge of.

Mr DAVID SHOEBRIDGE: Would you take it on notice?

Mr SEVERIN: The arrangement would have been made before my time. I am happy to take that on notice.

Mr DAVID SHOEBRIDGE: We had submissions earlier that when you make a decision whether to accept or reject the recommendation from SORC there are two boxes, one to accept and one to reject. Often it is just a tick in one or other box or a circle around one or other comment and there are no reasons given. Is that what happens?

Mr SEVERIN: Certainly not to my recollection. I always give reasons for decisions that are not consistent with SORC's recommendations.

Mr DAVID SHOEBRIDGE: That was not the evidence we had from the Legal Aid witnesses, who said that it was often just a tick in one box or another and at best maybe one sentence that says, "Due to notoriety." What sort of reasons are you giving? Are you giving clear reasons?

Mr SEVERIN: I certainly do give reasons when I make a decision that is inconsistent with the recommendation made by SORC.

Mr DAVID SHOEBRIDGE: Could you on notice provide us with the number of occasions in the last period—probably the last financial year—when you have disagreed with the recommendation from SORC and give us the number of occasions when you have given reasons?

Mr SEVERIN: Yes, again I need to take—

Mr DAVID SHOEBRIDGE: I do not expect you to have this—

Mr SEVERIN: —the availability of that information as I am not sure how long the records are kept in that context. I am not sure if this is a question you asked the chair of SORC. I certainly provide reasons if I disagree with recommendations or where I have slightly differing views. I do that in the context of quite unambiguous clarity.

CHAIR: To clarify that, the question was not put to SORC. It came, as Mr Shoebridge said, from Legal Aid.

Mr DAVID SHOEBRIDGE: After we heard from SORC, so we did not have the opportunity to ask SORC.

CHAIR: Unfortunately time for questions has expired. Any questions that you have taken on notice will need to be responded to within 21 days. Any additional questions that Committee members have will also be sent to you and responses will be required within 21 days. Thank you very much for appearing. As this is the last session for the day, I thank all witnesses for appearing and those who attended.

(The witnesses withdrew)

(The Committee adjourned at 4.31 p.m.)