



Justice
Inspector of
Custodial Services

Lifers: Classification and regression



Produced by Inspector of Custodial Services
Level 13, 10 Spring Street
Sydney NSW 2000

P: 02 8061 9331

W: www.custodialinspector.justice.nsw.gov.au

September 2015

Contents

Foreword	4
Glossary of terms	5
Executive summary.....	6
Recommendations	7
1. Introduction.....	8
2. Overview of inspection.....	9
Background	9
Objective.....	9
Context	9
3. The purpose and importance of the classification system	11
4. The NSW classification system	13
Complexity of the CSNSW classification system.....	14
5. Lifers	15
Progression through the classification system.....	15
The regression of lifers	16
Consequences of reclassification to A2	18
Risk management	18
Engagement with victims	19
References.....	22

Foreword

In July 2015 there was public commentary on the management by Corrective Services NSW (CSNSW) of 12 life-sentence or 'lifer' inmates, their classification, and their victims. The commentary implied that the policies and practices by which life-sentence or 'lifer' inmates are managed by CSNSW do not meet community expectations. Unsullied by evidence, the terms 'soft treatment', 'cushy treatment' and 'privileges' were used.

It is important that the commentary and assertions be tested because, as Lord Justice Woolf observed in his report into the 1990 British prison riots, stability in the correctional system rests on getting the right balance between security, order and justice.

It is my view that the issues raised warranted inspection under the provisions of the *Inspector of Custodial Services Act 2012* as being in the public interest. To fail to do so may otherwise have ceded an interpretation of the truth to a single, and not necessarily objective, viewpoint. Public confidence in the correctional system is already fragile and may be further undermined by a lack of understanding. It is an unfortunate feature of our times that the quest for public confidence in the correctional system requires CSNSW to continually demonstrate the conservatism of its inmate management.

This report documents the events and processes by which 12 life-sentence inmates were, in July 2015, at the direction of the Commissioner, regressed from their existing lower security classification to A2 (maximum security) classification.

It is my view that the regression process and the reasons given by CSNSW were inconsistent with the provisions of the *Crimes (Administration of Sentences) Regulation 2014*. The Commissioner has emphasised that consideration should be given to community confidence in the management of inmates. I agree with this position, with the caveat that institutional expediency and populism should not, in practice, override legislation.

It was also of concern that little attention was expressed to the effects of regressing the inmates on the whole custodial estate, to the integrity of the classification system, to inmate behaviour management and, ultimately, to the staff who will be left to manage people who have had the processes and goalposts changed as a result of no action on their part.

The classification system is complex and is to be reviewed by CSNSW, with a view to simplification. It will be important that this review, in seeking to strike a balance between the political and the professional, does not compromise the objectivity and integrity of the classification system.



J. R. Paget
Inspector of Custodial Services
September 2015

¹ Woolf, Lord Justice, and Tumin, S, *Prison Disturbances*, April 1990, London, HMSO, para 9.20.

Glossary of terms

A2.....	Maximum security classification
Cement lifer.....	Inmates sentenced to life imprisonment before 12 January 1990
CMT.....	Case Management Team
CSNSW	Corrective Services NSW
ICS	Inspector of Custodial Services
Inspector.....	Inspector of Custodial Services
Lifers	Inmates serving life sentences
Natural lifer.....	Inmates sentenced to life imprisonment on or after 12 January 1990
Override.....	Authority to change an inmates' classification decision
SORC	Serious Offenders Review Council
The Act.....	<i>Inspector of Custodial Services Act 2012</i>

Executive summary

This report by the Inspector of Custodial Services was produced following media commentary on the management of a number of life-sentenced inmates (lifers) in the NSW correctional system. The media reports and subsequent discussion with Corrective Services NSW (CSNSW) related to 12 particular lifers, all of whom had had their security classifications downgraded some time prior to coming to public notice. In an apparent response to media and community concern about this downgrading of security classifications, the Commissioner of CSNSW revoked the classifications of the 12 inmates and placed them in the maximum-security (A2) category again.

The classification system is a vital part of the successful operations of any correctional system. This report examines CSNSW classification processes and procedures, and particularly the way in which they are used to manage lifer inmates. It is a complicated system, and one that is easily misconstrued, but it is important to ensure that it is managed with integrity and in an objective and predictable manner.

A central component of the classification system is to assign inmates with the lowest necessary security classification to accommodate their level of risk. Hand in hand with this is the notion that inmates can progress through security classifications in custody. These principles provide predictability for inmates, ensure consistency in security management and deliver economic efficiencies for the correctional system.

Of the 12 lifers who are the subject of this report, nine had been downgraded from a maximum security rating to a medium or minimum rating more than eight years ago. The remaining three had been downgraded in the past two years.

Upon examination of the issue, it became apparent that the decision to regress these inmates to maximum security was made not in accordance with the reasons set out in the *Crimes (Administration of Sentences) Regulation 2014*, but in response to concerns from victims of crime and other members of the community, who were not satisfied with the security level of these inmates. This is clearly inconsistent with both the spirit and intent of the regulations.

Another important part of the management of inmates who are serious offenders is the communication with victims and families of victims. The way this is managed by CSNSW is examined in this report and the Inspector considers that there is scope for CSNSW to improve its communications with victims in order to better reflect a sense of empathy and engagement. There is a critical need to enhance a victim's understanding of the way they can interact with the correctional system.

