

Serious Offenders Review Council



2021 ANNUAL REPORT

for the year ended
December 2021



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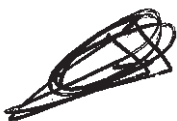
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The Hon. Dr Geoff Lee, MP
Minister for Corrections
52 Martin Place
Sydney NSW 2000

Dear Minister

In accordance with section 209 of the *Crimes (Administration of Sentences) Act 1999*, I have pleasure in submitting to you, for the information of the Parliament, the report of the Serious Offenders Review Council for the period 1 January 2021 to 31 December 2021.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Favretto', written in a cursive style.

John Favretto
Chairperson
Serious Offenders Review Council

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CHAIRPERSON'S FOREWARD

On behalf of the Council and the Secretariat, I am pleased to introduce our 2021 Annual Report.

2021 has been a frustrating and challenging year with the continuing impact of COVID-19, particularly after the 2020 year. Council meetings at Newington House continued to be largely by virtual means in order to comply with any COVID-19 visit restrictions, as well as to limit the number of persons within the physical domain for WHS and logistical reasons. Fortunately, the technology available enabled the Secretariat and the Council to still meet and to effectively continue to carry out our statutory functions. Due to the ongoing COVID-19 restrictions, in person interviews with serious offenders at correctional centres was limited, although there was some AVL availability for interviews. However, the inability to maintain face to face interviews with serious offenders compromises the real benefits of inter-personal observation of body language. This includes the opportunity to interrogate a serious offender who may be demonstrating poor custodial behaviour and/or a negative attitude in addressing their criminogenic factors, and required therapeutic program pathway. It also restricts their personal opportunity to give an explanation about their attitude and conduct in a real setting. Conversely, there is also the lack of opportunity to acknowledge directly with an inmate the positive progress that they are making, and continued encouragement towards their rehabilitation and eventual release into the community. I wish to record that the Commissioner's COVID-19 restrictions had the full support of the Council, to ensure the safety of everyone and ensuring the logistical operation of a Correctional Centre.

The COVID-19 restrictions to C2/Cat 2 OFF Complex permits and C3/Cat1 External Leave Programs also had the effect of limiting classification and placement progression, and the serious offender being tested out of the custodial environment. While participation in external leave programs may afford some measure of leniency in how a serious offender serves out their sentence, the primary purpose is community protective in nature, in order to reduce the risk of re-offending. In many cases the need for participation in external leave may be recognised by final treatment reports, particularly those of a medium/high intensive nature (HISOP; MISOP; VOTP; IDATP), as a transition to parole. Rehabilitation risk management and coping skills learned by the serious offenders during these programs, may need to be firstly utilised and tested in the community, within the confines of the more restricted nature of C2/Cat 2 OFF Complex Permit and C3/Cat 1 External Leave, before we consider that release to parole is appropriate. However, where there is a delay in an offender's progression in classification towards external leave a tension can then arise between the time available for participation in external leave programs that which would allow a critical and meaningful period of supervision on parole.

Unless there is a critical pre-condition to participate in external leave, generally we tend to favour release to parole to accommodate that critical and meaningful period of supervision on parole. As we are precluded from considering whether an inmate may be considered for a Continuing Detention or Extended Supervision Order (s.135 (5) Crimes (Administration of Sentences) Act 1999), we must then proceed on the basis that the inmate could be released without any supervision in the community. The benefits of parole supervision include the implementation of a Community Corrections/State Parole Authority risk mitigation

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plan which includes community support, and ongoing criminogenic and mental health counselling. This is a critical pathway in ensuring the protection of the community, and the successful re-integration of the inmate as a lawful abiding member of the community.

As recorded in my 2020 Report, the emerging challenge for 2021 were the changes proposed by Offender Services & Programs, Corrective Services NSW, as to how inmates (including serious offenders) are assessed for therapeutic program intervention. This issue was the subject of high level meetings, with an acceptable agreement reached for the identification of a serious offender's therapeutic intervention needs. However, given the Council's sole legislative responsibility for recommending the "developmental programs" (therapeutic) for serious offenders (s.197 (2) (iii) Crimes (Administration of Sentences) Act 1999), we reserved the right to recommend to the Commissioner a particular therapeutic program pathway, irrespective of any pathway identified by Offender Services & Programs. This reservation is now required to be noted in a serious offender's Caseplan, so that they are aware that their programs pathway needs to be reviewed by the Council before it goes to the Commissioner.

The workload of the Council continues to grow (Figure 1 page 21). While only a minimal increase in recent years, it is still a continuing trend, and at a time when the Secretariat's resourcing has remained static since 2007. During 2020-2021, representations were made to the relevant CSNSW Management of the Secretariat Cost Centre for additional resourcing but with no success. Late in 2021 I took the opportunity of writing directly to the Minister on this issue, and also proposed for some reading fees for the other Judicial and Community Members. Given the significant workload and the onerous reading time required, there should be a reasonable reading fee based upon the number of agenda items.

All members of the Council continue to work professionally, independently but collaboratively, and I wish to acknowledge their unstinting dedication to the large workload each has to bear. Each brings their own diverse range of skills and human experiences, that makes for a very balanced Council. On behalf of the Council I also wish to acknowledge Mr Philip Hugill and Ms Angela West, the two Official Members, who apart from their role in our meetings also provide very effective ongoing liaison with correctional centre management; and Mr Peter Townsend, Manager Classification and Placement Aboriginal Programs. I also wish to record the appointment in late 2021, of the new Community Member, Mr. Douglas Revette.

I particularly wish to acknowledge the very professional and dedicated service of the staff of the Secretariat during 2021. Notwithstanding the impact of COVID-19 and their own work place restrictions, they continued to provide a high quality, timely, effective and efficient service. I particularly wish to acknowledge the very capable leadership of Ms Alyson McDade, the Executive Officer and Registrar, and also the valuable assistance she provides me, and the other Council Members.

