

**Inquiry into security classification and
management of inmates sentenced to
life imprisonment**

**Legal Aid NSW submission to the
Legislative Council Standing Committee
on Law and Justice**

October 2015

1. About Legal Aid NSW

The Legal Aid Commission of New South Wales (Legal Aid NSW) is an independent statutory body established under the *Legal Aid Commission Act 1979 (NSW)* to provide legal assistance to socially and economically disadvantaged people across NSW.

Legal Aid NSW provides information, community legal education, advice, assistance and representation, through a large in-house legal practice and private practitioners. Legal Aid NSW also funds a number of services provided by non-government organisations, including 36 Community Legal Centres (CLCs) and 28 women's domestic violence court advocacy services.

The Legal Aid NSW Prisoners Legal Service (PLS) is a statewide specialist service. The PLS assists prisoners in NSW goals through the provision of advice, minor assistance and representation in certain circumstances. PLS services are free and confidential.

The PLS provides advice and minor assistance for bail applications, appeals, parole, classification and other prison issues, as well as other areas of law which effect prisoners' lives such as family law and civil law (fines, debt, housing) to help them rehabilitate after release.

The PLS represents prisoners at:

- hearings at the State Parole Authority
- life sentence determinations
- segregation appeals, and
- visiting magistrate hearings.

Legal Aid NSW thanks the Standing Committee on Law and Justice (the Committee) for the opportunity to make recommendations to the Inquiry into security classification and management of inmates sentenced to life imprisonment (the Inquiry). The following submissions draw on the experiences of Legal Aid NSW staff currently working in the PLS.

Should you require any further information please contact Nicholas Ashby, Solicitor, Strategic Policy and Planning, Legal Aid NSW, telephone 02 47254608 or Nicholas.ashby@legalaid.nsw.gov.au.

2. Categorisation of inmates sentenced to life imprisonment – an overview

The Terms of Reference limit the Inquiry to three categories of inmates, and specifically, those inmates:

- serving a sentence for the term of their natural lives
- serving life imprisonment who are subject to non-release recommendations, and
- serving life imprisonment who have not had a specified term or non-parole period set for the sentence.

As the Inquiry is considering inmates who have little or no prospect of release from custody, for ease of expression, we shall refer to them in this submission as 'lifers'.

The Legal Aid NSW Prisoners Legal Service ('PLS') has acted for and regularly provides advice and minor assistance to lifers.

2.1 Inmates serving a sentence for the term of their natural lives

A sentence for the term of an offender's natural life was introduced as a discretionary sentence in January 1990. To the best of Legal Aid NSW's knowledge, 56 sentences of natural life have been imposed to date, and only one of these inmates is female. These offenders do not have and cannot apply for a non-parole period.

2.2 Inmates serving life who are subject to non-release recommendations

Before natural life imprisonment became a discretionary option in January 1990, life imprisonment was the mandatory sentence for murder but the offender could apply for release on licence after serving 10 years. This meant that the offender did not and was not expected to serve natural life. Most of these 'lifers' were released on licence within 15 years.

When the sentencing regime changed in 1990, the power to release on licence was abolished. Offenders then serving life imprisonment (approximately 250 inmates) were given the right to apply to the Supreme Court for a determinate sentence with a non-parole period.

In relation to 10 of these offenders, the sentencing Judge made a recommendation that they should never be released on licence. Subsequent amendments have effectively given force of law to that recommendation. These offenders are entitled to apply to the Supreme Court for a non-parole period only after they have served 30 years and 'special reasons' must exist for their application to be granted.¹

¹ *Crimes (Sentencing Procedure) Act 1999*, Schedule 1 clauses 2 & 4(3)

If a non-parole period is granted, these inmates are not eligible for parole unless they are in imminent danger of dying and do not pose a risk to the community.² These inmates are, therefore, highly unlikely to be released from custody.

2.3 Inmates serving life who have not had a specified term or non-parole period set for the sentence

This is a reference to the majority of inmates referred to in paragraph 2.2 above. Legal Aid NSW estimates that there are only a handful of inmates in this group who have not applied to the Supreme Court, had their sentences determined and subsequently been granted release on parole. Legal Aid NSW estimates there might be 10 such offenders.