The recommendations made in this report centre around ensuring the integrity of the classification system through the correct application of legislation and policies. This will assist the correctional system to operate effectively, with positive outcomes for both inmates and the system as a whole.

Recommendations

The Inspector will review progress against these recommendations and include this as part of the annual reporting mechanisms to NSW Parliament.

Recommendation 1

The Inspector recommends that CSNSW classification system review does not compromise the objectivity and integrity of the classification system.

Recommendation 2

The Inspector recommends that CSNSW should, in regressing inmates managed by the Serious Offenders Review Council, act in accordance with the Crimes (Administration of Sentences) Regulation 2014.

Recommendation 3

The Inspector recommends that CSNSW should review the regression of the 12 inmates who are the subject of this report to ensure compliance with the Crimes (Administration of Sentences) Regulation 2014.

Recommendation 4

The Inspector recommends that CSNSW develop its communication strategies to enable an improved understanding of the correctional system for victims.

1. Introduction

- 1.1 This is the fourth report produced by the Inspector of Custodial Services (ICS) since the establishment of the office in October 2013. The office was established by the *Inspector of Custodial Services Act 2012* ('the Act') with the purpose of providing independent scrutiny of the conditions, treatment and outcomes for adults and young people in custody, and to promote excellence in staff professional practice.
- 1.2 The principal functions of the Inspector, as set out in Section 6 of the Act, include:
- to inspect each adult custodial centre at least once every five years;
 - to examine and review any custodial service at any time;
 - to report to Parliament on each such inspection, examination or review;
 - to report to Parliament on any particular issue or general matter relating to the functions of the Inspector if, in the Inspector's opinion, it is in the interest of any person or in the public interest to do so.
- 1.3 Under the Act, the Inspector has the remit to inspect over 100 custodial facilities across NSW. These include 34 public and two privately operated prisons. Three prisons are exclusively for women. There are 13 centres that are exclusively maximum-security environments or host a maximum-security unit. There are, in addition, over 80 court and cell complexes that fall within the Inspector's remit.

2. Overview of inspection

Background

- 2.1 Recent media reports have been critical of the Corrective Services NSW (CSNSW) inmate classification system; in particular, how this system is applied to inmates serving life sentences ('lifers'), and the access of the lifer cohort to other than a maximum-security classification. Many of the reports contained misinformation about the purpose and operation of the classification system and about the level of 'privileges' afforded to inmates.
- 2.2 The media reports also indicate an absence of understanding with regard to information sharing between CSNSW and registered victims, and expectations related to security conditions for offenders serving life sentences.
- 2.3 The media reports have also implied that, in recent years, there have been changes to the policies and practices by which lifer inmates, and other maximum-security inmates, are managed.
- 2.4 The tenor of these suggestions, in essence, is that the management of the correctional system in general, and of lifer inmates in particular, does not meet community expectations. The terms 'soft treatment', 'cushy treatment', 'privileges' and 'social reform' have been used repeatedly in media reports.

Objective

- 2.5 This report will examine the classification of life-sentenced inmates. This is an issue that has attracted media and community interest recently. Commentary not based on evidence does little to promote public confidence in the justice system.
- 2.6 This report will outline the purpose and importance of the inmate classification system in the NSW correctional system. It will examine the structure of the inmate classification system in NSW with particular reference to lifers. The ways in which CSNSW engages with victims of crime and shares information with them will also be discussed.
- 2.7 It is the view of the Inspector that concerns around lifers and their classification warrant inspection under the provisions of the Act as they are in the public interest.²

Context

- 2.8 A series of news articles in July 2015 carried reports concerning a group of lifers whose security classification had been downgraded from maximum security.³ As a result of the lower security classification, the media reported that these inmates had received "soft treatment" and were granted prison privileges, although it was not stated what these privileges were.⁴

² See Section 6(1)(e) of the *Inspector of Custodial Services Act 2012*.

³ Bennis, Matthew, 'Never to Be Released Prisoners Get Soft Serve in Jails from Corrective Services Boss Peter Severin Who Jet Sets to Mexico and Colorado to Brainstorm Jail Policy,' *The Daily Telegraph*, 16 July 2015; Fife-Yeomans, Janet, 'Murder Victim Valda Connell's Son Breaks down after Being Told Callous Killer Moved to Minimum Security Jail,' *The Daily Telegraph*, 16 July 2015; Fife-Yeomans, Janet, 'NSW's Most Sadistic Killers Shown Mercy with Prison Privileges,' *The Daily Telegraph*, 18 July 2015.

⁴ Bennis, Matthew, and Fife-Yeomans, Janet, 'Victims' Families Rejoice as State's Worst Killers Sent Back to Maximum Security by Corrective Services Minister David Elliott,' *The Daily Telegraph*, 21 July 2015.

- 2.9 The media reported the distress that some of the victims' families had experienced on learning that specific inmates had been re-classified to a level lower than maximum security. In late July 2015, CSNSW advised that 12 lifers would have their security classification regressed to maximum, effective immediately.
- 2.10 Following this, the Commissioner of CSNSW met with victims to discuss their concerns about the classification system and, more generally, their relationship with CSNSW.⁵ This meeting was held on 5 August 2015 and is discussed further on page 20.

² Devine, Miranda, and Fife-Yeomans, Janet, 'Jail Boss Faces Family Fury,' *The Daily Telegraph*, 29 July 2015.

