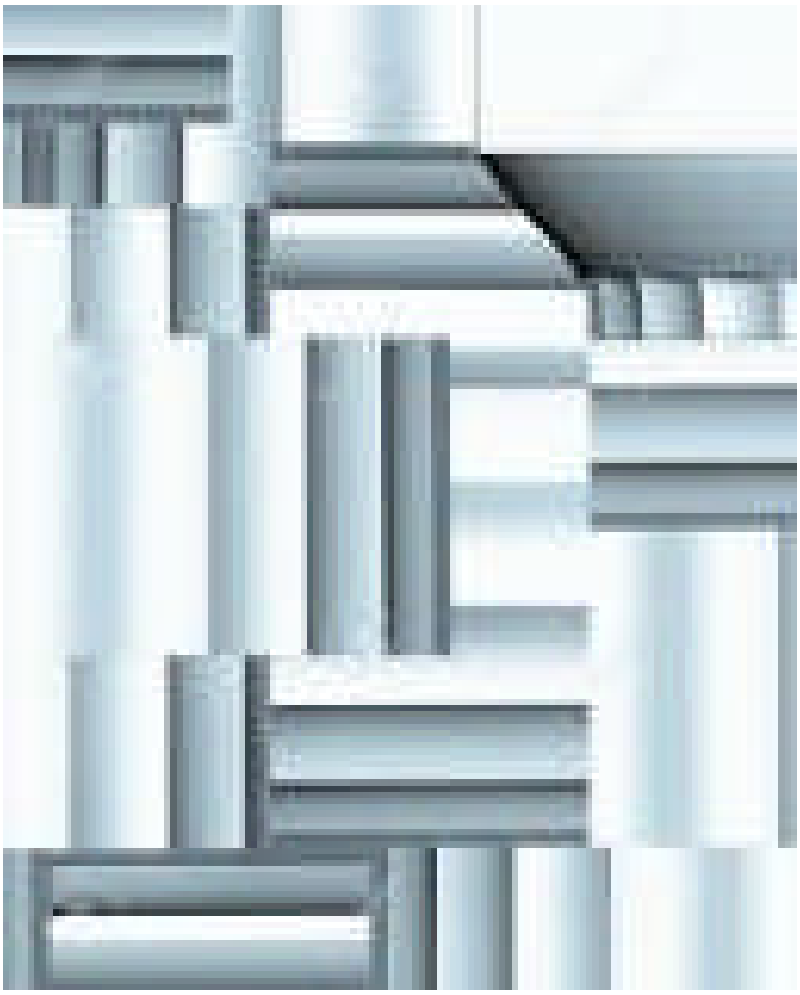
Complex Adult Victim Sex Offender Management Review Panel

Advice on the legislative and governance models under the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic)

November 2015



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Acknowledgements

This report was commissioned by the Minister for Corrections (the Hon. Wade Noonan, MP) in May 2015. We, as members of the Panel appointed to compile the report, came to the task equipped with some relevant professional experience. None of us, however, has spent a professional lifetime within the very broad horizons of what is now known as the 'correctional' field. We were nevertheless sufficiently familiar with it to know that it demands, of those whose lives are dedicated to it, a degree of professional commitment and a breadth of knowledge, wisdom, common sense and decency rare in any sphere.

Although many of those who we consulted knew that we had a duty to exercise independence of judgment and a critical rigour in our examination of their workplace and work practices, and to recommend change wherever we thought that change would be beneficial, the cooperation we received was universal and unstinting. This cooperation extended beyond members of Corrections Victoria to those working in the associated fields of health, human services and justice. Any virtues which this report may have are due in large part to them. We owe a debt of gratitude to them all.

It is inevitable that many of those who read this report will have engaged, to a depth which the Panel cannot match, with the issues about which the report is concerned. The consequence is that (albeit unintentionally) the report will fail to reflect some of the good work that has been and is being done within the wide scope of activities upon which the report may touch. The Panel's job has been to concentrate on what can be improved, and not on whether identified deficiencies are the result of fault. In most cases, they are not; for what was acceptable, indeed excellent, at one time, may be in need of change in another. Suggestions for reform do not necessarily carry any criticism of those responsible for carrying out existing processes under the current legislative scheme.

Throughout this assignment we have been assisted by five researchers (who, with an eye to the Panel's terms of reference, designated themselves 'The CAVSOM Team') without whose dedication to the production of this report we would have never completed our task. Nina Hudson led the team with outstanding expertise, and provided us with an ability to anticipate challenges and identify solutions which we could not have supplied ourselves. Norelle Woolley, Paula Cumbo, Lisa Chesswas and Amanda Abbruzzese gave Nina, and the Panel, their utmost cooperation, and the benefit of their knowledge of, and experience in, the correctional, legal and related fields. It is simply not possible that we could have been better assisted.

David Harper

Paul Mullen

Bernadette McSherry

27 November 2015

Executive summary

On 17 March 2015, Masa Vukotic was murdered by Sean Price. Price was then under a supervision order made pursuant to the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) ('SSODSA') having in October 2014 been released from prison on bail. Two days after the murder, he committed further serious crimes before voluntarily giving himself up to the Principal Practitioner who, in accordance with Price's supervision order, had the immediate responsibility for his management by Community Correctional Services Victoria. Price then waited with his Principal Practitioner until he was arrested, and subsequently charged, by Victoria Police. He has since pleaded guilty to those charges.

Terms of reference for the review

Following Price's arrest, the Minister for Corrections, the Hon. Wade Noonan, MP, ('the Minister') appointed a Panel, consisting of the Honourable David Harper AM, Professor Paul Mullen, and Professor Bernadette McSherry to conduct a review of the management of offenders who are described in the terms of reference as 'complex adult victim sex offenders' and who, like Price, are subject to the SSODSA. In the meantime, however, the Department of Justice and Regulation had completed its own internal review of the Department's involvement with Price since his release from prison on 2 October 2014.

A further review, on this occasion initiated by the Chief Psychiatrist, Department of Health and Human Services, by way of an investigation into mental health services provided to Price, was also undertaken. Although there was no suggestion that either the internal review or the Chief Psychiatrist's investigation had been other than thoroughly and competently carried out, the Minister was of the opinion that, in the circumstances, an independent assessment of both was appropriate.