In total, Legal Aid NSW estimates that the terms of reference of this Inquiry concern approximately 75 lifers.

2.4 Inmate Classification

In order to respond in detail to the Inquiry, it is necessary to understand the security classification system which is imposed by Corrective Services NSW (Corrective Services). In view of the fact that there are so few female lifers, we will deal only with the system that applies to male offenders.

In summary, the following classification system applies to male inmates:

- Male inmates are classified as either A (maximum) or B (medium) or C (minimum).³
- Inmates who have a non-parole period must, in order to obtain parole, progress through the security classification system from A to B to C. Minimum security classification C comprises of 3 levels which progress from C1 to C2 or C3.
- C1 and C2 allows transfer to a less secure correctional centre and work outside of a correctional centre. C3 allows unescorted leave from custody to attend work or study, or to accompany an approved sponsor on day or weekend leave.

² s154A *Crimes (Administration of Sentences) Act 1999*

³ See clause 12, *Crimes (Administration of Sentences) Regulation 2014*.

3. Terms of reference and recommendations of Legal Aid NSW

Section 2A of the *Crimes (Administration of Sentences) Act 1999* (NSW) (the Act), sets out the Objects of the Act and provides:

- (1) This Act has the following objects:
 - (a) to ensure that those offenders who are required to be held in custody are removed from the general community and placed in a safe, secure and humane environment,
 - (b) to ensure that other offenders are kept under supervision in a safe, secure and humane manner,
 - (c) to ensure that the safety of persons having the custody or supervision of offenders is not endangered,
 - (d) to provide for the rehabilitation of offenders with a view to their reintegration into the general community.
- (2) In the pursuit of these objects, due regard must be had to the interests of victims of the offences committed by offenders.

The Committee has been instructed to examine five broad areas in the conduct of the Inquiry. Legal Aid NSW will address these separately and sequentially:

- (a) ***whether the existing legislation, policies and procedures for determining the security classification and custodial management of such inmates are appropriate and consistent with community expectations***

The current procedures relating to the security classification and custodial management of 'lifers' have been operating for 25 years. Legal Aid NSW is of the view that they have worked well and, in principle, there is no need for significant change.

However, Legal Aid NSW notes that in September 2015, the Inspector of Custodial Services (the Inspector) publicly commented on media reports about Corrective Services policies and practices relating to the management of inmates serving life imprisonment.⁴ Specifically, in July 2015, following media reports of victims' distress upon learning that 12 lifers had been reclassified to levels below maximum security, it was reported that this led to CSNSW revoke that classification of and reclassifying those inmates as maximum security. The Inspector expressed concerns to the Commission of Corrective Services that the decision to regress the status of these inmates was not consistent with the *Crimes (Administration of Sentences) Regulation 2014* (the Regulation).

⁴ Lifers: security classification and regression, Inspector of Custodial Services, Department of Justice, September 2015

Legal Aid NSW supports the recommendations of the Inspector to Corrective Services which are, in summary:

- that the review of the classification system does not compromise the objectivity and integrity of the classification system
- that the Serious Offenders Review Council act in accordance with the Regulation in regressing inmates
- that Corrective Services review the regression of the 12 inmates in July 2015 to ensure compliance with the Regulation, and
- that Corrective Services review its communication strategies to enable an improved understanding of the correctional system for victims.

(b) *the impact of security classification and custodial management of such inmates on registered victims and the role of registered victims in the classification and management decision making process*

Legal Aid NSW provides legal services to victims of violence and acknowledges the impact that serious offences have upon the lives of victims and their families. We acknowledge the need for victims and their families to access information about matters which inform and support them. We support the framework for providing victim impact statements in the course of the court proceedings and the need for counselling services.

Legal Aid NSW also acknowledges the pressure on Corrective Services as a consequence of adverse media publicity about the management of inmates, particularly in high profile matters. We acknowledges these can be highly emotive and attract continued public attention for many years after a sentence of life imprisonment has been imposed.

Legal Aid NSW agrees that victims of these crimes and their families should receive appropriate information about the custodial management of the inmates, however, this must be distinguished from actively seeking a victim's views in relation to classification decisions or bowing to public pressure when making classification decisions about individual inmates.