The Council continues to appreciate, respect and maintain its independent statutory charter. On behalf of the Council and the Secretariat, I wish to record the members' appreciation and honour in being given the opportunity to serve the Minister for Corrections, and the people of NSW.

John Favretto

Chairperson

OVERVIEW

About this Report

Under section 209 of the *Crimes (Administration of Sentences) Act 1999* the Council is required to submit an Annual Report to the Minister for Corrections for presentation to Parliament providing information as to the Council's activities during the relevant year. This report covers the period 1 January 2021 to 31 December 2021.

About Serious Offenders

This expression is defined in the legislation, and is set out in Schedule One to this report, together with information pertaining to the nature of the Serious Offender population and their offences. However, in general terms, a Serious Offender can be defined as an inmate serving a sentence of Life imprisonment, as having been convicted of murder, or who has been sentenced to a term of at least 12 years before becoming eligible to be released on parole. As at 31 December 2021, there were 943 Serious Offenders in custody representing approximately 11.0% of the sentenced inmate population (7.7% of the total inmate population) at that time. Included in the total of 943 are 39 female Serious Offenders.

About the Council

The Council is constituted by the *Crimes (Administration of Sentences) Act 1999*. The Council has been in existence since 14 January 1994, initially constituted by the *Prisons (Amendment) Act 1993*.

The Council comprises the following categories of members:

Judicial

These members are appointed by the Governor of NSW. Sitting or retired judges of a NSW Court, or the Federal Court, and magistrates, or persons qualified to be appointed as a judge of a NSW Court are eligible.

Community

These members are appointed by the Governor of NSW as being persons who reflect as closely as possible the composition of the community at large.

Official

These members are appointed by the Commissioner of Corrective Services and are officers of Corrective Services New South Wales.

MEMBERS OF THE COUNCIL DURING 2021

Judicial Members

Chair:

Mr John Favretto

Alternate Chair:

Ms Lee Gilmour

Deputy Chair:

Mr Keith Alder

Community Members

- The Hon Peter Anderson AM
- Mr Lawrence Baker
- Professor Susan Hayes AO
- Ms Joanne Jousif
- Mrs Carol Mara
- Mr Douglas Revette
- Ms Gowan Vyse

Official Members

Mr Philip Hugill, Director, Inmate Classification & Placement

Ms Angela West, General Manager Inmate Classification & Placement

PRINCIPAL FUNCTIONS OF THE COUNCIL

- i. to provide advice and make recommendations to the Commissioner of Corrective Services with respect to the following:
 - a. the security classification of Serious Offenders,
 - b. the placement of Serious Offenders,
 - c. the case plans, including program pathways, of Serious Offenders
 - d. the designation of inmates as High Security, Extreme High Security, Extreme High Risk Restricted and National Security Interest (including the revocation or variation of any such designation), and
 - e. the management of High Security, Extreme High Security, Extreme High Risk Restricted inmates and National Security Interest (including the periodic re-view of security classification, placement and case plans), and
- ii. to perform such other functions as may be prescribed by the regulations in relation to the management of Serious Offenders and other inmates,
- iii. to provide reports and advice to the State Parole Authority concerning consideration for the release on parole of Serious Offenders,
- iv. to prepare and submit Reports to the Supreme Court of NSW with respect to applications under Schedule 1 to the *Crimes (Sentencing Procedure) Act 1999*,
- v. to review segregated and protective custody directions on application made by a relevant inmate to the Council,
- vi. to provide Reports and Advice to the Minister and to such other persons or bodies as may be prescribed by the regulations.

PRINCIPAL ACTIVITIES OF THE COUNCIL

- i. Convening fortnightly meetings in relation to Serious Offenders: see Section 1 hereof.
- ii. Convening monthly meetings in relation to public interest inmates and the review of escapes: see Sections 4 and 5 hereof.
- iii. Convening bi-monthly meetings in relation to High Security inmates: see Section 3 hereof.
- iv. Conducting regular review hearings for inmates appealing segregation or protective custody directions: see Section 6 hereof.
- v. Conducting interviews with Serious Offenders eligible for progression in security classification: see Section 2 hereof.
- vi. Providing reports to the State Parole Authority in respect of Serious Offenders: see Section 7 hereof.
- vii. Providing reports to the Commonwealth Attorney General in respect of Serious Offenders serving federal sentences: see Section 8 hereof.
- viii. Providing Reports to the Supreme Court of NSW in respect of Serious Offenders seeking that the Court re-determine their Life sentence: see Section 9 hereof.

However, merely to state these statutory functions of the Council does not convey a complete picture of the Council's activities. For example, the Council's secretariat on a daily basis deals with an extremely wide range of written and telephone enquiries from correctional centres, programs staff, CSNSW senior management, Corrections Intelligence Group, the legal profession and inmates and their families. There is regular contact with the Courts because of the statutory requirement that Council must have regard to the remarks of the sentencing Judge (and therefore the necessity of obtaining a copy of those remarks in each case), and the need to keep itself apprised of the results of relevant appeals to the Court of Criminal Appeal. The Council is in frequent contact with Justice Health seeking advice and medical reports, and, from time to time, with the Mental Health Review Tribunal as a result of the shared responsibility in respect of Serious Offenders who are also forensic patients under the Mental Health legislation.