The Panel's terms of reference were drawn accordingly. The Minister requested the Panel:

> To conduct an independent review of the [Department of Justice and Regulation] internal review of the management of Sean Price and the Chief Psychiatrist's review of the clinical assessments of, and mental health service system responses to, Sean Price.
>
> To provide advice on how the SSODSA could be improved or another post sentence legislative framework be created to strengthen the protection of the community from complex adult victim sex offenders and improve the management of complex adult victim sex offenders.
>
> To provide advice on governance models for improved decision making and case management between the criminal justice and mental health service systems in relation to complex adult victim sex offenders.

The first of the Panel's terms of reference is the subject of a separate report, being the Panel's first report.

The second and third of the terms of reference is the subject of this, the Panel's, second report.

The Panel's review of the second and third of its terms of reference has necessarily focused on the legislative framework under the SSODSA and the governance arrangements for decision making and case management associated with it. That framework is designed to support the purposes of the SSODSA which are set out section 1 of the Act. The legislation's main purpose is to enhance the protection of the community by requiring offenders who have served custodial sentences for certain sexual offences and who present an unacceptable risk of harm to the community to be subject to ongoing detention or supervision. The Act's secondary purpose is to facilitate the treatment and rehabilitation of such offenders.

The SSODSA, as its purposes show, was never designed to provide for protection from other than those who have served custodial sentences for the sexual offences to which the Act applies. No Victorian legislation has as its purpose the enhancement of post-sentence protection from offenders who have committed offences of non-sexual interpersonal violence. Sean Price had committed such offences, and had been assessed as presenting a high risk of reoffending in this way. However, although at the same time he presented an unacceptable risk of further sexual offending, and was accordingly the subject of post-sentence supervision orders under the SSODSA, his even greater propensity for violence unrelated to purely sexual assaults could not be adequately managed by that means. That, and not failures in the justice system, should be the primary reason why there is, rightly, concern about the present legislative provisions for the protection of the community generally from offenders who, having served a custodial sentence, present an unacceptable risk of committing offences causing serious interpersonal harm, whether that harm is sexual or not.

The provision of advice about how the SSODSA could be improved, or another post-sentence legislative framework be created, to strengthen the protection of the community from complex adult victim sex offenders, thus broadened the scope of the Panel's focus. In the Panel's opinion, any improvement in the post sentence legislative framework must encompass the extension of that framework to the management of the risk of violent offending; expanding its focus to protect the community from all acts of serious interpersonal harm.

It is this somewhat more broadly based advice, together with advice on governance models for improved decision making and case management between the criminal justice and mental health service systems, which this report attempts to provide. It proceeds throughout on the assumption that there will be no artificial distinction between sexual and violent offences.

Scope and methodology for the review

The Panel's terms of reference require it to give particular attention to complex sex offenders who offend against adult victims. These offenders are considered to be 'complex' because they:

- have a complex offending profile by presenting a risk of violent offending (in addition to a risk of sexual offending), and/or
- are, by reason of their issues and needs (including one or more of mental health issues, personality traits/behavioural issues, cognitive impairment and substance misuse) difficult to treat and manage.

As at 14 August 2105, there were 118 offenders subject to post-sentence detention or supervision orders under the SSODSA. Two of these were in detention, while the remaining 116 were under supervision.

The Panel considered the cases of 46 offenders – of the 118 subject to the SSODSA – who had committed sexual offences against adult victims. They also had complex offending profiles. While all had committed a sexual offence, many had engaged in acts of general criminality, and had histories of violent offending, in addition to their sexual offence history.

The terms of reference include a request by the Minister to 'consider the current management of similar [to Sean Price] supervision order adult victim sex offenders and provide advice on any further action to be taken to mitigate their risk of further violent or sexual reoffending and to improve their treatment and rehabilitation.' The Panel focused in particular on 11 offenders who had been identified by the Department of Justice and Regulation as presenting with issues of possible immediate concern. During the course of the review it provided advice about these offenders to the Secretary to the Department of Justice and Regulation. In giving such advice, the Panel did not identify any further action that was required regarding the management of these offenders.

In the preparation of its second report, the Panel held 48 meetings with organisations, experts and individuals which (or who) had responsibilities and expertise of relevance to the issues with which the Panel was concerned. With the assistance of the Victims Support Agency, meetings were also arranged with three victims of crime. In addition, visits and observations were organised as part of the Panel's information gathering about the way the SSODSA operates in practice.

The Panel invited offenders who were then subject to supervision and detention orders to provide input to the review through their answers to a questionnaire. These answers have been analysed, with the results set out in the report.

The SSODSA provides for the continued supervision (and, in the most serious cases, detention) of particular sex offenders beyond the term of their sentence. The current scheme applies to offenders who have committed 'relevant' sexual offences against either adult or child victims.

Serious breaches of supervision orders are rare. Sean Price is the first and only offender to have committed murder while on supervision. This suggests that the Department of Justice and Regulation has, in the vast majority of cases, effectively managed (and is effectively managing) the risk of sexual reoffending. However, because the risk that may be managed under the SSODSA is limited to sexual offending, offenders serving a sentence for violent offences, but not sexual offences, are not 'eligible' offenders for the purpose of the SSODSA scheme.

'Four pillars' underpinning the Panel's advice

There are, necessarily, links between the Panel's two reports. The Panel's findings in the first report are particularly concerned with reviews of the treatment and management of Sean Price. These findings have informed the reasoning behind the recommendations made in this (the second) report, which relates more broadly to the operation of the SSODSA with respect to the cohort of complex adult victim sex offenders – of which Price was one.