3. The purpose and importance of the classification system

*The security classification of prisoners should be based on an objective assessment of risk and a risk management strategy that takes into consideration the nature of their crime, risk to the community, risk of escape and their behaviour in custody.*⁶

- 3.1 The classification system is a key component of the custodial system and centre security. Classification refers to either the division of inmates into groups according to some system or principle, or to the placement of inmates into groups according to some pre-determined rules.⁷
- 3.2 Classification is widely regarded as pivotal to the effective and efficient management of prison operations.⁸ Classification systems are an integral part of the risk-management architecture of correctional systems. They provide support across a range of issues in correctional management practices:
- From a security perspective, these systems aim to minimise the risk of correctional centre escape, violence and other institutional misconduct.
 - An effective classification system contributes to inmate behaviour management by providing incentives to promote appropriate behaviour and performance and, hence, a benign institutional climate. Where these are absent, staff are placed at risk by inmates who cannot see any meaningful future.⁹
 - From a rehabilitation perspective, the classification system, together with placement arrangements, assists in ensuring the sequencing and timely completion of programs to meet the expectations of releasing authorities.
 - From a resource management perspective, classification systems inform estate planning. There should be a match between the security classification of the estate's individual correctional centres with inmate cohorts.
- 3.3 As the Inspector noted in a previous report, at present 54.5 percent of NSW inmates are classified as minimum security, but only approximately 36 percent of beds are minimum security.¹⁰ This means that a high number of inmates are housed in a higher and more expensive security classification than is necessary.
- 3.4 Every inmate housed in accommodation rated higher than his or her security needs represents the inefficient use of public funds.

⁶ Government of Western Australia, *Standard Guidelines for Corrections in Australia (Revised 2012)*, Department of Corrective Services, 2012, <https://www.correctiveservices.wa.gov.au/_files/about-us/statistics-publications/students-researchers/guidelines-for-corrections-aust.pdf>.

⁷ Western Australia Office of the Inspector of Custodial Services, *Report into the Review of Assessment and Classification within the Department of Corrective Services*, Report no. 51, April 2008, p. T8, <<http://www.oics.wa.gov.au/wp-content/uploads/2014/04/51-ReviewAssessmentClassificationJun2008.pdf>>.

⁸ Bench, Lawrence L., and Allen, Terry D., 'Investigating the Stigma of Prison Classification: An Experimental Design,' *The Prison Journal*, 83.4, 2003, p. 367–82.

⁹ For a discussion on incentives and disincentives in inmate management, see Prison Reform Trust, "Incentives and Earned Privileges," <<http://www.prisonreformtrust.org.uk/Portals/0/Documents/IEP%20Briefing%20Prison%20Reform%20Trust.pdf>>.

¹⁰ NSW Inspector of Custodial Services, *Full House: The Growth of the Inmate Population in NSW*, 2014, p. 34.

- 3.5 A central purpose of the classification system is to assign inmates the lowest necessary security classification to accommodate their risks.¹¹ It is clearly expressed in the *Standard Guidelines for Corrections in Australia (Revised 2012)*. The sixth guiding principle for the management of prisoners is that they are “held at a level of security which is commensurate with the level of risk posed by that prisoner”.¹²
- 3.6 This principle is reinforced in the ‘Classification and Placement’ section of the *Standard Guidelines*, which provides that:
- The Administering Department should provide a well-structured and transparent system of classification and placement of prisoners which has as its central aim; the safety of prisoners, staff and the community, while ensuring placement of prisoners at their lowest level of security appropriate for their circumstances to ensure maximum opportunities for rehabilitation.*¹³
- 3.7 The notion of an inmate being assigned the lowest necessary security classification to manage the identified risks carries with it the idea of progression in the custodial setting.
- 3.8 This notion of progression has been highlighted by the Council of Europe as being of particular importance in the management of life and long sentenced inmates:
- The progression principle refers to the importance of trying to secure a beneficial movement through the prison system for all life sentence and long term prisoners. During the prison period, progression may be an important antidote to mental deterioration by providing specific goals that can be achieved within a foreseeable period of time.*¹⁴
- 3.9 Over the past two decades, prison classification systems have become more objective through the use of structured processes and multiple validated assessment instruments. As a result of these changes, evidence shows that criteria for the placement of inmates in appropriate accommodation units have been validated and placement decisions have been made in a more consistent manner. Further, over-classification has been reduced, prisoner program needs are assessed more systematically, institutional misconduct has declined and escapes reduced.¹⁵
- 3.10 It should be noted, however, that the utility of a well-developed objective classification system is undermined by the impact of crowding in the prison estate, which results in bedspace management driving inmate placement.
- 3.11 An effective classification system can also be undermined by populist considerations, which can corrode objectivity.

¹¹ The principle of assigning inmates with the lowest security category consistent with managing risks is well expressed in the United Kingdom correctional system. See the United Kingdom National Offender Management System, *Categorisation and Recategorisation of Adult Male Prisoners*, PSI 40/2011, 31 August 2011, <<https://www.justice.gov.uk/downloads/offenders/psipso/psi-2011/psi-40-2011-categorisation-adult-males.doc>>.

¹² Government of Western Australia, *Standard Guidelines for Corrections in Australia (Revised 2012)*, Department of Corrective Services, 2012, <https://www.correctiveservices.wa.gov.au/_files/about-us/statistics-publications/students-researchers/guidelines-for-corrections-aust.pdf>.

