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Mr Mark Speakman
Attorney General New South Wales
NSW Sentencing Council
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Dear Mr Speakman,

I understand that you are calling for "a review of sentencing for murder and manslaughter and the standard non-parole periods for murder."

The Consultation Paper for the Review states:

3.7 The law and principles relating to the imposition of life sentences have a particular relevance for murder since murder is one of the principal offences for which courts may impose life imprisonment.

3.8 A life sentence in NSW is imposed for the term of the offender's natural life. Sentencing law in NSW does not permit courts to set a non-parole period when imposing a sentence of life imprisonment.

3.9 Since the abolition of the death penalty, life imprisonment is the most severe penalty available in NSW. At common law, the maximum penalty for an offence is reserved for the worst category of case

I am afraid that I have neither the time nor the competence to wade through all the "ifs and buts" mentioned in the Consultation Paper. On the other hand, I appreciate the necessity for the law to be precise, and to allow for options.

I will therefore concentrate on a few over-arching principles which I believe you need to consider when making recommendations.

The most important of these is the denying of all hope to the prisoner.

NSW is the only Australian jurisdiction where parole is not available for life sentences. Elsewhere in Australia, life sentences are either discretionary or mandatory.

In section 6, it states that the non-parole option is available in cases of (inter alia) extreme culpability, where a life sentence is the only way to meet the **community interest in retribution**, punishment, protection and deterrence. This conjures up scenes of the baying mob outside the courthouse.

Section 3.3 of the Consultation Paper discusses the General Principles of sentencing that apply in NSW:

3.3 When sentencing an offender for murder or manslaughter, a NSW court must take into account the sentencing principles that are applicable to all offences committed in NSW, which are: the purposes of sentencing (that is, adequate punishment, deterrence, protecting the community, **promoting rehabilitation**, making the offender accountable, denunciation, and recognising the harm to the victim and the community)¹ the principles of sentencing (key principles include that a sentence must be proportional to the offence,² that there should parity between the sentences of co-offenders,³ that offenders should be sentenced only for the offence of which they are convicted,⁴ and that, where the offender is being sentenced for more than one offence, the sentence must be just and appropriate to the totality of the offending behaviour)

The non-parole requirement in NSW rules out any prospect of freedom, or rehabilitation, or even the promotion of rehabilitation, but rather reinforces the quenching of all hope. Why should a prisoner "behave" when it serves him or her no purpose? The prisoner could re-offend while in jail, knowing that no worse sentence can be applied.

On the other hand, the expectation of release on parole, and eventual freedom, can encourage in the prisoner a change of heart, of habits and positive steps on the road to rehabilitation and a useful life in the community.

And a saving to the government in the high costs of imprisonment, which includes support of the family outside. .

I therefore urge the Sentencing Council to find some middle ground between the extremes of throwing away the key and excessive leniency.

I append two well known quotes .

Blessed are the merciful, for they shall obtain mercy

The quality of mercy is not strained;
It droppeth as the gentle rain from heaven
Upon the place beneath. It is twice blest;
It blesseth him that gives and him that takes:

Yours faithfully

(signed)

Allan Miles