The Panel has framed the advice sought by the second and third of the Panel's terms of reference around the following four pillars, illustrated in the accompanying diagram. In summary are these:

> *1. Early intervention and continuity of care to reduce the risk of serious interpersonal harm*: The changes recommended by the Panel aim to ensure that a carefully selected cohort, consisting only of the most serious and greatest risk offenders, are provided with incentives and opportunities to engage in interventions involving treatment and management while under sentence in prison or on parole. The purpose of these interventions is ensure so far as possible that at the end of their sentence they do not pose an unacceptable risk of further relevant offending. If, however, those incentives and opportunities are not fully grasped, then the cohort will be made subject to post-sentence detention or supervision. In that event, the scheme recommended by the Panel, if implemented, will provide for the seamless and continuous delivery of treatment and management into to the post-sentence regime of detention or supervision.
>
> *2. Reducing the number of victims of serious interpersonal harm*: A key gap in the operation of the SSODSA is that the legislation is limited to protecting the community against the risk of further sexual offending. It does not extend to protection from the risk of violent offending not associated with a sexual assault. The Panel's view is that the legislation should be refocused to ensure that it can, to the maximum extent possible, protect the community against acts of serious interpersonal harm, regardless of the characterisation of the offending as sexual or violent or both.
>
> *3. Independent and rigorous oversight*: A key area of improvement in the management of offenders under the SSODSA is to remove fragmentation while promoting rigour in decision making and increasing accountability. The Panel's view is that a new authority (to which the Panel has provisionally given the name the 'Public Protection Authority') should be established so that this can best be achieved. The Authority would be responsible for the continuous and seamless management of offenders who have committed serious offences and who while still under sentence are assessed as at such a level of risk of committing further offences involving serious interpersonal harm that a democratic society committed to respect for human rights could properly justify (while that risk remains unacceptable) the imposition upon them of post-sentence and post-release treatment and management designed to reduce that risk to the minimum.
>
> *4. Responsive service delivery and intensive case management:* A key area for improvement in the model for case management of offenders under the SSODSA is to strengthen the delivery of services directed towards minimising their risk. But the risk they pose arises out of their complex deficits; and these require coordinated, multi-disciplinary responses if they are to be effectively addressed by the relevant services. Because those services must endeavour to treat and manage that risk, they must also provide incentives and opportunities to engage in immediate post-release interventions. The Panel's view is that there should be multi-disciplinary Public Protection Panels established under the Public Protection Authority to coordinate responsive service delivery and effective case management.

Considerations underpinning the Panel's pillars of reform

The Panel has also, in framing its advice, taken account of what in its opinion are the considerations which should inform the operation of a post-sentence regime of detention or supervision.

First, criminal conduct attracts punishment. It is proper that it does. Such punishment frequently includes detention or supervision. The employment of either for purposes of prevention rather than punishment is nevertheless a significant departure from the principles generally held to be important in a democratic society. It can, therefore, only be justified under carefully limited circumstances.

Secondly, while the principles remain of central importance, the case for a strictly circumscribed regime of preventive detention or supervision is now accepted as a necessary element in the protective armoury which democratic constituents demand from their lawmakers.

Thirdly, any individual's risk of reoffending cannot be accurately predicted. At best, offenders can with reasonable confidence be placed among a group which, as a group, falls within a category of risk generally ranked as 'low', 'moderate' or 'high', sometimes with gradations in between. It is easier to identify the factors which, if managed effectively, will reduce the chances of reoffending than it is to predict the likelihood of reoffending by an individual – still less the likely seriousness of that reoffending.

Fourthly, those with the most promising prospects of reducing their risk to the greatest proportionate extent are those who present the greatest risk. It is this cohort upon which any scheme to enhance the protection of the community by the imposition of ongoing detention or supervision should concentrate. Treatment of those with a low risk may cause harm rather than be of benefit, and in any event the expense of such treatment is difficult to justify against its utility. The opposite is true of treatment of offenders who present as being among those with the greatest risk of further serious offending – provided, of course, that such treatment is carefully tailored to meet the individual needs of the particular offender.

Fifthly, and consistently with the reasons given in the fourth point, the scheme best designed to effect the reduction of risk would be rigorously restricted to those who, at the time of their selection for the cohort, present with the greatest likelihood of committing an offence involving serious interpersonal harm, irrespective of whether that offending is of sexual or non-sexual violence, or both.

Sixthly, the scheme would, while the members of this cohort are serving a custodial sentence for offences of serious interpersonal violence, provide those offenders, not less than three years before the completion of their sentences, with carefully prepared intervention and management plans which are then put into effect throughout the balance of their sentences.

Finally, the failure to restrict the scheme in this way will result in, among other things, the detention or supervision – at very significant (indeed, in the Panel's opinion, intolerable) financial and other costs to the community – of those who even if free of such post-sentence restrictions would not reoffend. Should that happen both the community and the offender would be adversely affected.

If adopted, it must be acknowledged that the Panel's recommendations will not eliminate reoffending of the kind which the scheme is designed to reduce. The eradication of risk is impossible. No more can be done than to adopt the most efficient and cost-effective means of reducing that risk. It is important that the community understands this.

The most significant potential source of misunderstanding is the media. A significant community disservice will be done if false expectations are generated. Like harm will also be done if a system which is as well designed as possible, and as well managed as it can be, is falsely accused of failure when a serious crime is committed by an offender under the supervision of the scheme.

With these considerations in mind, the Panel has proceeded upon the basis that its recommendations should:

- be practical and cost effective
- be reached independently and impartially
- balance between the protection of the community, the rights of victims of crime and the rights of an offender who has served his or her sentence, and
- identify with as much accuracy as possible those offenders who present with the greatest risk of committing an offence causing serious interpersonal harm.

If the reformed scheme is to fulfil its aim of reducing the number of victims of serious interpersonal harm, by means which do not subject offenders to an unnecessary or unreasonable (and potentially costly) restriction of their liberty, the Panel considers, in broad compass, that the scheme must:

- have a workable definition of both serious sexual offending and serious violent offending
- be able to identify those offenders who present the greatest likelihood of committing an offence involving serious interpersonal harm, whether sexual or otherwise, and to exclude those who, though they may reoffend in various ways, are less likely to commit an offence of this kind
- direct those who present the greatest likelihood of committing an offence involving serious interpersonal harm to in-prison treatment and rehabilitation which reduces their chance of committing further like offences and maximises their chance of obtaining parole and, on completion of their sentence, of unrestricted release
- recognise the value of parole, and
- provide, for those offenders who on completion of their sentence pose an unacceptable risk of committing a relevant offence if a detention or supervision order is not made and the offender is in the community, a seamless transition from being a sentenced prisoner to an offender subject to a post-sentence detention or supervision order.

