Jane Quin
[redacted]
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New South Wales Sentencing Council
Department of Communities and Justice
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Dear Sentencing Council members,

Re: Review of sentencing for murder and manslaughter, including the penalties imposed for domestic and family violence homicides and the standard non-parole periods for murder.

Thank you for the opportunity to comment in relation to the review you are undertaking.

I have a general interest in issues of social justice. We are judged by the way we treat people outside the mainstream of our society, including our prisoners. Over the years I have been disappointed by the public's attitude towards prisoners – their views on the length of sentences, possible release on parole and the living conditions of prisoners. Talk-back radio personalities have complained about the "luxuries" that prisoners have. I remember commentators making much of the fact that some prisoners had TVs and, in one case, a guitar in his cell. It seems that the public can be easily sidetracked from the the greatest punishment of a prisoner, that is, his or her loss of freedom.

My contribution to this review involves the issues of sentencing, and entitlement to parole. I will comment on the following topics (and use the bracketed descriptors as I do not have legal training):

1) mandatory sentencing for murder ("life means life"), and
2) retrospective legislation that denied prisoners, whose cases did not fall under the new sentencing procedures of 1996, the right to apply for parole (the "cement them in legislation").

It seems to me that both of these legislative changes came about when politicians of both sides of politics were unduly influenced by pressure from the public for greater law and order and, in the case of the "cement them in" legislation, by concern over the possible parole of a rapist/murderer who had committed a most heinous crime.

<u>"Life means life" - mandatory sentencing for murder – no prospect of parole</u>

My interest in mandatory sentencing has been heightened because I have a friend who was sentenced for the term of his natural life under the "life means life" legislation.

I understand that NSW courts must impose a mandatory "life means life" sentence if the offence of murder is found to be in the "worst category". Judges are in an unique position – they have a wealth of experience and have heard the details of offences ranging from minor matters to those of

the most dreadful kind. They are experienced in weighing up many factors when imposing a sentence upon a convicted person. Should their sentences be seen as to have been too harsh or lenient, review is available at courts of appeal.

It is extraordinary that a group of politicians could believe they were better placed than the courts to decide a sentence of "never to be released" if a crime was found to be in the worst category. I am aware that a number of judges have expressed regret that they were unable to set a non-parole period when sentencing a person to a "life means life" sentence.

If there is no chance of parole, the sentence becomes just one step away from the death penalty. I have asked a number of friends lately if they would prefer to die in gaol or be executed. Two preferred the choice of execution. So in the minds of some, a "never to be released" gaol term can be more crushing than death itself. Whether they would hold that view in reality is another thing, but their responses raise serious issues about a "never to be released" sentence. And the most obvious is, "Why would someone choose death over life?"

Not only does a "never to be released" sentence destroy hope, it can also destroy any notion of rehabilitation or redemption. I understand that "never to be released" prisoners are generally offered separate prison cells. This appears to be a result of the fact that those prisoners could be seen to have "nothing to lose" and therefore be a threat to other prisoners. This can only be a worrying situation for staff and prisoners in the gaol system. And, up until a few years ago, "never to be released" prisoners were not offered training or education in gaol because, as I understood, the corrections system did not see any sense in training someone who would never be able to use their new skills. To me, this was especially cruel.

Retrospective "cement them in" legislation of 2001

This legislation appears intrinsically unfair. It suggests a worrying notion for us all, that is, that at any one time we can never be sure of the impact of our actions in terms of the law in NSW. I believe that the government of the day brought about this change in response to concern that was fuelled by hard-line media commentators.

My interest in the "cement them in" legislation was increased when I met one prisoner who was ultimately affected by it. At the time I met him in gaol, at a "family day", he had been imprisoned for many years. The plight of this man has haunted me over the last 20 years or so for the following reasons: his youth at the time of the crime (he was a teenager) and that the fact that he carried out the atrocity as part of a group. I have often wondered about the culpability of an individual (especially a relatively young person) when acting in a group. Though, of course, the severity of the crime for the victim must multiply when there are a number of perpetrators.

In conclusion, we must not give up on our prisoners but give them the opportunity to redeem themselves and, where possible, reintegrate themselves into our community. A prison chaplain, who was well into her 80s, and who had earlier worked as a teacher, once told me that the best part of her working life was the time she spent in the gaol system "because of the people I met there".

Yours sincerely,

Jane Quin