¹³ Government of Western Australia, *Standard Guidelines for Corrections in Australia (Revised 2012)*, Department of Corrective Services, 2012, <https://www.correctiveservices.wa.gov.au/_files/about-us/statistics-publications/students-researchers/guidelines-for-corrections-aust.pdf>.

¹⁴ Council of Europe, *Management by Prison Administrations of Life-Sentence and Other Long-Term Prisoners*, Strasbourg, 2003, p. 20. Note that the European context envisages eventual release.

¹⁵ U.S. Department of Justice, *Objective Prison Classification: A Guide for Correctional Agencies*, National Institute of Corrections, July 2004, p. ix, <http://www.jfa-associates.com/publications/pcras/06_ObjClass2004.pdf>.

4. The NSW classification system

- 4.1 In NSW the legislative framework for inmate classification is detailed in the *Crimes (Administration of Sentences) Regulation 2014* and these provisions are largely repeated in the *CSNSW Offender Classification and Case Management Policy and Procedures Manual*.¹⁶ The classification categories are detailed as follows:

Classification of male inmates

- a. Each male inmate is to be classified in one of the following categories for the purposes of security and the provision of appropriate development programs:

Category AA, being the category of inmates who, in the opinion of the Commissioner, represent a special risk to national security (for example, because of a perceived risk that they may engage in, or incite other persons to engage in, terrorist activities) and should at all times be confined in special facilities within a secure physical barrier that includes towers or electronic surveillance equipment.

Category A1, being the category of inmates who, in the opinion of the Commissioner, represent a special risk to good order and security and should at all times be confined in special facilities within a secure physical barrier that includes towers or electronic surveillance equipment.

Category A2, being the category of inmates who, in the opinion of the Commissioner, should at all times be confined by a secure physical barrier that includes towers, other highly secure perimeter structures or electronic surveillance equipment.

Category B, being the category of inmates who, in the opinion of the Commissioner, should at all times be confined by a secure physical barrier.

Category C1, being the category of inmates who, in the opinion of the Commissioner, should be confined by a physical barrier unless in the company of a correctional officer or some other person authorised by the Commissioner.

Category C2, being the category of inmates who, in the opinion of the Commissioner, need not be confined by a physical barrier at all times but who need some level of supervision by a correctional officer or some other person authorised by the Commissioner.

Category C3, being the category of inmates who, in the opinion of the Commissioner, need not be confined by a physical barrier at all times and who need not be supervised.

- b. Subject to clause 27, the Commissioner may at any time vary or revoke a classification under this clause.
- c. Male inmates who are classified in Category AA are prescribed to be serious offenders, as referred to in paragraph (f) of the definition of **serious offender** in section 3 (1) of the Act.

¹⁶ Corrective Services NSW, *Offender Classification and Case Management Policy and Procedures Manual*, 3 March 2013, Section 21.1., <<http://www.correctiveservices.justice.nsw.gov.au/Documents/Related%20Links/open-access-information/offender-classification/12.1-Classification-of-Male-Inmates.pdf>>.

- 4.2 CSNSW is required to review an inmate's classification, placement and case plan at least once every 12 months. An early review may also occur within the 12-month period for varying reasons. An inmate has the right to appeal his or her classification within 14 days of being notified of that decision, but this is only if new and relevant information is available that was not taken into account during the initial review process and may have had an impact on the classification decision.¹⁷
- 4.3 The process of assessing an inmate for classification is multifaceted. The inmate is first assessed against a standard range of criteria and allocated a score. This score is then assessed by the Case Management Team (CMT), which reviews the score in conjunction with additional criteria. The CMT usually consists of representatives from both custodial and programs sections of a centre.
- 4.4 The CMT considers the offender's custodial history, any outstanding court matters, case notes, offences in custody, parole reports and general behaviour when making its determination. The CMT can leave the classification as it was, or amend it, if deemed necessary. This use of a professional 'override' provides an additional check on the categorisation of inmates and aims to ensure that all available information is considered.
- 4.5 For inmates who are being considered for regression, work release, or who are categorised as serious offenders, the General Manager of the centre is required to substantiate the CMT recommendation. If a decision cannot be agreed upon, a senior consultative committee is formed.
- 4.6 The vast majority of CMT classification assessments (86 %) for sentenced inmates are approved without being overridden by a higher authority.

Complexity of the CSNSW classification system

- 4.7 The CSNSW classification system is more complex than other Australian correctional jurisdictions. One of the reasons for this has been the creation of sub-categories of classifications created over the past decade, in response to the threats posed, or risks presented, by individual inmates.
- 4.8 The US National Institute of Corrections recommends that correctional jurisdictions need to constantly review their classification policies to ensure they are not being overly restrictive. It observes that an example of a restrictive policy would be the requirement that the severity of the offence alone would require all such prisoners be housed in maximum security for an extensive period of time when it is clear that many such prisoners could be safely housed in a medium-security setting.¹⁸
- 4.9 The ICS has previously recommended that CSNSW review and simplify the classification system. The timeframe for completion of this review is April 2016.¹⁹

Recommendation 1: The Inspector recommends that CSNSW classification system review does not compromise the objectivity and integrity of the classification system.