The reformed post-sentence scheme envisaged by the Panel

Flowing from the Panel's four pillars are recommendations, which the Panel has made with the intention to bring about a reformed post-sentence scheme that has a number of key elements. These are reflected in the accompanying diagram, which depicts the process under the reformed scheme as being reductive (thus its funnel-like profile). The Panel has recommended that the legislative provisions of the post-sentence supervision and detention scheme be broadened to target the risk of serious interpersonal harm posed by serious violent offenders as well as complex adult victim sex offenders. This is to be achieved by:

- broadening of the eligibility criteria for the scheme to include serious violent offenders and sex offenders, and
- increasing the legislative options to manage and respond to an escalation of risk of serious interpersonal harm, including a risk of violent reoffending, in addition to sexual reoffending.

In the Panel's view, there is no justification for the exclusion of particular serious violent offenders from eligibility for any scheme that has the enhancement of community protection as its purpose. Accordingly, eligibility for the post-sentence detention and supervision order scheme should be broadened to include serious violent offenders, in addition to sex offenders **(Recommendation 1)**.

Critically, the Panel considers that the paramount principle underpinning the selection of the eligibility criteria is that it be precise. The Panel considers that the scheme can be better targeted against serious interpersonal harm by amending the current statutory criteria for eligibility under the SSODSA to:

- add certain and specified violent offences to the list of relevant offences under the SSODSA, and
- provide that eligibility be confined to those serving a specified minimum sentence of imprisonment for a relevant offence.

The recommended approach **(Recommendations 2–4)** combines offence type and imprisonment sentence length, which the Panel considers are the key factors necessary to identify the pool of eligible offenders that the Victorian post-sentence scheme should target to identify, and protect the community from, those who present the greatest likelihood of causing serious interpersonal harm.

The offence type captures the nature of the most recent offending behaviour, and is broad enough to cover offences that result in the commission of interpersonal harm, whether it be sexual or non-sexual. The length of the sentence of imprisonment reflects a judicial assessment of a range of important factors taken into account by a court in the sentencing process. Of particular relevance are the judicial assessment of the offender's:

- previous convictions, including any pattern of similar offending or a course of conduct, and
- prospects for rehabilitation and the extent to which there is a need for the sentence to protect the community from such offending.

Offenders who are eligible under the reformed criteria should be notified of their eligibility, shortly after entry into prison under sentence, so that they are aware of the possible consequences of their conviction and sentence **(Recommendation 5)**.

The Panel recommends that the Secretary to the Department of Justice and Regulation and the Director of Public Prosecutions should retain the discretion to bring applications for supervision and detention orders respectively, and that the 'unacceptable risk' test be retained in the determination of such applications **(Recommendation 6)**.

The Panel recommends the creation of a new statutory authority – the Public Protection Authority – to provide independent and rigorous oversight of offenders who are included in the overall scheme and to coordinate a whole of government approach to the delivery of a range of services to address the multiple and complex needs of offenders **(Recommendation 10)**. The Public Protection Authority is depicted in the accompanying diagram as a 'protective instrument' between the offender and the public. The core arrow device is pointing to the right, inferring the progress of offenders forward under the reformed scheme.

The Panel envisages a two-staged process by which offenders will be selected for entry into the cohort under the purview of the Public Protection Authority **(Recommendations 12 and 13)**. The intended outcome of these processes is, therefore, the accurate and early identification of those who, precisely because they have the greatest likelihood of causing serious interpersonal harm, should on commencement of a prison term be identified for possible later inclusion in a very small and strictly confined cohort of offenders.

- Sentenced prisoners, on their reception into the prison system, are assessed for the risk they present. The initial stage of the process envisaged by the Panel will commence at that point. Those offenders meeting the Panel's eligibility criteria outlined above under the reformed scheme, who are assessed at a moderate to high risk of reoffending will be referred to the Public Protection Authority.
- The Authority should, using flexible criteria, review all eligible offenders referred to it and determine such offenders meet the threshold for inclusion in its cohort – those whom it considers present the greatest likelihood of causing serious interpersonal harm. Flexibility in making the Authority's determination will be of the essence. Admission to the scheme, however, will be restricted to those very few eligible offenders who are so likely to cause serious interpersonal harm that making the specialised treatment and management integral to the program available to them is warranted.

To support these recommendations, the Panel makes two recommendations to change Corrections Victoria's current process for in-prison assessment and treatment for offenders in the cohort that are focus of this review. They include both sex offenders and serious violent offenders These recommendations seek to achieve earlier offence-specific assessment and treatment for sex offenders, and a review of the service delivery framework offenders who have committed both violent and sexual offences **(Recommendations 23 and 24)**.

The Authority's oversight should commence no later than three years before an offender's earliest eligibility date – with the aim that offenders serving a longer sentence will have already commenced a program of interventions to address their treatment needs as assessed by Corrections Victoria **(Recommendation 11)**.

Offenders who come under the purview of the Public Protection Authority will be subject to an Intervention and Management Plan, which will set out the specialised plan of treatment and interventions designed as far as possible to deliver the services from a range of agencies required to manage the risk of the offender, and address their multiple and complex needs and support their rehabilitation – underpinned by the common aim of protecting the community from further acts of serious interpersonal harm **(Recommendation 15)**.

The new Authority would, as one of its primary functions, assume the responsibility – at present allocated to the Detention and Supervision Division of the Adult Parole Board – of supervising offenders who are under supervision orders **(Recommendation 16)**. It is a responsibility which the Board has discharged admirably. The Panel nevertheless believes that the Board's resources would be better employed if devoted to its core function and expertise which, of course, is to administer Victoria's parole system. Both the Adult Parole Board and the Public Protection Authority would then have responsibility for that which each is best fitted to discharge.

The Public Protection Authority should be empowered to discharge its key functions while the offender is in custody, as well as while the offender is subject to post-sentence supervision or detention (if an application is so made and granted by the court at the end of an offender's sentence). This is in no way a criticism of the way in which Corrections Victoria performs its functions for such offenders; but a recognition that there are constraints on the extent to which, at present other agencies have a responsibility to do the same. Importantly, the Panel recommends that there should be no changes to the duties and/or powers of the Department of Justice and Regulation, as provided by relevant legislation, in relation to offenders who are in prison. The Department of Justice and Regulation must retain the authority to make necessary decisions relating to the classification and management of prisoners, the safety and security of staff and other prisoners, and the good order of the prison **(Recommendation 17)**.

