

**STANDING COMMITTEE ON LAW AND JUSTICE
INQUIRY INTO SECURITY CLASSIFICATION AND MANAGEMENT OF
INMATES SENTENCED TO LIFE IMPRISONMENT**

Supplementary Questions: Serious Offenders Review Council

1. **On 1 November 2015 the Sun Herald reported that the Minister for Corrections had “changed the law to allow prisoners to be reclassified without first consulting the Serious Offenders Review Council”. Could you please provide details about this change?**

Prior to the recent change to the Crimes (Administration of Sentences) Regulation 2014, Clause 17 stated:

17 Variation of classification and designation of certain inmates

- (1) The Commissioner must not, without seeking and considering the recommendations of the Review Council:*

- (a) cause an inmate who has an escape-risk classification to cease to have an escape-risk classification, or*
- (b) cause an inmate who has a high security, extreme high security, extreme high risk restricted or national security interest designation:
 - (i) to have that designation varied to another designation, or*
 - (ii) to cease to have a designation, or**
- (c) cause a serious offender to have his or her classification changed.*

- (2) In the case of an inmate who has an escape-risk classification, the Review Council:*

- (a) is not to make a recommendation for the purposes of subclause (1) (a) unless it is satisfied that there are special circumstances that, in the opinion of the Review Council, justify the reclassification, and*
- (b) need not consider an application made to it by an inmate for the purposes of subclause (1) (a) if, on the face of the application and any document submitted in support of it, the Review Council considers that the application:
 - (i) is not substantially different from a previous application, made by or on behalf of the same inmate, that it has rejected, or*
 - (ii) is frivolous or vexatious.**

- (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.*

On 21 July 2015 the Commissioner, Corrective Services NSW, wrote to the SORC Chairperson advising after consideration and discussion with the Minister for Corrections he had determined to rescind the decisions previously made in relation to a range (9) of life sentenced prisoners and reclassify them to A2. On 27 July 2015 the Commissioner, Corrective Services NSW, again wrote to the SORC Chairperson advising that he had determined to regress a further two life sentenced inmates to A2.

In making these decisions the Commissioner did not seek or consider the advice and recommendations of the Serious Offenders Review Council, as required under Clause 17 of the Regulation.

In the process of carrying out a review of the above decisions, the Inspector of Custodial Services identified the breach of the regulation and informed the Commissioner.

On 18 August 2015 the Commissioner wrote to the SORC Chairperson, noting the oversight and stated that in order to rectify the situation, requested for SORC to provide him with their recommendations as to the reclassification of the 11 life sentenced inmates regressed to A2 in July 2015. SORC subsequently reviewed these 11 life sentenced inmates at its meeting of 1 September 2015 and forwarded their recommendations to the Commissioner for his consideration.

Also on 18th August 2015, a Senior Policy Officer, Justice Strategy and Policy Branch, wrote to the SORC Chair, advising that proposed amendments to the Regulation had been drafted, including an additional section to Clause 17 enabling the Commissioner CSNSW to change a serious offender's security classification without first seeking the recommendations of the Review Council if the Commissioner considered there were exceptional circumstances. The SORC Chair provided feedback on the proposed amendments.

On 30 October 2015 Clause 17 was amended to:

17 Variation of classification and designation of certain inmates

(1) The Commissioner must not, without seeking and considering the recommendations of the Review Council:

- (a) cause an inmate who has an escape-risk classification to cease to have an escape-risk classification, or*
- (b) cause an inmate who has a high security, extreme high security, extreme high risk restricted or national security interest designation:
 - (i) to have that designation varied to another designation, or*
 - (ii) to cease to have a designation, or**
- (c) cause a serious offender to have his or her classification changed.***

(2) In the case of an inmate who has an escape-risk classification, the Review Council:

- (a) is not to make a recommendation for the purposes of subclause (1) (a) unless it is satisfied that there are special circumstances that, in the opinion of the Review Council, justify the reclassification, and*
- (b) need not consider an application made to it by an inmate for the purposes of subclause (1) (a) if, on the face of the application and any document submitted in support of it, the Review Council considers that the application:
 - (i) is not substantially different from a previous application, made by or on behalf of the same inmate, that it has rejected, or*
 - (ii) is frivolous or vexatious.**

(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.

(4) Despite subclause (1) (c), the Commissioner may, if the Commissioner considers that there are exceptional circumstances that justify doing so, cause a serious offender to have his or her classification changed without seeking the recommendations of the Review Council.

(5) The Commissioner must notify the Review Council of any decision made under subclause (4).