¹⁷ Corrective Services NSW, *Fact Sheet No.9 Classification and Placement of Inmates*, <http://www.correctiveservices.justice.nsw.gov.au/Documents/CSNSW%20Fact%20Sheets/fact_sheet_9_classification.pdf>.

¹⁸ Austin, James, *Findings in Prison Classification and Risk Assessment*, Washington, National Institute of Corrections, Federal Bureau of Prisons, Department of Justice, 2003, p. 5.

¹⁹ Corrective Services NSW, "Response to NSW Inspector of Custodial Services Report 'Full House'," <<http://www.custodialinspector.justice.nsw.gov.au/Documents/CSNSW%20Response%20to%20Recommendations%20on%20Full%20House%20Report.pdf>>.

5. Lifers

- 5.1 The *Sentencing Act 1989* (now repealed) introduced a regime that is commonly referred to as ‘truth in sentencing’. The provisions of this regime were applied to life-sentence inmates through the *Crimes (Life Sentences) Amendment Act 1989* and the *Sentencing (Life Sentences) Amendment Act 1989*.
- 5.2 ‘Truth in sentencing’ created a category of life-sentence inmates for whom release from prison on parole is not an option.
- 5.3 All lifers are considered serious offenders. They are managed by the Serious Offenders Review Council (SORC) under the *Crimes (Administration of Sentences) Act 1999*.
- 5.4 The lifer cohort is not homogenous and there are several smaller sub-groups within the classification:
- ‘Natural lifer’ inmates are those who were sentenced to life imprisonment on or after 12 January 1990.
 - ‘Cement lifers’ are those who were sentenced to life imprisonment before 12 January 1990 with a non-release recommendation from the NSW Supreme Court. They are eligible to apply (once only) for a re-determination of their life sentence under the *Crimes (Sentencing Procedure) Act 1999* Schedule 1 (2).
 - Life-sentenced inmates, who are eligible for re-determination, are those inmates who were sentenced to life imprisonment before 12 January 1990 who are eligible to apply for a re-determination.²⁰
 - Life-sentenced inmates with a non-parole period. These are inmates who were sentenced to life imprisonment before 12 January 1990 and subsequently had their sentence re-determined. These inmates could be released from custody by the State Parole Authority, but would continue to serve the sentence under community supervision for the term of their life.
- 5.5 There were 98 lifers in the custody of CSNSW as of July 2015.²¹

Progression through the classification system

- 5.6 In April 2005 the Commissioner wrote to the SORC Chairperson, advising that natural and cement lifers were able to be reclassified from maximum to medium security, however, not below medium security, unless there were exceptional circumstances. The circumstances were not defined and were at the Commissioner’s discretion.

This differentiates lifers from other serious offenders who can progress through the security classification system to a minimum rating. The principle underpinning this difference in management is not clear to the Inspector.

²⁰ Re-determination refers to the change in sentencing practice that has enabled certain prisoners serving life sentences to apply to the Supreme Court for the conversion of their sentences into numerical amounts.

²¹ Corrective Services NSW, Internal Memo, *Categories of Offenders in Custody of CSNSW Sentenced to Life Imprisonment*, July 2015, provided 5 August 2015.

The regression of lifers

5.9 The classification of some lifers from a maximum rating to a lower security rating is not new and follows standard classification processes. The table below demonstrates that this has been a long-standing practice in NSW. It also shows that all 12 inmates who are the subject of this report were regressed to a maximum-security classification (A2) in July 2015.

Inmate	Year	Class	Year	Class	Year	Class				Year	Class	
1	1978	A2	1982	B	1987	C1					July 2015	A2
2	1991	A2	2002	B							July 2015	A2
3	1985	A2	1993	B							July 2015	A2
4	1979	A2	1990	B	1993	C1					July 2015	A2
5	1981	A2	1984	B	1986	C1					July 2015	A2
6	1991	A2	2007	B							July 2015	A2
7	1987	A2	1999	B							July 2015	A2
8	1987	A2	2015	B							July 2015	A2
9	1988	A2	1995	B							July 2015	A2
10	1999	A2	2000	B	2001	C1	2002	B	2007	C1	July 2015	A2
11	1994	A2	2013	B							July 2015	A2
12	1992	A2	2015	B							July 2015	A2

5.10 The table clearly demonstrates that the classification status of most of these lifers was reduced over a decade ago, and that the current Commissioner reclassified only three of these inmates from maximum to medium security.

5.11 In July 2015, CSNSW advised the inmates concerned that the decision to regress them to an A2 classification was:

...based on significant concerns expressed by victims of crime and other members of the community in relation to the current classification policy for inmates serving a life sentence.

This system will now be reviewed to ensure that the policy and our practices meet the expectations of the broader community whilst ensuring appropriate inmates management.

Once this review is completed you will be advised of the outcomes and any impact on your security classification.

I would also like to confirm that this decision is not as a result of your conduct and behaviour in custody and all our records will record this accordingly as the decision is not based on any disciplinary issue.

You may forward any submissions you wish to make to the Serious Offenders Review Council for consideration.²²

²² Commissioner of Corrective Services NSW, letters to inmates, 22, 27 July 2015.