Depending upon the success or otherwise of these specialised interventions delivered under the Intervention and Management Plan, offenders may or may not be the subject of an application to the court for a post-sentence supervision or detention order. Those who, at the conclusion of their sentence, are deemed by a court to constitute an unacceptable risk and who, therefore, the court also deems to be the proper subject of orders for continuing detention or supervision, will be made so subject. In such circumstances they will continue to be under a program of management designed and coordinated under the auspices of the Public Protection Authority, just as they were while serving their sentence; but with the program tailored to the applicable post-imprisonment circumstances. The transition, if and when it occurs, is designed to be seamless. If an offender is placed under a post-sentence order, the responsibility of the Public Protection Authority for that offender’s treatment and management will continue.

The Panel has formed the view that a more active involvement by mental health, disability and social services is required in the management of those on post-sentence supervision orders if the community was to be protected effectively. This is not a criticism of the efforts that are currently made, but reflects the limitations of the current governance and service delivery frameworks. The Department of Justice and Regulation staff bear the primary responsibility for the delivery of services, irrespective of how well equipped they may be to respond to the complex needs or the sometimes confronting circumstances with which they are required to contend. Despite a range of efforts, however, shared approaches to risk management, with common language, measurable objectives, and clearly defined outputs across agencies, are lacking. In these circumstances, community protection through service coordination cannot be as effective as it should.

A new governance framework – comprising corresponding multi-disciplinary Public Protection Panel/s – should be established to support the Public Protection Authority (**Recommendation 27**). The Panel/s should have the responsibility of developing and implementing the Intervention and Management Plans, while the Authority will have the responsibility for approval and oversight of the Plans. The connection between the Public Protection Authority and the Public Protection Panel/s, through the mechanism of the Intervention and Management Plan, is illustrated via their positioning on the protective funnel in the diagram.

The Panel/s should have legislated responsibilities to coordinate service delivery and share information under the Intervention and Management Plans for offenders who pose the greatest likelihood of serious interpersonal harm. Their composition, functions and governance model should be determined by the Public Protection Authority, to which the Panel/s should be accountable, and each agency should be appropriately resourced to undertake its expanded functions. Each Panel should have a lead agency, which should be that agency among the members of the Panel which is likely to be most closely and directly involved in the treatment and management of the individual offender. While the offender remains under sentence in prison or under post-sentence detention, the lead agency would in the ordinary (if not the invariable) case be Corrections Victoria, Department of Justice and Regulation.

The Panel also makes recommendations to increase the options for managing and responding to an offender's risk of serious interpersonal harm, in the event that an offender is placed under post-sentence supervision following expiry of sentence. These include:

- Ensuring core and discretionary conditions can be imposed in relation to violent offending, in addition to sexual offending **(Recommendation 7)**.
- The provision of training in formal risk assessments for staff involved in the day-to-day management and supervision of offenders under the scheme **(Recommendation 8)**.
- The creation of a court-ordered emergency detention order, transferral of the Adult Parole Board's emergency direction powers to the Public Protection Authority and extension of Victoria Police's holding powers **(Recommendation 9)**.

Further recommendations are made to streamline and simplify the processes for the prosecution of breaches of supervision orders to ensure that the response to a breach is as swift and proportionate as possible. These recommendations are also made with the aim of reducing the costs of the current processes for prosecuting breaches of supervision orders **(Recommendations 19–22)**.

Accommodation is an integral part of the approach to managing offenders on post-sentence supervision and detention orders. This is so both in terms of supervision under the order and in terms of the delivery of services to address their multiple and complex needs. Finding suitable accommodation options for sex offenders requires balancing the needs of offenders subject to post-sentence orders with the expectation of public protection. The potential addition of serious violent offenders to the cohort who may be under supervision or detention requires consideration of what accommodation might be suitable for them.

Corella Place, the only community residential facility established under the SSODSA, was of particular interest to the Panel, given that it accommodates nearly 60 per cent of those who are presently both subject to supervision orders and living in the community. Corella Place is intended to provide transitional accommodation, supervision and support for serious sex offenders on post-sentence orders, when appropriate accommodation cannot be found elsewhere in the community.

The Panel has given consideration to the current accommodation options for offenders. The Panel's report provides evidence of the complex and multiple needs of the cohort of offenders subject to the SSODSA, including the prevalence of intellectual disability and cognitive impairment, past and current diagnoses of mental illness and substance misuse.

The Panel identifies a number of areas where it considers more work is needed to ensure that there are additional community-based residential options for the placement of offenders under SSODSA orders, or orders under any reformed post-sentence detention or supervision order scheme. The accommodation options should cater to the individual and complex needs of offenders and support a step up-step down approach to residential placement. The Panel makes a number of recommendations (**Recommendations 30–34**) to achieve:

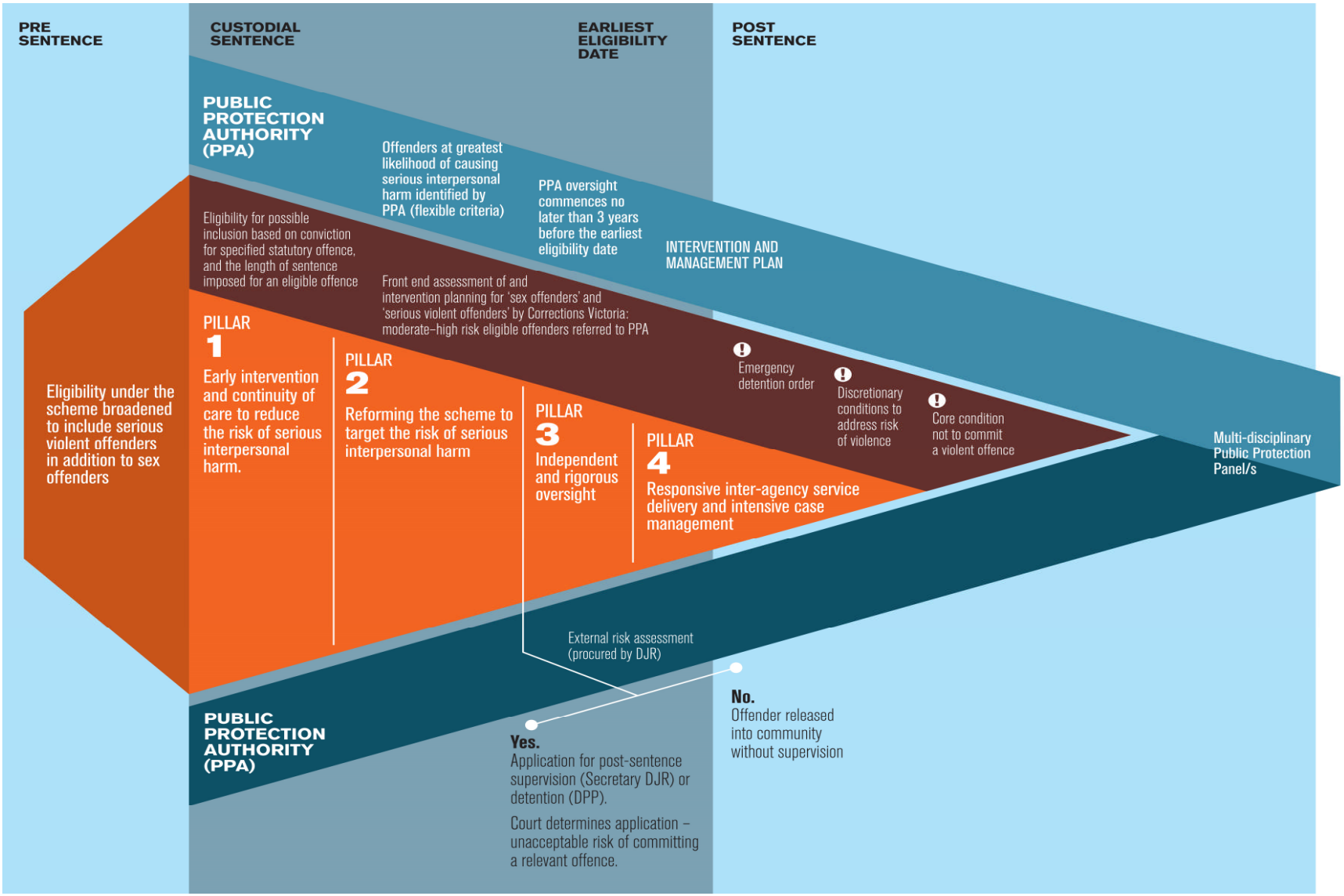
- more flexible community accommodation options for supervision order offenders
- a step-up/step-down approach to the placement of offenders under supervision
- a new forensic residential disability service offenders with an intellectual disability and cognitive impairment
- an increase in the forensic mental health residential accommodation options for offenders with a mental illness, and
- a multiple and complex needs approach under current and proposed accommodation options.

The Panel's strong view is that current and any new accommodation options should be predicated on the scheme being a civil one focused on community protection rather than punishment, pass the ‘minimum interference test’ set out in the SSODSA, and be compatible with the *Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic).

The Panel envisages that this cohort of offenders should be smaller than the numbers subject to post-sentence detention or supervision orders under the SSODSA. Indeed, as the numbers under post-sentence orders grow with the increase in the prison population, the Panel anticipates that, if the scheme operates as it should, the proportion of offenders in the cohort under the auspices of the Public Protection Authority should decrease as against the present proportion of those under detention and supervision orders. The financial benefits of this decrease will depend upon the cohort being confined in the way envisaged by the Panel.

Consistently with its approach, the Panel emphasises that vigilance is required by the Public Protection Authority, government and the courts to ensure that the regime contemplated by the Panel is directed at only the 'critical few': those with the greatest likelihood of causing serious interpersonal harm. The temptation to widen the circle must be resisted. This is essential if the limited resources of the State are to be directed towards offenders who pose the highest risk of reoffending and for whom the scheme is likely to be of optimal benefit.

Conscious of the danger that the reformed scheme may expand beyond the boundaries originally contemplated for it, the Panel considers it important that there be a review of any of the reforms that are implemented. Such a review would allow government to assess whether the Panel's recommendations are operating as intended and whether any amendment is required **(Recommendation 35)**.


PRE SENTENCE
CUSTODIAL SENTENCE
EARLIEST ELIGIBILITY DATE
POST SENTENCE
PUBLIC PROTECTION AUTHORITY (PPA)
Offenders at greatest likelihood of causing serious interpersonal harm identified by PPA (flexible criteria)
PPA oversight commences no later than 3 years before the earliest eligibility date
INTERVENTION AND MANAGEMENT PLAN
Eligibility for possible inclusion based on conviction for specified statutory offence, and the length of sentence imposed for an eligible offence
Front end assessment of and intervention planning for 'sex offenders' and 'serious violent offenders' by Corrections Victoria: moderate–high risk eligible offenders referred to PPA
Eligibility under the scheme broadened to include serious violent offenders in addition to sex offenders
PILLAR 1
Early intervention and continuity of care to reduce the risk of serious interpersonal harm.
PILLAR 2
Reforming the scheme to target the risk of serious interpersonal harm
PILLAR 3
Independent and rigorous oversight
PILLAR 4
Responsive inter-agency service delivery and intensive case management
Emergency detention order
Discretionary conditions to address risk of violence
Core condition not to commit a violent offence
Multi-disciplinary Public Protection Panel/s
External risk assessment (procured by DJR)
PUBLIC PROTECTION AUTHORITY (PPA)
Yes.
Application for post-sentence supervision (Secretary DJR) or detention (DPP).
Court determines application – unacceptable risk of committing a relevant offence.
No.
Offender released into community without supervision

Recommendations

Reforming the scheme to target the risk of serious interpersonal harm

Eligibility broadened to include serious violent offenders, in addition to sex offenders, posing the greatest likelihood of serious interpersonal harm

Recommendation 1

Eligibility for the post-sentence supervision and detention scheme should be broadened to include serious violent offenders, in addition to sex offenders.

Recommendation 2

Eligibility of offenders for post-sentence supervision or detention should be determined by:

- conviction of an offence specified in a list of offences (an 'eligible offence') defined in legislation, and
- a sentence of imprisonment of a certain length imposed for an eligible offence.

Recommendation 3

In defining the criteria under Recommendation 2, consideration should be given to:

- including in the legislative definition of an eligible offence 'sexual offences' as currently defined under the *Serious Sex Offenders (Supervision and Detention) Act 2009* (Vic) and 'serious violent offences' as currently defined under the *Corrections Act 1986* (Vic), and
- fixing the minimum length of an eligible sentence of imprisonment imposed on an eligible offence at three or four years' imprisonment.