DURING 2021

- i. At at 31 December 2021 there were 943 Serious Offenders representing 11% of sentenced inmate population (7.7% of the total inmate population).
- ii. The Council held 24 meetings (plus one (1) extraordinary meeting) and made a total of 1628 recommendations to the Commissioner in respect of Serious Offenders' security classification and placements. The Commissioner (or his delegate) approved 1562 of these recommendations and a further 5 recommendations were approved with variations. The Council made a further 865 recommendations to the Commissioner in respect of Serious Offenders' case plans.
- iii. There were 55 Serious Offenders, the subject of Parole Orders made by the State Parole Authority, who were released to parole in 2021. The Council recommended the consideration of the release on parole in all cases. In 2021 the Council provided 175 reports to the State Parole Authority containing advice in respect of Serious Offenders eligible to be considered by the Authority for release on parole.
- iv. There were 2 Serious Offenders serving a Federal Sentence who were the subject of Parole Orders made by the Commonwealth Attorney General and released to parole in 2021. The Council provided 10 reports to the Commonwealth Attorney General on the custodial history of the serious offenders being considered for release on parole in that year.
- v. The Council held five (5) meetings (plus four (4) extraordinary meetings) reviewing the status of Extreme High Risk Restricted, Extreme High Security, High Security and National Security Interest inmates and as a result made 189 recommendations to the Commissioner. The Commissioner (or his delegate) approved 181 of these recommendations. At 31 December 2021 there were a total of 161 Inmates with a high security designation. There were 38 inmates designated Extreme High Risk Restricted, 28 Inmates designated National Security Interest, 50 Inmates designated Extreme High Security and 29 Inmates designated High Security. There were a further 10 designated both Extreme High Security and National Security Interest and 6 designated both High Security and National Security Interest.
- vi. Assessment Committees constituted by members of the Council spent a total of 20 days at correctional centres or via audio-visual link carrying out 246 interviews with Serious Offenders. Due to COVID-19 restrictions, Assessment Committees convened on a further 15 days to undertake paper reviews on another 145 serious offenders.

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- vii. There were 98 applications from Public Interest inmates (out of a total of 160 applications received) the subject of recommendations by Council to be approved to participate in unescorted external pre-release leave programs. The Commissioner (or his delegate) approved 72 of these recommendations.
- viii. There were 55 inmates (out of a total of 90 applications received) the subject of recommendations by Council to have their escape-risk classification removed. The Commissioner (or his delegate) approved 50 of these recommendations. There was one further application where the Commissioner (or his delegate) varied the Council's recommendation.
- ix. There were 77 applications received from Inmates seeking reviews of segregation or protective custody orders. Hearings were held in respect of four (4) of those applications, all were confirmed by the Council. Two (2) applications were withdrawn by the inmate and 43 directions revoked by the Governor of the correctional centre, prior to the hearing. Twenty eighth (28) applications did not proceed for other reasons.
- x. The Council did not receive any requests from the Supreme Court of NSW for a report in respect of a Serious Offender applying to the Court to re-determine their Life sentence.

Section 1: MEETINGS OF THE COUNCIL

- 1.1 The Council conducts regular meetings in the Conference Room at the historic Newington House, Silverwater. During 2021, the Council met on 25 occasions in respect of Serious Offenders, and made 954 recommendations to the Commissioner as to their classification and/or placement, of which the Commissioner (or his delegate) approved 888 recommendations and a further five (5) approved with variations. The Council made 674 “stay as is” recommendations, all these recommendations were approved. There were an additional 865 recommendations in relation to case plans.
- 1.2 Meetings of the Council are held at such times as are fixed by the Chair and the procedure at such meetings is also determined by the Chair. A quorum of the Council is comprised of a judicial member, a community member and an official member. Generally speaking, up to six members of the Council are present at meetings in respect of serious offenders.
- 1.3 However, the Chair may direct that any particular meeting of the Council is to be constituted by a meeting of a division of the Council consisting of a judicial member, a community member and an official member, and may delegate to such division any of the functions of the Council.
- 1.4 In order to comprehend the importance of the Council’s core functions it is necessary to have some understanding of the significance of the security classification system. This allows the Serious Offender, in a proper case, to progress from the highest level classification, at the commencement of the sentence, which may require his/her incarceration in a maximum security correctional centre for as long as he/she is so classified, to the lowest level classification towards the expiry of the non-parole period of the sentence, which classification permits him/her to be held in a minimum security correctional centre. This progression, SORC ensures, is on a basis particular to each individual inmate.
- 1.5 It is very much in the community’s interest that as many Serious Offenders as may properly do so progress to the lowest level of classification because it is only by so doing that the inmate becomes eligible to participate in unescorted pre-release leave programs. The purpose of such programs is to prepare the inmate for re-entry to normal life in the community following a lengthy period of incarceration. The inmate is also tested by this exposure to life in the community in the company of approved sponsors, thereby providing an additional opportunity to assess the inmate’s likely response when released from prison. An additional benefit which flows from an inmate successfully taking part in such programs is that by doing so the prospects of being released on parole, under the supervision of Community Corrections, are enhanced.
- 1.6 Thus classification determines, to a large extent, placement in a particular centre, which in turn may determine what developmental programs are available to the inmate (e.g., sex offender programs, violence prevention programs, alcohol or other

drugs counselling, education). The Council provides the Commissioner with written advice as to the most suitable classification of the Serious Offender throughout the entire period of the sentence. In so doing, the Council has regard to the accumulated information gathered by the Council as to the inmate's progress.

- 1.7 Each time the Council exercises its statutory functions, it is required to consider the public interest, and in so doing to take into account at least 14 specified subject-matters of which the protection of the public is to be regarded as paramount. The other matters which must be taken into account cover disparate topics including: the nature and circumstances of the offence, the inmate's conduct during his current sentence, and, if applicable, during any previous sentence, the need to maintain public confidence in the administration of criminal justice, and the rehabilitation of the inmate and his eventual re-entry into the community as a law-abiding citizen (see Section 198(3) of the Act).
- 1.8 From its inception, the Council acknowledged that although not bound by Departmental policies, it would nevertheless generally be guided by them, departing from them only when it considered the particular circumstances justified such a course of action. Thus, for example, when making recommendations in respect of Serious Offenders considered eligible to undertake unescorted pre-release leave programs, the Council has regard to the time-frame adopted by the Department which requires such an inmate to be within a specified proximity to the expiry of the non-parole period of the inmate's sentence.