- 5.12 This decision-making process appears inconsistent with the provisions of the *Crimes (Administration of Sentences) Regulation 2014*. The Regulation allows the Commissioner to, at any time, revoke a classification under clause 17. However, such a variation requires that:
- (1) The Commissioner must not, without seeking and considering the recommendations of the Review Council:
 - ...(c) cause a serious offender to have his or her classification changed.
 - ...(3) If the Commissioner varies the classification or designation of an inmate under this clause in a way that is contrary to the recommendations of the Review Council, the Commissioner must ensure notice of that fact is given to the Review Council.²³
- 5.13 The provisions clearly direct the Commissioner to consult with the SORC before regressing a SORC inmate. Yet the Commissioner's letter to the Chairperson of SORC, dated 21 July 2015, indicates that, after consulting with the Minister for Corrections, it was the Commissioner's determination to rescind and reclassify the inmates in question to maximum status (A2).
- 5.14 Further, there is no provision under clause 17 of the Regulation for classification decisions to be based on the concerns of victims of crime or other community members, which is the reason given in the letters to the inmates.²⁴ Reference is made to the public interest in relation to serious offenders in s.198 of the *Crimes (Administration of Sentences) Act 1999*, but this section of the Act concerns the exercising of powers by the SORC, not by the Commissioner.
- 5.15 The Inspector considers that the process of reviewing the classification of these lifers was not consistent with the Regulation. Further, any suggestion of institutional expediency or populism overriding legislation should, in practice, be avoided.
- 5.16 The Inspector expressed these concerns to the Commissioner on 12 August 2015.²⁵ The Commissioner acknowledged the error in process and advised that he would take remedial action and bring the matter to the attention of the Chairperson of the SORC and seek his recommendation.²⁶

Recommendation 2: The Inspector recommends that CSNSW should, in regressing inmates managed by the Serious Offenders Review Council, act in accordance with the *Crimes (Administration of Sentences) Regulation 2014*.

Recommendation 3: The Inspector recommends that CSNSW should review the regression of the 12 inmates who are the subject of this report to ensure compliance with the *Crimes (Administration of Sentences) Regulation 2014*.

²³ *Crimes(Administration of Sentences) Regulation 2014*, Reg. 17.

²⁴ *Crimes(Administration of Sentences) Regulation 2014*, Reg. 17.

²⁵ *Inspector of Custodial Services, electronic correspondence to Commissioner of Corrective Services NSW, 12 August 2015.*

²⁶ *Commissioner of Corrective Services, electronic correspondence to Inspector of Custodial Services, 16 August 2015.*

Consequences of reclassification to A2

- 5.17 The reclassification (regression) of the 12 inmates back to maximum security has a negative impact on a range of operational issues. These include inmate bed placement and allocation to an appropriately classified centre, and the way the integrity of the system is perceived by both internal and external stakeholders.
- 5.18 As a consequence of the regressions of the 12 inmates to A2 classification in July 2015, six of the inmates were transferred to higher security correctional centres and six inmates who were already accommodated in maximum-security centres remained there.
- 5.19 The re-classifications of 12 inmates, and the manner in which they were carried out, will understandably cause inmates to call into question the integrity of the classification system.
- 5.20 Inmates throughout the estate are well aware that the treatment of one inmate cohort, which they might find to be of concern, can also be directed at others. This is not helpful in the context of a custodial setting already volatile as a result of overcrowding and a declining quality of prison life.
- 5.21 While it is generally accepted that positive reinforcement is more effective than sanctions and negative reinforcement in managing inmate behaviour, it is recognised that positive reinforcement will inevitably elicit some media and community resistance on the grounds that “it is inequitable to reward antisocial individuals for doing what is minimally expected of most citizens”.²⁷
- 5.22 Correctional centre staff, who are already pressed dealing with the consequences of crowding and other pressures across the estate, will have to manage the additional consequences of these classification regressions. This is likely to undermine the utility of the classification system as a tool to assist staff in the management of inmates. This also has the potential to impact adversely on staff safety.
- 5.23 The community attention generated by this issue highlights the importance of CSNSW effectively communicating to its stakeholders an explanation of the purpose of the inmate classification system, how it operates, and the outcomes sought from the system.

Risk management

- 5.24 The management of lifer inmates brings with it high operational and reputational risks. It is an area where getting the balance right between the political and the professional is a recognised challenge. This challenge is acknowledged by the Ombudsman; in an August 2015 letter to the Commissioner, regarding management of life-sentenced inmates, the Ombudsman underlined the importance of ensuring correctional practice is not compromised:

*As long as NSW remains a jurisdiction which has full life sentences, it is important the proper amount of discretion is given to our correctional administrators to ensure the system of managing offenders represents sound penal practice and basic human rights and does not simply respond to public cries for harsher inmate management.*²⁸

²⁷ Marlowe, Douglas B, 'Depot Naltrexone in Lieu of Incarceration: A Behavioral Analysis of Coerced Treatment for Addicted Offenders,' *Journal of Substance Abuse Treatment*, 31.2, 2006, p. 131.

²⁸ Deputy Ombudsman NSW, letter to Commissioner of Corrective Services NSW, 13 August 2015.