Recommendation 4

To inform the determination of the approach envisaged by the Panel under Recommendation 3, the Department of Justice and Regulation should undertake an audit of offenders that includes an examination of the number of 'sex offenders' and 'serious violent offenders' and the sentences imposed on such offenders for eligible offences to ensure there is careful consideration of the implications of defining the criteria in this way. This should be undertaken with a view to achieving the Panel's aim that the cohort of offenders eligible for post-sentence supervision or detention and possible inclusion in the Public Protection Authority's purview is appropriately confined to those offenders who present the greatest likelihood of causing serious interpersonal harm.

Recommendation 5

All offenders identified by the Department of Justice and Regulation as eligible under any amended criteria should be notified at the earliest opportunity of their eligibility for post-sentence supervision or detention and their options for intensive rehabilitation and treatment.

Recommendation 6

The Secretary to the Department of Justice and Regulation or the Director of Public Prosecutions, as the case requires, should retain discretion, independent of the Public Protection Authority, to determine which eligible offenders will be the subject of an application for post-sentence supervision or detention on the basis of the 'unacceptable risk' test.

Legislative options to manage and respond to an escalating risk of serious interpersonal harm

Recommendation 7

The reformed post-sentence detention and supervision scheme should:

- include a clear statutory power for conditions, instructions and directions to be made that are aimed at reducing an offender's risk of committing either violent or sexual offences or both, and
- continue to provide that a core condition of every supervision order be not to commit a 'relevant' sexual offence and provide that a core condition of every supervision order be not to commit a serious violent offence (defined as an indictable offence punishable by a sentence of imprisonment), such that the commission of such an offence whilst an offender is subject to a supervision order will constitute a breach of that order.

Recommendation 8

Staff who are involved in the day-to-day management and supervision of offenders should be provided with training in the conduct of formal threat assessments.

Recommendation 9

The reformed post-sentence detention and supervision scheme should:

- empower the Public Protection Authority to make an emergency direction that an offender be present at a particular place for up to a period of 72 hours for the purpose of a threat assessment
- extend the limit of the holding powers of Victoria Police from 10 hours to 72 hours, and
- provide for an emergency detention order to be made by a court that an offender be detained for up to a period of five days.

Independent and rigorous oversight

The Public Protection Authority

Recommendation 10

A new statutory agency should be created – the Public Protection Authority – to provide independent and rigorous oversight of offenders who present with the greatest likelihood of causing serious interpersonal harm.

Recommendation 11

Oversight by the Public Protection Authority should commence no later than three years before an eligible offender's earliest eligibility date for release while an offender is serving a custodial sentence, with the aim of reducing the risk posed, and such oversight should continue for those offenders who are ultimately made subject to post-sentence orders.

Criteria for inclusion in the Public Protection Authority's cohort of offenders posing the greatest likelihood of serious interpersonal harm

Recommendation 12

Eligible offenders assessed as a moderate to high risk of reoffending under existing clinical assessments applicable to all prisoners categorised as sex offenders and/or serious violent offenders by the Department of Justice and Regulation should be referred to the Public Protection Authority for review.

Recommendation 13

The Public Protection Authority should review all eligible offenders (assessed as moderate to high risk of reoffending) referred to it to determine whether the offenders meet the threshold for inclusion in the cohort of offenders under its purview. In determining whether eligible offenders meet the threshold, the Public Protection Authority should use flexible criteria (in addition to the statutory eligibility criteria) to identify those offenders who present the greatest likelihood of causing serious interpersonal harm, whether sexual or otherwise, and who should be under its purview.

Intervention and Management Plans

Recommendation 14

In determining which eligible offenders should come under its purview in custody, the Public Protection Authority or the relevant Public Protection Panel should have the power to seek such independent assistance as is necessary, and should be resourced accordingly.

Recommendation 15

Offenders who come under the purview of the Public Protection Authority should be subject to an Intervention and Management Plan, which will be overseen by the Authority and developed by the relevant Public Protection Panel/s. The lead agency of the Panel/s should be responsible for coordinating the implementation of the Intervention and Management Plan, whereas the Public Protection Authority should be responsible for the approval and oversight of the Intervention and Management Plan. The Plan should commence while an offender is in prison and continue, with any necessary modifications, in circumstances where an offender is made subject to a post-sentence order.

Powers of the Public Protection Authority

Recommendation 16

The Public Protection Authority should be granted the existing functions and duties of the Adult Parole Board under the *Serious Sex Offenders (Supervision and Detention) Act 2009* (Vic), in addition to new powers to ensure the Intervention and Management Plan is being implemented while an offender is in prison or in the community. The following powers should exist regardless of where an offender is located:

- the ability to approve or reject a plan (including approval of any amendments sought)
- the ability to provide informal feedback regarding a plan (carries no legislative weight)
- the ability, to be conferred by legislation, to issue guidance to a lead agency and/or any agency with a role under the plan, and
- the ability, to be conferred by legislation, to issue directions to any agency with a role under the plan which is failing, without reasonable excuse, to put into effect the matters recommended by the Public Protection Authority.

Recommendation 17

There should be no changes to the duties and/or powers of the Department of Justice and Regulation, as provided by relevant legislation, in relation to offenders who are in prison. However, a failure to comply with a direction issued by the Public Protection Authority should have distinct consequences, which depend upon where an offender is located:

- If the offender is in prison and the Department of Justice and Regulation, as the lead agency, is unable to comply with a direction of the Public Protection Authority, the Authority should be required to report this to the Minister for Corrections.
- If the offender is in the community and an agency on the Public Protection Panel/s is unable to comply with a direction of the Public Protection Authority, the agency must within a specified time report to the court that made the order.

Streamlining and simplifying conditions and breach proceedings

Recommendation 18

Discretionary conditions attached to supervision orders, as well as instructions and directions, should wherever possible and in accordance with the established case law be streamlined and simplified.

Recommendation 19

The Public Protection Authority should be granted the powers that are currently vested in the Adult Parole Board to respond to alleged breaches of a supervision order.

Recommendation 20

In the majority of cases, charges in respect of less serious breaches of a supervision order should be filed and prosecuted in the Magistrates' Court by Victoria Police. The Secretary to the Department of Justice and Regulation should also retain a power to initiate and prosecute breach proceedings in the Magistrates' Court. However, guidelines should be developed with input from relevant stakeholders, such as the Director of Public Prosecutions, as to the considerations which should be taken into account when this discretion is exercised to ensure that the prosecutorial discretion is exercised consistently across all agencies.