Section 2: ASSESSMENT COMMITTEES

- 2.1 Assessment Committees, made up of Council members, visit those correctional centres throughout New South Wales which house serious offenders. A number of interviews with inmates housed in regional centres were carried out via audio-video link. Selected inmates are interviewed individually. Generally speaking, these inmates are interviewed due to the fact that they are within eight years or less of their earliest possible release date and are eligible for a reduction in security classification. At these visits the Committees also meet with relevant correctional centre managers, including the Governor, concerning the progress of those serious offenders.
- 2.2 In 2021, due to COVID-19 restrictions access to inmates was not always possible and in lieu the Assessment Committees completed paper reviews on serious offenders eligible for progression in security classification.
- 2.3 The interview notes and proposals of the Assessment Committees are tabled at subsequent meetings of the Council and, together with other material on the inmate's file, provide the basis for the recommendations made by the Council to the Commissioner concerning the inmate's ongoing classification, placement and program participation. This may determine what developmental programs will be available to the inmate, and whether the inmate will progress, eventually, to a classification and placement which will allow for participation in unescorted pre-release leave programs. This participation may enhance the inmate's prospects, on the expiry of the non-parole period, of obtaining release on parole under supervision by Community Offender Services.
- 2.4 These exercises carried out by the Council's Assessment Committees represent a significant proportion of the Council's overall activities, requiring, as they do, considerable input from the Council's secretarial staff, as well as from the members. In addition, there is the time and effort contributed by the correctional centre staff, without which such exercises would not be possible. During 2021, Assessment Committees spent a total of 20 days carrying out 246 interviews with Serious Offenders. Due to COVID-19 restrictions, Assessment Committees convened on a further 15 days to undertake paper reviews on 145 serious offenders.

Section 3: HIGH SECURITY INMATE MANAGEMENT COMMITTEE

- 3.1 Bi-monthly members of the Council meet for the purpose of constituting the High Security Inmate Management Committee (HSIMC). This Committee convened for the first time in January 1998. The function of this Committee is to advise the Commissioner whether certain inmates (not confined to “Serious Offenders” or sentenced inmates) should be designated as Extreme High Risk Restricted, Extreme High Security, High Security or National Security Interest. At its meetings the Committee is assisted by a number of senior officers of Corrective Services NSW who, although having no vote, nevertheless tender reports and provide advice to the HSIMC and are present during the conduct of the HSIMC meetings. These personnel include Assistant Commissioners (or delegates), Governors of those correctional centres which house relevant inmates as well as Corrections Intelligence Managers and others.
- 3.2 The HSIMC, in its deliberations on recommendations, places significant weight on the advice of such personnel. If the HSIMC recommends that an inmate be designated either as Extreme High Risk Restricted, Extreme High Security, High Security or National Security interest, the Commissioner may only act on such a recommendation if there is material on which he can decide that an inmate constitutes either a danger or an extreme danger to other people, or a threat or an extreme threat to good order and security . All inmates so designated are reviewed by the HSIMC regularly. As at 31 December 2021 there were 161 inmates managed by the HSIMC; 38 inmates designated as Extreme High Risk Restricted, 28 inmates designated National Security Interest, 50 inmates designated as Extreme High Security and 29 inmates designated as High Security. Ten (10) inmates were designated both Extreme High Security and National Security Interest and a further six (6) designated High Security and National Security Interest.
- 3.3 During 2021, the Council held five (plus four extraordinary) HSIMC meetings and made 189 recommendations to the Commissioner on security designation. The Commissioner (or his delegate) approved 181 of these recommendations.
- 3.4 The main consequences of being designated an Extreme High Security inmate are that the inmate is moved to different cells on a regular basis, must wear distinctive clothing on days when the inmate is permitted visitors, and the latter themselves are subject to special security measures. Such an inmate is also subject to stringent security arrangements on escort.
- 3.5 The only practical consequence of being designated a High Security inmate is that additional security measures may be employed when such an inmate is on escort. In some Centres the inmate may be denied access to certain locations within the Centre by reason of his designation and as a result may be unable to participate in some programs conducted at those locations.

- 3.6 All security arrangements that apply to Extreme High Security inmates also apply to Extreme High Risk Restricted (EHRR) inmates along with controls and restrictions upon the number and type of visits, visitors, mail and money which may be received for the Inmate. EHRR sentenced inmates are also designated as Serious Offenders and will come within the jurisdiction of the Serious Offenders Review Council.
- 3.7 For inmates designated National Security Interest (NSI) there are controls and restrictions on the number and type of visits, visitors and mail. Security arrangements that apply to Extreme High Security inmates may also be applied.
- 3.8 Holding an Extreme High Risk Restricted, Extreme High Security or High Security designation impacts on an Inmate's security classification and placement.

Section 4: THE PRE-RELEASE LEAVE COMMITTEE

- 4.1 It is the function of this Committee to review applications by so-called “public interest” inmates (other than Serious Offenders) for access to unescorted pre-release leave programs, such applications having been referred to the Council by the Commissioner of Corrective Services NSW, for consideration and recommendation. The expression “public interest inmate” is defined in the Inmate Classification & Placement Policy and Procedures Manual, Corrective Services New South Wales. Generally, the definition covers certain types of offences, and has regard to the length of the sentence imposed for the particular offence.
- 4.2 For the purpose of discharging this function, members of the Council convene monthly in order to constitute the Pre-Release Leave Committee to consider such applications. In order to qualify for consideration by the Committee, each such application must be supported in writing by relevant correctional centre managers, with the exception of unlawful non-citizens applying for unescorted pre-release leave programs.
- 4.3 During 2021 the Committee considered 160 applications for unescorted pre-release leave, and in respect of 98 of such applications recommended that pre-release leave be approved. The Commissioner (or his delegate) approved 72 of these recommendations.