- 5.25 The operational risks include those associated with managing people who will eventually die in custody; that is, they have nothing to aspire to and they have nothing to lose. The mitigation of this operational risk requires an objective classification system that provides a predictable progression.
- 5.26 CSNSW also endeavours to preserve its reputation in the eyes of the government and the community. The security of the estate and duty of care obligations demand that CSNSW manages the lifer population, who are largely regarded with loathing and contempt by the community, in an effective and humane way. This is difficult in NSW, where in any public discussion of inmate management, sound science is drowned out by sound bites.
- 5.27 The allocation of a security classification should assist in the management of some risk, for example escape, control or dangerousness. Since the Commissioner's letter to the inmates indicates that their regression to A2 maximum security classification involved none of these risks, the regression can be seen to have responded the CSNSW reputational risk.
- 5.28 The Inspector considers that, since 2012, CSNSW has become more conservative in its approach to inmate management. There has, for example, been an increase in the Commissioner's submissions to the State Parole Authority not supporting the release of offenders:
- 2009 – 7 submissions
 - 2010 – 5 submissions
 - 2011 – 1 submission
 - 2012 – 0
 - 2013 – 12 submissions
 - 2014 – 24 submissions
 - 2015 – 10 submissions for the period 1 January to 31 July 2015.
- 5.29 Over the past two years, CSNSW has introduced a more restrictive risk assessment process to guide the management of offenders on Extended Supervision Orders and other community based orders. In addition, there are more cautious provisions for inmate external leave programs as of March 2015, which has resulted in fewer inmates accessing external leave.

Engagement with victims

- 5.30 Media reports and other commentary related to the classification of lifers presented the views of the victims, families and community members as such that offenders sentenced to life should spend their entire sentence in maximum-security conditions without any rehabilitation interventions or access to amenities or services provided to other inmates. Historically, the media has generally discussed inmates' access to services and amenities in terms of outrage and derision.²⁹

²⁹ Jewkes, Y, 'Prisons and the media' in Y. Jewkes. (Ed.), Handbook on Prisons, Cullompton, Willan Publishing, 2007, p. 456.

- 5.31 The *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* specifies that the exercise of victims' rights must be "without prejudice to the accused".³⁰ In NSW, offender management is governed by legislation that defines the rules and regulations for the good order, management and security of a custodial centre. Victims of crime have the right to particular information, which recognises them as victims and provides support to them. These rights are codified in the *Victims Rights and Support Act 2013* and the Charter of Victims Rights.
- 5.32 Victims are informed in broad terms of major aspects of the inmates' custody orders and changes, and they have the right to be informed of developments in an inmates' management that may affect their safety, such as parole or external leave.³¹ They are also able to provide victim impact statements regarding the granting of parole.
- 5.33 CSNSW maintains a Victims Register, which records the names and contact details of victims who have requested registration of their interests. There are approximately 1200 registered victims. The Victims Register informs victims of any changes that involve the offender being eligible for unescorted leave, due for parole or release, or having escaped custody. The Victims Register aims to ensure that victims of crime are recognised and respected. It supports a victim's safety and protection from harm.
- 5.34 CSNSW does not routinely advise victims of changes in inmate security classification or of routine transfers between correctional centres or for medical treatment. A victim may, however, enquire at any time about an offender's location.³²
- 5.35 Unless victims know their rights and the services available to them, they may not seek to access them. At present, CSNSW communicates with victims through various means, including brochures, letters, phone calls, and the internet. The Inspector heard that victims are not always aware of the information available to them and the CSNSW website is not easy to navigate.
- 5.36 In addition to a Victims Register brochure (published in 2008), the CSNSW staff, who manage the Victims Register, have over 40 template letters which are used to provide advice to registered victims.
- 5.37 CSNSW recognises that these letters are bureaucratic in tone, and do not convey the empathy that should be shown to victims. These templates are being revised.
- 5.38 It is necessary for CSNSW to recognise and respect the importance of responding to victims in a clear manner. There is considerable room to improve the tone and clarity with which CSNSW communicates information to its registered victims. More appropriate and early communication with victims will ensure that they have an increased understanding of issues relevant to inmate management, such as the classification system.
- 5.39 The Inspector recognises that it is important for custodial practice to be clarified but notes that an understanding of inmate classification, placement and management may not be accompanied by agreement from victims.

³⁰ United Nations, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, United Nations General Assembly, A/RES/40/34, 29 November 1985.

³¹ Government of Western Australia, *Standard Guidelines for Corrections in Australia (Revised 2012)*, Department of Corrective Services, 2012, <https://www.correctiveservices.wa.gov.au/_files/about-us/statistics-publications/students-researchers/guidelines-for-corrections-aust.pdf>.Section 1.36-1.38.

³² Corrective Services NSW, *Victims Register brochure*, 2008, <<http://www.correctiveservices.justice.nsw.gov.au/Documents/victims-register-brochure.pdf>>.

- 5.40 The Inspector notes that information and education efforts would be more effective if integrated with other justice processes for victims at the courts, or service programs such as NSW Government victim's assistance. This will support a key outcome of the Department of Justice *Strategic Plan 2014–15* to “improve community confidence in the justice system”.³³
- 5.41 The Inspector also notes the importance of managing a victim's expectations concerning the correctional system, and that CSNSW held a consultation forum with victims in August 2015 in recognition of this. The emphasis of this consultation and subsequent action is on the provision of information to assist victims to overcome any sense of powerlessness.
- 5.42 Victim's access to information is well defined in policy and practice, as discussed above. CSNSW needs to communicate effectively with victims without raising expectations about the level of input that victims can have into custodial management.

Recommendation 4: The Inspector recommends that CSNSW develop its communication strategies to enable an improved understanding of the correctional system for victims.

³³ NSW Department of Justice, *Strategic Plan 2014–15*, <http://www.justice.nsw.gov.au/Documents/DJ_Strategy_Framework_Plan%20on%20a%20Page.pdf>.