Decisions about classification and reclassification of inmates should be made on the basis of the legislative and regulatory framework.

On a practical level, the current classification system relating to lifers does not formally involve victims of the offence. Legal Aid NSW understands that Corrective Services will not progress a lifer beyond B (medium security) classification. We understands that Corrective Services does not progress a lifer to category C1 because the offender would be transferred to a less secure correctional centre which might tempt them to escape from custody. At present, victims have a right to be informed and respond only when a serious offender is being considered for C3 classification (temporary leave) and parole. Neither of these situations arise with lifers.

In view of the fact that lifers will not be transferred to minimum security gaols, nor seek parole, Legal Aid NSW submits there is no need for victims to be involved in Corrective Services decisions relating to their gaol placement or access to programs. Apart from causing anguish to the victims through seeking their views, these decisions do not directly impact on victims. We submits that victims need only be involved in a decision making process when an offender is likely to have access to activities in the community or is seeking parole.

(c) communication with registered victims prior to and following a security classification and custodial management decision being made and the form that any communication should take

Legal Aid NSW recommends that the current procedure for communication with registered victims prior to, and following, a security classification and custodial management decision being made is appropriate. Within the current regime, victims have a role if a serious offender is seeking unescorted leave or on parole.⁵ Lifers are never in this position.

Legal Aid NSW submits there is no need to seek the views of victims on the specific issue of inmate progression from A to B or access to programs, activities or work because it does not involve transfer to a minimum security gaol or unescorted leave from gaol. We submits that this is a gaol management issue relating to appropriate placement and access to programs and work. These are matters of administration for Corrective Services and have no impact on the public.

Whilst Legal Aid does not agree that the views of victims and their families should influence inmate classification decisions, Legal Aid NSW does agree that victims should be provided with appropriate information explaining these decisions.

(d) whether it is appropriate to reclassify and provide inmates sentenced to life imprisonment with access to rehabilitative programs and services if they have little or no prospect of release from custody;

Lifers are sent to gaol as punishment, not for punishment. Imprisonment with 'hard labour' was abolished decades ago. It is one of the stated objects of the *Crimes (Administration of Sentences) Act 1999* (NSW) that prisoners are to be held in a safe, secure and humane environment.

Legal Aid NSW concedes that 'lifers' are serving sentences for the most serious of offences. However, we submit that this fact does not displace the moral obligation which arises in a civilised society to treat such individuals with respect as fellow human beings.

Legal Aid NSW notes the international instruments to which Australia is a signatory, for example, the United Nations *International Covenant on Civil and Political Rights* (1976) which provides:

⁵Ss. 67, 68, 145 and 198(2)(b) *Crimes (Administration of Sentences) Act 1999*

Article 7 – ‘No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment...’

Article 10 at paragraph 1 - ‘All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person..’

Even if a lifer is held as B classification and detained in a maximum or medium security correctional centre, Legal Aid NSW recommends these inmates should have access within those centres to programs, both rehabilitative and educational, activities and work inside the gaol or outside with a guard.

Legal Aid NSW submits it is inappropriate and inhumane to provide nothing to occupy the time of lifers. To do so, would mean that lifers would have nothing to do but ‘stare at the gaol walls’ for the remaining decades of their lives. The resulting boredom would undermine morale of both the inmates and correctional staff and result in friction between them.

Legal Aid submits that as lifers age, issues affecting general mental well-being, dementia and mobility will be exacerbated by a lack of mental and physical stimulation and to deprive lifers of any meaningful activity would potentially speed such decline.

(e) *the impact of inmate security classification and management decisions on the operation of the correctional system;*

Poor security classification and management decisions impact upon the good order and discipline of the gaol. Legal Aid NSW submits that boredom and lack of activity contributes to friction between Corrective Services staff and inmates. We refers to the Objects of the *Crimes (Administration of Sentences) Act 1999* (NSW), specifically the contents of section 2A set out above. The legislation requires that inmates are placed in a safe and humane environment and kept under supervision in a safe manner, and that the persons having custody supervision of inmates be safe in discharging their duties.

Legal Aid NSW submits that to deny lifers, who are potentially the most dangerous of offenders, meaningful activity is to exacerbate the pressures of an already charged environment and to cause risk to the safety of both inmates and those who supervise them.