(6) The Review Council may recommend to the Commissioner that the Commissioner reconsider a decision made under subclause (4).

- 2. How many times during the previous financial year did the Commissioner of Corrective Services disagree with the Serious Offenders Review Council's recommendation regarding the classification of inmates?**
- a. On how many of these occasions did the Commissioner provide reasons for his decision? Please provide the Committee with these reasons on a confidential basis.**

During the 2014-2015 financial year, the Serious Offenders Review Council :-

- made 1034 recommendations to the Commissioner CSNSW in relation to a serious offender's security classification.
- made 700 recommendations that a serious offender's security classification Stay As Is. All 700 "Stay As Is" recommendations were approved.
- made 334 recommendations that a serious offender's security classification and/or access to Section 6.2 permits be changed.
 - o 256 (76%) of these recommendations were approved.
 - o 11 (3%) of these recommendations were approved with amendments.
 - o 67(21%) of these recommendations were not approved by the Commissioner.

Attached:-

- Report outlining SORC recommendations from 1/7/2014-30/6/2015 not approved by the Commissioner and Commissioner's comments.
- Commissioner's guidelines for progression in security classification for serious offenders (male and female). Note, all serious offenders recommended for progression in classification included in the above report were within the timeframes outlined in the Commissioner's guidelines for progression.

NB:

- In general Inmates are eligible for Section 6.2 ON and OFF complex permits when they progress to C2 security classification.
- A section 6.2 ON complex permit enables an Inmate to work on the grounds of the correctional complex, under staff supervision.
- A section 6.2 OFF permit enables an Inmate to work off the correctional complex, under staff supervision.

SUMMARY OF COMMISSIONER'S GUIDELINES FOR MALE SERIOUS OFFENDERS

The Commissioner has determined that unless "exceptional circumstances" apply, Serious Offenders will be eligible for reduction in classification as per the following:-

Security Classification		Time From Earliest Possible Release Date
From	To	
A2	B	8 years
B	C1	5 years
C1	C2	3 years
C2	C3	<p>24 months</p> <ul style="list-style-type: none"> • External Work/Education Preparatory Stage <i>(NO unescorted leave to be taken)</i> <p>18 months</p> <ul style="list-style-type: none"> • External Work/Education Programs • Day Leave for Inmates in a camp/farm location <p>12 months</p> <ul style="list-style-type: none"> • Day Leave, every 28 days, for inmates participating in External Work/Education Programs <p>9 months</p> <ul style="list-style-type: none"> • Day Leave, every 28 days, for inmates <u>NOT</u> participating in External Work/Education Programs <p>4 months</p> <ul style="list-style-type: none"> • Weekend Leave, weekly, after completion of 3 day leaves, for: <ul style="list-style-type: none"> ○ Inmates participating in External Work/Education Programs ○ Inmates currently/previously housed at a farm/camp location <p>2 months</p> <ul style="list-style-type: none"> • Weekend Leave, weekly, after completion of 3 day leaves, for inmates <u>NOT</u> participating in External Work/Education Programs

Effective: 31/3/2015

Peter Severin
Commissioner CSNSW
18 March 2015

SUMMARY OF COMMISSIONER'S GUIDELINES FOR FEMALE SERIOUS OFFENDERS

The Commissioner has determined that unless "exceptional circumstances" apply, Serious Offenders will be eligible for reduction in classification as per the following:-

Security Classification		Time From Earliest Possible Release Date
From	To	
Cat 4	Cat 3	7 years
Cat 3	Cat 2	3 years
Cat 2	Cat 1	<p>24 months</p> <ul style="list-style-type: none"> • External Work/Education Preparatory Stage. <i>(NO unescorted leave to be taken)</i> <p>18 months</p> <ul style="list-style-type: none"> • External Work/Education Programs <p>12 months</p> <ul style="list-style-type: none"> • Day Leave every 28 days for inmates participating in External Work/Education Programs <p>9 months</p> <ul style="list-style-type: none"> • Day Leave every 28 days for inmates <u>NOT</u> participating in External Work/Education Programs <p>4 months</p> <ul style="list-style-type: none"> • Weekend Leave, weekly, after completion of 3 day leaves for Inmates participating in External Work/Education Programs <p>2 months</p> <ul style="list-style-type: none"> • Weekend Leave, weekly, after completion of 3 day leaves for inmates <u>NOT</u> participating in External Work/Education Programs

Effective: 31/3/2015

Peter Severin
Commissioner CSNSW
18 March 2015