References

- Austin, James, *Findings in Prison Classification and Risk Assessment*, Washington, National Institute of Corrections, Federal Bureau of Prisons, Department of Justice, 2003, p. 5.
- Austin, James, and Hardyman, Patricia L., *Objective Prison Classification: A Guide for Correctional Agencies*, U.S. Department of Justice, National Institute of Corrections, July 2004, <http://www.jfa-associates.com/publications/pcras/06_ObjClass2004.pdf>, p. ix.
- Bench, Lawrence L., and Allen, Terry D., 'Investigating the Stigma of Prison Classification: An Experimental Design,' *The Prison Journal*, 83.4, 2003, pp. 367–82.
- Benns, Matthew, and Fife-Yeomans, Janet, 'Victims' Families Rejoice as State's Worst Killers Sent Back to Maximum Security by Corrective Services Minister David Elliott,' *The Daily Telegraph*, 21 July 2015.
- Benns, Matthew, 'Never to Be Released Prisoners Get Soft Serve in Jails from Corrective Services Boss Peter Severin Who Jet Sets to Mexico and Colorado to Brainstorm Jail Policy,' *The Daily Telegraph*, 16 July 2015.
- Commissioner of Corrective Services, electronic correspondence to Inspector of Custodial Services, 16 August 2015.
- Commissioner of Corrective Services NSW, letter to inmates, 22, 27 July 2015.
- Corrective Services NSW, Internal Memo, *Categories of Offenders in Custody of CSNSW Sentenced to Life Imprisonment*, July 2015, provided 5 August 2015.
- Corrective Services NSW, *Fact Sheet No.9 Classification and Placement of Inmates*, <http://www.correctiveservices.justice.nsw.gov.au/Documents/CSNSW%20Fact%20Sheets/fact_sheet_9_classification.pdf>.
- Corrective Services NSW, *Offender Classification and Case Management Policy and Procedures Manual*, 3 March 2013, Section 21.1., <<http://www.correctiveservices.justice.nsw.gov.au/Pages/CorrectiveServices/related-links/publications-and-policies/policies-defined-gipa-act/csnsw-policy-documents/csnsw-policy-documents.aspx>>.
- Corrective Services NSW, "Response to NSW Inspector of Custodial Services Report 'Full House'," <<http://www.custodialinspector.justice.nsw.gov.au/Documents/CSNSW%20Response%20to%20Recommendations%20on%20Full%20House%20Report.pdf>>.
- Corrective Services NSW, *Victims Register brochure*, <<http://www.correctiveservices.justice.nsw.gov.au/Documents/victims-register-brochure.pdf>. 2009>.
- Council of Europe, *Management by Prison Administrations of Life-Sentence and Other Long-Term Prisoners*, Strasbourg, 2003, p. 20.
- Deputy Ombudsman NSW, letter to Commissioner of Corrective Services NSW, 13 August 2015.
- Devine, Miranda, and Fife-Yeomans, Janet, 'Jail Boss Faces Family Fury,' *The Daily Telegraph*, 29 July 2015.
- Fife-Yeomans, Janet, 'Murder Victim Valda Connell's Son Break down after Being Told Callous Killer Moved to Minimum Security Jail,' *The Daily Telegraph*, 16 July 2015.
- Fife-Yeomans, Janet, 'NSW's Most Sadistic Killers Shown Mercy with Prison Privileges,' *The Daily Telegraph*, 18 July 2015.

Government of Western Australia, *Standard Guidelines for Corrections in Australia (Revised 2012)*, Department of Corrective Services, 2012, <https://www.correctiveservices.wa.gov.au/_files/about-us/statistics-publications/students-researchers/guidelines-for-corrections-aust.pdf>.

Inspector of Custodial Services Act 2012.

Inspector of Custodial Services, electronic correspondence to Commissioner of Corrective Services NSW, 12 August 2015.

Jewkes, Y, 'Prisons and the media' in Y. Jewkes. (Ed.), *Handbook on Prisons*, Cullompton, Willan Publishing, 2007, p. 456.

Marlowe, Douglas B., 'Depot Naltrexone in Lieu of Incarceration: A Behavioral Analysis of Coerced Treatment for Addicted Offenders,' *Journal of Substance Abuse Treatment*, 31.2, 2006, p. 131.

NSW Department of Justice, Strategic Plan 2014–15, <http://www.justice.nsw.gov.au/Documents/DJ_Strategy_Framework_Plan%20on%20a%20Page.pdf>.

Prison Reform Trust, "Incentives and Earned Privileges," <<http://www.prisonreformtrust.org.uk/Portals/0/Documents/IEP%20Briefing%20Prison%20Reform%20Trust.pdf>>.

The United Kingdom National Offender Management System, *Categorisation and Recategorisation of Adult Male Prisoners*, PSI 40/2011, 31 August 2011, <<https://www.justice.gov.uk/downloads/offenders/psipso/psi-2011/psi-40-2011-categorisation-adult-males.doc>>.

United Nations General Assembly, *United Nations, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, A/RES/40/34, 29 November 1985.

Western Australia Office of the Inspector of Custodial Services, *I*, Report no. 51, April 2008, <<http://www.oics.wa.gov.au/wp-content/uploads/2014/04/51-ReviewAssessmentClassificationJun2008.pdf>>, p. T8.