Section 5: THE ESCAPE REVIEW COMMITTEE

- 5.1 On a monthly basis members of the Council meet for the purpose of constituting the Escape Review Committee. The function of this Committee is to deal with applications on behalf of inmates (non Serious Offenders) who have been classified as escapees within the meaning of the Regulation. The consequences of being so classified include confinement in correctional centres designated as being suitable to house inmates classified as escapees, possible limited access to certain developmental programs, and exclusion from pre-release leave programs. Applications from Serious Offenders who are classified as escapees are reviewed at the meetings for Serious Offenders (see Section 1).
- 5.2 Once an inmate has been classified in this way, he or she cannot be removed from that classification except on a recommendation to that effect from the Escape Review Committee to the Commissioner approved by the latter. In order for the Committee to so recommend, it must be satisfied on the material before it, that there are special circumstances for so doing.
- 5.3 Clause 14 of *Crimes (Administration of Sentences) Regulation 2014* provides, in effect, that an inmate “who commits an escape offence” is to be classified within one or other of the escape risk classifications prescribed. However, the clause appears to give rise to some difficulties as to the meaning to be given to the expression “escape offence”, which is defined as meaning “an offence of escaping from lawful custody or an offence of attempting or conspiring to escape from lawful custody.” This is so whether or not the person is prosecuted.
- 5.4 The perceived difficulty arises in circumstances where the relevant inmate has not been convicted (i.e. found by judicial process) of an escape offence, but it is nevertheless asserted that his conduct brings him within the definition of escape offence. There is no provision as to how such an assertion is to be tested, nor as to the procedure by which the alleged conduct may be “found” to be an escape offence. Arguably, this constitutes either a separate administrative power in the Commissioner or at least blurs boundaries in respect of the common law and express statutory provisions, e.g., s.310A of the *Crimes Act, 1900*.
- 5.5 During 2021 a total of 90 applications were considered by the Committee, and in respect of 55 of those applications Council made a recommendation that their escape risk classification be removed. The Commissioner (or his delegate) approved 50 of these recommendations. One (1) further application was approved by the Commissioner with a variation to the Council’s recommendation.

Section 6: SEGREGATION/PROTECTIVE CUSTODY REVIEW HEARINGS

- 6.1 Restricted placement occurs either as separation from all other inmates (non association) or some other inmates (limited association). Inmates held in restricted placement are so held either as a result of a direction that they be held in segregation, or a direction that they be held in protective custody. In the case of segregation this is always as a result of a unilateral decision by the relevant authority, but in the case of protective custody, this may also derive from such a decision or, more likely, as a result of an application made by an inmate. The essential purpose of segregation is the protection of other inmates (and sometimes staff), whereas the reason for protective custody is to afford the inmate protection from certain other inmates.
- 6.2 Any inmate the subject of either a segregation direction, or a unilateral decision by the relevant authority in respect of limited or non-association protective custody has the statutory right, after 14 days in such confinement, to seek a review of the decision by lodging an application in writing with the Council.
- 6.3 In hearing and determining such applications the Council is not bound by the rules of evidence. It must notify the inmate of the hearing and allow the inmate to appear, with or without a legal representative. The Council, in deciding whether to confirm, amend or revoke the relevant decision, must take into account the following matters:
- a. whether the decision was made in accordance with the relevant provisions of the Act;
 - b. whether the decision was reasonable in the circumstances;
 - c. whether the decision was necessary to secure the safety of the inmate or any other person;
 - d. the security of, and the preservation of good order and discipline within the correctional centre; and thus whether
 - e. the interests of the public are served
- 6.4 During the year under review, 77 applications were made to the Council to review segregation/protective custody orders in circumstances where an inmate had been confined for a period exceeding 14 days, and four (4) of such applications preceded to a hearing. All orders were confirmed by the Council. Two (2) applications were withdrawn by the inmate and 43 directions revoked by the Governor of the correctional centre, prior to the hearing. Twenty-eight (28) other applications did not proceed for other reasons. The hearings were held via audio-video link.

Section 7: REPORTS TO THE STATE PAROLE AUTHORITY

- 7.1 The Council is required to submit reports and advice to the State Parole Authority in respect of serious offenders as they become eligible for release on parole advising, in particular, whether or not it is appropriate for the inmate to be considered for release on parole by the Authority [s.197(2)(a) and 135(3)]. In 2021 the Council provided 175 Reports to the State Parole Authority.
- 7.2 Fifty five (55) Serious Offenders, the subject of Parole Orders made by the State Parole Authority, were released in 2021. The Council had advised as to the appropriateness of release on parole in all cases.

Section 8: REPORTS TO THE COMMONWEALTH ATTORNEY GENERAL

- 8.1 The Council submits reports to the Commonwealth Attorney General in respect of Serious Offenders serving federal sentences, as they become eligible for release on parole. In 2021 the Council provided ten (10) reports to the Commonwealth Attorney General.
- 8.2 Two (2) serious offenders serving federal sentences were released to parole in 2021.

Section 9: REPORTS TO THE SUPREME COURT OF NSW

- 9.1 Schedule 1 to the *Crimes (Sentencing Procedure) Act 1999* provides, in effect, that in respect of certain Life sentences imposed on serious offenders, such an inmate may apply to the Supreme Court seeking an Order that a non-parole period be set, with the result that at the expiry thereof the inmate becomes eligible to be considered by the State Parole Authority for release on parole. Excluded is any inmate serving a life sentence imposed under Section 19A of the *Crimes Act 1900* (N.S.W.), amended in this regard in 1989, which provides for the imposition of sentences for natural Life.
- 9.2 The Council is required to prepare and submit reports to the Supreme Court in respect of such applications: *Crimes (Administration of Sentences) Act 1999*, Section 197(2)(c).
- 9.3 During 2021 the Council did not receive any requests for a report from the Supreme Court in respect of a serious offender applying to the Court for the re-determination of an existing Life sentence.

- 9.4 As at 31 December 2021 there were three (3) relevant inmates whose Life sentences have yet to be re-determined. There are a further eight (8) inmates, subject to non-release recommendations, who are eligible to make such an application after having served 30 years of their sentence.

Section 10: SERIOUS OFFENDERS ASSESSMENT UNIT (SOAU)

- 10.1 The SOAU conducts comprehensive psychological assessments within the early stages of sentencing to assist in 'whole of sentence' case management planning for identified sexual and violent offenders. The rationale of a 'front-end' assessment is to increase opportunity for motivational enhancement and channel offenders into appropriate programs in a timely fashion prior to their earliest possible release date.
- 10.2 Between 2007 to 2020 all newly sentenced SORC offenders were automatically referred to the SOAU. However from July 2020 the referral process changed, with SORC referring offenders for assessment or case plan review on a case-by-case basis. Offenders are also identified for assessment by (a) referral from the Commissioner CSNSW (generally via the High Risk Offenders Assessment Committee) and (b) monthly data received from Corporate Research Evaluation and Statistics (CRES) flagging newly sentenced sexual and violent offenders.

Section 11: THE COUNCIL'S SECRETARIAT

- 11.1 The administrative support staff of the Council is accommodated at Newington House within the Silverwater Correctional Complex. The small Secretariat, consisting of the Executive Officer & Registrar and eleven staff, is responsible for carrying out all secretarial and clerical work for the Council to enable it to fulfil its statutory responsibilities.
- 11.2 The Council wishes to place on record its indebtedness to the Executive Officer & Registrar and Secretariat staff and to acknowledge the dedication, hard work and commitment of each of the members thereof.
- 11.3 The contact details for the Council Secretariat are:

Executive Officer and Registrar
Serious Offenders Review Council
Newington House
Private Bag 144
SILVERWATER NSW 1811

SORC@dcj.nsw.gov.au

SCHEDULE ONE: PROFILE OF SERIOUS OFFENDERS

Who is a Serious Offender?

The *Crimes (Administration of Sentences) Act 1999* defines Serious Offender as follows:

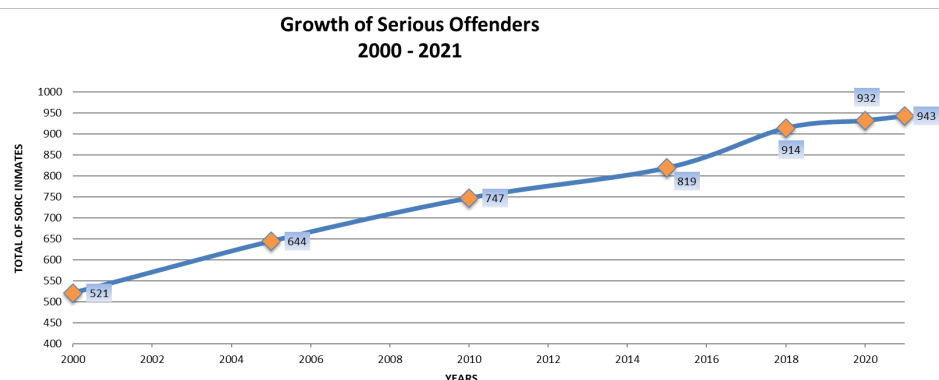
- (a) an inmate who is serving a sentence for Life, or
- (b) an inmate who is serving a sentence for which a non-parole period has been set in accordance with Schedule 1 to the *Crimes (Sentencing Procedure) Act 1999*, or
- (c) an inmate who is serving a sentence (or one of a series of sentences of imprisonment) where the term of the sentence (or the combined terms of all of the sentences in the series) is such that the inmate will not become eligible for release from custody, including release on parole, until he or she has spent at least 12 years in custody, or
- (d) an inmate who is for the time being required to be managed as a serious offender in accordance with a decision of the sentencing court, the Parole Authority or the Commissioner, or
- (e) an inmate who has been convicted of murder and who is subject to a sentence in respect of the conviction, or
 - (e1) a Commonwealth post sentence terrorism inmate, or
 - (e2) a NSW post sentence inmate, or
- (f) an inmate who belongs to a class of persons prescribed by the regulations to be Serious Offenders for the purposes of this definition.

Number of Serious Offenders

As at 31 December 2021 there were 943 serious offenders, representing 11.0% of the Sentenced inmate population (7.7% of the total inmate population).

Figure 1 represents the growth in the number of Serious Offenders spanning 2000 to 2021. The number of Serious Offenders also includes Serious Offenders who have returned to custody for breach of parole. The percentage of serious offenders to the Sentenced and total inmate population has remained relatively constant over the years.

Figure 1: Growth of Serious Offenders



Types of Serious Offenders

Jurisdiction

Included in the Serious Offender population, in addition to inmates convicted of NSW offences by NSW Courts, are inmates convicted in NSW of federal offences and who come within the definition of Serious Offender.

As at 31 December 2021 there were:

- 91 Serious Offenders serving Commonwealth sentences.
- 11 Serious Offenders serving sentences imposed in other jurisdictions, who have transferred to NSW custody.

The number of inmates serving non-NSW imposed sentences represents 10.8% of all Serious Offenders.

Inmates serving a “Life” sentence

As at 31 December 2021 there were 78 Serious Offenders serving sentences of “Life”. This represents 8% of all Serious Offenders. The meaning of a “Life” sentence may vary depending on where and when the sentence was imposed, as outlined in the following categories:

1. Inmates serving life imprisonment for the term of their natural life

As at 31 December 2021 there were 43 Serious Offenders serving sentences of natural Life. This represents 4.5% of all Serious Offenders. These include either a Life sentence imposed by the NSW Supreme Court since 12 January 1990 or a Life sentence imposed by the federal jurisdiction.

These inmates comprise 41 inmates sentenced for murder in NSW following amendments to the *Sentencing Act 1989*. The total also includes two (2) Commonwealth inmates sentenced for drug offences.

2. Inmates serving an existing life sentences eligible to have the terms of that sentence redetermined

As at 31 December 2021 there were three (3) Serious Offenders sentenced to life imprisonment prior to 12 January 1990 who are eligible to have the terms of their Life sentence determined by the Supreme Court of NSW under Schedule 1.2.2(a), *Crimes (Sentencing Procedure) Act 1999*.

3. Inmates serving an existing life sentence and who are the subject of a Non-Release Recommendation

As at 31 December 2021 there were a further nine (9) Serious Offenders sentenced to life imprisonment prior to 12 January 1990 who are the subject of a non-release recommendation under Section 154A(3), *Crimes (Administration of Sentences) Act 1999*.

One of these nine (9) inmates has had his life sentence redetermined. The remaining eight (8) Serious Offenders in this category may apply to have the terms of their Life sentence determined by the Supreme Court of NSW after serving at least 30 years of their sentence under Schedule 1.2.2(b) of the *Crimes (Sentencing Procedure) Act 1999*.

These inmates are not eligible for a determination unless the Supreme Court, when considering the inmate's application, is satisfied that special reasons exist that justify the making of such a determination.

4. Inmates sentenced to Life imprisonment with a non-parole period

As at 31 December 2021 there were 23 Serious Offenders serving Life sentences in which the court had specified a non-parole period, at the expiry of which they become eligible for release on parole. If released to parole, the inmate will be supervised during the remainder of their Life sentences. This represents 2.4 % of all Serious Offenders.

Types of Offences

1. Inmates sentenced for murder

As at 31 December 2021, of the 943 Serious Offenders, 507 are serving sentences for murder. This represents 53.8 % of all Serious Offenders.

2. Inmates sentenced for offences other than murder

As at 31 December 2021, of the 943 Serious Offenders, 431 are serving sentences for offences other than murder with a non parole period of 12 years or more or those deemed a Serious Offender at the direction of the Commissioner or State Parole Authority or prescribed as serious offenders by the regulations. This represents 45.7% of all Serious Offenders. The offences include:

- Sexual Offences including Assault, Intercourse without Consent and Offences against Children (233 Serious Offenders): 24.7% of all Serious Offenders.
- Drug offences including Importation, Supply and Conspiracy (90 Serious Offenders): 9.5% of all Serious Offenders.
- Violent Offences including Robbery, Manslaughter, Wounding, Kidnapping (73 Serious Offenders): 7.7% of all Serious Offenders.
- Acts in preparation for terrorism (34 Serious Offenders): 3.6% of all Serious Offenders.
- Other Offences including Fraud and Firearm (1 Serious Offender): 0.1% of all Serious Offenders

Nine (9) of these Serious Offenders were managed by the Council on a direction of the Commissioner of Corrective Services:-

- 7 for serious sexual (or sexually related) offences,
- 2 for violent offences

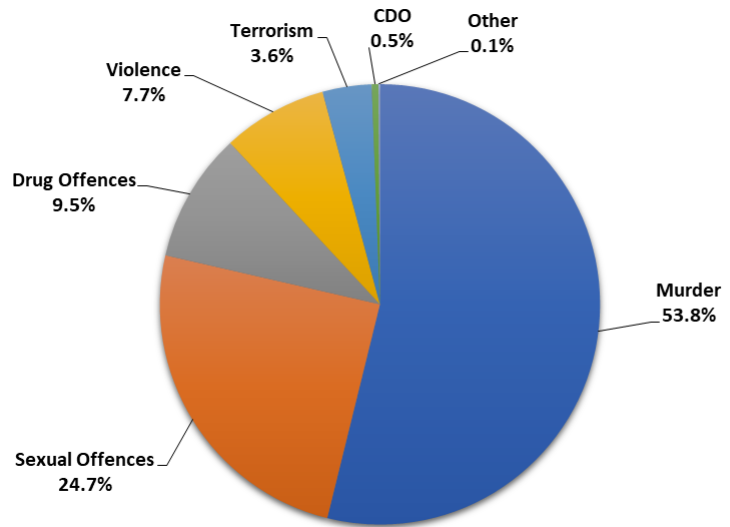
3. Inmates serving a Continuous Detention Order

As at 31 December 2021, five (5) Serious Offenders, are serving Continuous Detention Orders: 0.5% of all Serious Offenders. Four (4) are NSW Post Sentence Orders and one (1) is a Commonwealth Post Sentence Order.

All Serious Offenders - Index Offence Type

As at 31 December 2021

Figure 2:
Breakdown of Index Offence Type for all Serious Offenders



Types of Offenders

As at 31 December 2021, of the 943 Serious Offenders, 507 are serving sentences for murder. This represents 53.8 % of all Serious Offenders.

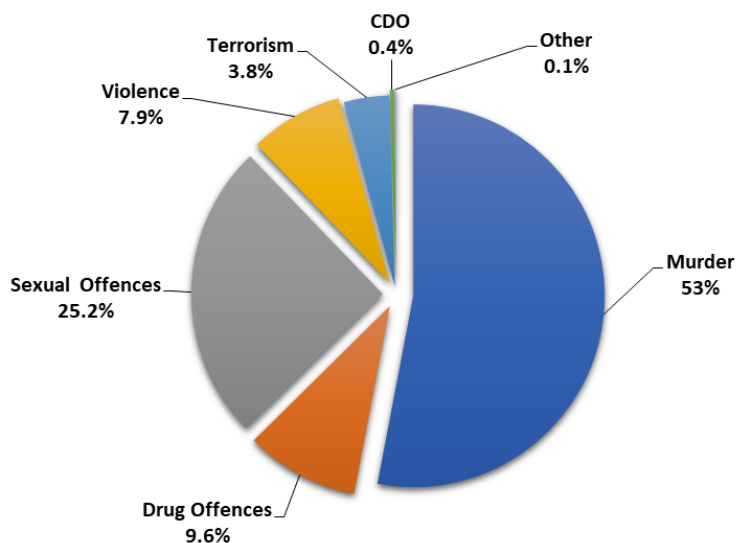
1. Male Serious Offenders

At at 31 December 2021 there were 904 male Serious Offenders. This represents 96% of Serious Offenders. Figure 3 shows a breakdown of the index offence type of male SORC inmates.

Male Serious Offenders - Index Offence Type

As at 31 December 2021

Figure 3:
Breakdown of index offence type for male Serious Offenders



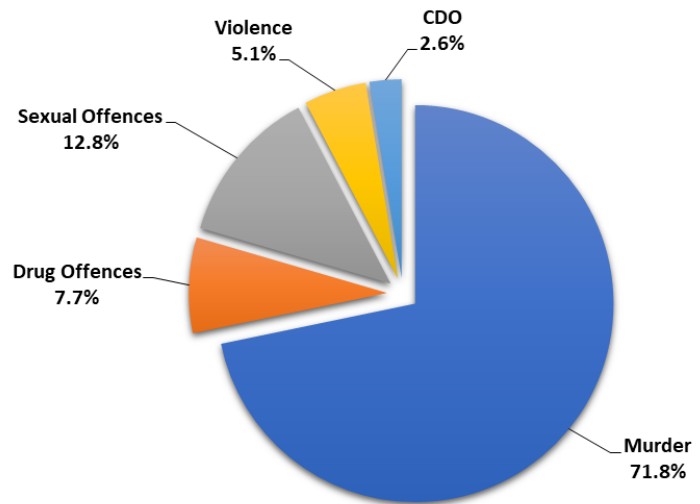
2. Female Serious Offenders

As at 31 December 2021 there were 39 female Serious Offenders. This represents 4.0% of Serious Offenders. Figure 4 shows a breakdown of the index offence type of female SORC inmates.

Female Serious Offenders - Index Offence Type

As at 31 December 2021

Figure 4:
Breakdown of index of-
fence type for female
Serious Offenders



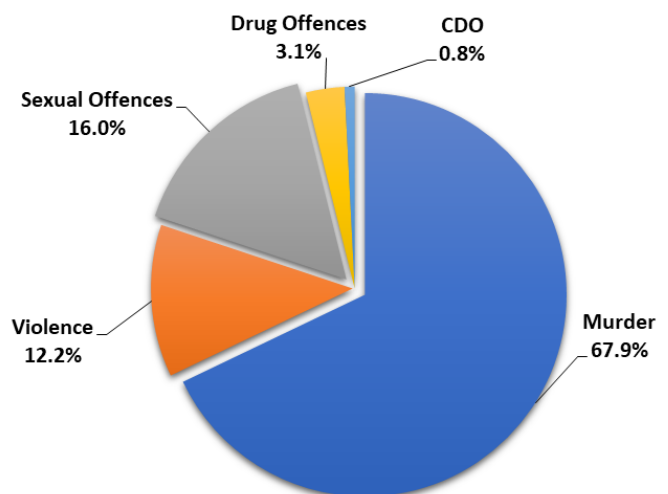
3. Aboriginal Serious Offenders

As at 31 December 2021 there were 131 Serious Offenders who identify as Aboriginal –124 males and seven (7) females. This represents 13.9% of all Serious offenders. Figure 5 shows a breakdown of the index offence type of Aboriginal Serious Offenders. NB: Six (6) female aboriginal Serious Offenders are serving murder convictions and one (1) is serving a violence offence.

Aboriginal Serious Offenders - Index Offence Type

As at 31 December 2021

Figure 5:
Breakdown of Index Offence
Type of Aboriginal Serious
Offenders



4. Forensic Patients

As at 31 December 2021 there were five (5) Serious Offenders declared forensic patients, by virtue of the provisions of the *Mental Health (Forensic Provisions) Act 1990*. Four (4) of these offenders are housed in the Forensic Hospital, Malabar.

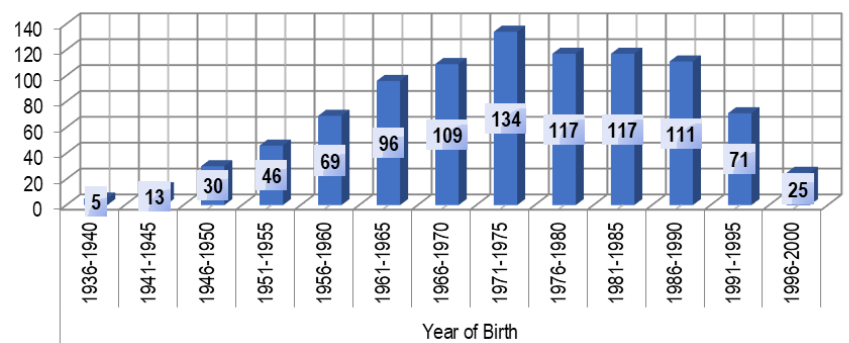
5. Age of Serious Offenders

As at 31 December 2021 the year of birth of Serious Offenders was distributed as outlined in Figure 6.

SORC Age Demographic

As at 31 December 2021

Figure 6:
Age Distribution of Serious Offenders



As at 31 December 2021 the youngest male Serious Offender was born in 2000 (21 years old) and the oldest was born in 1937 (84 years old).

The youngest female Serious Offender was born in 1999 (22 years old) and the oldest was born in 1939 (82 years old).



**SERIOUS OFFENDERS
REVIEW COUNCIL**

Contact Info

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