Recommendation 21

Charges in respect of serious breaches of a supervision order should be initiated by Victoria Police and prosecuted in the County Court or Supreme Court by the Director of Public Prosecutions. To facilitate this, there should be legislative amendment to the *Criminal Procedure Act 2009* (Vic) to:

- remove the requirement for a committal proceeding in such instances, and
- allow related summary offences to be uplifted to the County or Supreme Court to be dealt with summarily in conjunction with a breach of supervision order charge.

Recommendation 22

The Director of Public Prosecutions and Victoria Police should be appropriately resourced to undertake these duties.

Responsive inter-agency service delivery and case management

Assessment and treatment

Recommendation 23

Sex offenders in prison should be provided with offence-specific clinical assessment and treatment early in their sentence in contrast to the existing process of delivering interventions in the last 30 months (two and a half years) before an offender's earliest eligibility date.

Recommendation 24

The service delivery framework for offenders who have committed both violent and sexual offences should be reviewed to ensure that this cohort, having multiple needs, receive the benefit of front-end assessment and earlier, targeted interventions, than is currently the case.

Recommendation 25

The Public Protection Authority should be responsible, and adequately resourced, for the provision of guidance on risk assessment and its application to risk management in a fiscally responsible manner.

Recommendation 26

The delivery of treatment should be reviewed by the Department of Justice and Regulation to ensure that offence-specific interventions target only sex offenders or violent offenders whose risk of reoffending is assessed as moderate or above.

Coordinated inter-agency service delivery and intensive case management

Recommendation 27

Public Protection Panel/s should be established with legislative obligations to coordinate service delivery and share information under Intervention and Management Plans for offenders who pose the greatest likelihood of causing serious interpersonal harm. The composition, functions and governance model of the Public Protection Panel/s should be determined by the Public Protection Authority, to which the Panel/s should be accountable. Each agency should be appropriately resourced to undertake its expanded functions on the Public Protection Panel/s.

Recommendation 28

The Department of Justice and Regulation should ensure that staff members working with sex offenders and serious violent offenders receive appropriate and timely training.

Recommendation 29

The Good Lives Model and its application by Department of Justice and Regulation staff in Victoria should be evaluated.

Accommodation options for offenders on post-sentence orders

Recommendation 30

Flexible community accommodation options should be developed as a priority to cater to the complex needs of offenders on post-sentence orders. Placement options should continue to be predicated on the scheme being a civil one focused on community protection rather than punishment, pass the 'minimum interference test' set out in the *Serious Sex Offenders (Supervision and Detention) Act 2009* (Vic), and be compatible with the *Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic).

Recommendation 31

A step-up/step-down approach should be applied to facilitate the delivery of tailored and targeted interventions within existing and proposed residential facilities. The approach should be responsive to an offender's progress on the order, or lack thereof, by providing for a greater or lesser range of restrictive environmental controls, with interventions increased or reduced according to risk, needs and responsivity principles, and with treatment and reintegration being supported by coordinated inter-agency service delivery .

Recommendation 32

A new forensic residential disability service should be established to cater to offenders subject to the reformed post-sentence detention and supervision order scheme. While this residential service should operate under the *Disability Act 2006* (Vic), it must be appointed a residential facility for the purposes of any legislation giving effect to the reformed post-sentence detention and supervision order scheme, so that courts have more options when making residence conditions. The facility, and any interim arrangements until the facility is operational, should have the capacity to respond to the significant proportion of offenders with an intellectual disability or cognitive impairment, being more than a third of those subject to post-sentence orders.

Recommendation 33

Forensic mental health residential accommodation options must be increased to cater to offenders subject to the reformed post-sentence detention and supervision order scheme. Such accommodation options must:

- have a therapeutic focus to support offenders whose mental health issues make Corella Place and unsupported community residential options inappropriate for their needs
- provide treatment on a voluntary basis, unless the criteria for compulsory treatment under the *Mental Health Act 2014* (Vic) are applicable and satisfied, and
- include options that provide for short term or medium term placements.

While any such accommodation option should operate as a designated mental health service under the *Mental Health Act 2014* (Vic), it must be appointed a residential facility for the purposes of any legislation giving effect to the reformed post-sentence detention and supervision order scheme, so that courts have more options when making residence conditions. These accommodation options, and any interim arrangements until operationalised, should have the capacity to respond to the prevalence of mental health issues amongst offenders subject to post-sentence supervision orders.

Recommendation 34

Any of the current or proposed accommodation options available under the reformed post-sentence detention and supervision order scheme should recognise the complexity of the cohort of offenders, such that irrespective of where an offender is residing, a multiple and complex needs approach should be applied to address co-occurring mental health and disability needs, substance use issues and problem behaviour. This approach should be reflected in the Intervention and Management Plan developed by the lead agency on the Public Protection Panel/s to deliver coordinated services and information sharing.

The Panel's recommendations in practice

Review of legislation in response to this review

Recommendation 35

Any legislation introduced in response to this review should include a provision that requires the Minister for Corrections to conduct a review of the legislation after five years of its operation.

1. Introduction and context for the review

Introduction

1.1 Masa Vukotic was 17 years of age when, on 17 March 2015, she was murdered by Sean Price. The tragedy of her death was given added poignancy by her youth and by the randomness and viciousness of the attack upon her. The public distress which the case aroused was increased by the fact that the man by whom she was murdered had not only been granted bail but was also subject to a supervision order which, on 4 May 2012, had been imposed upon him by the County Court of Victoria pursuant to the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) ('SSODSA').[1] Two days after the murder of Ms Vukotic, Price committed the further offences of rape, robbery and attempted theft.[2] He then turned himself in to the Community Correctional Services officer (his Principal Practitioner) who was responsible for his supervision under the order. It is a tribute to the strength of the rapport between offender and Principal Practitioner, and the professionalism of the latter, that the two waited together after Price handed himself in until the police arrived to effect the arrest.

1.2 Following these events, the Minister for Corrections, the Hon. Wade Noonan MP, initiated a review of the management of a cohort of offenders who are described in the terms of reference as 'complex adult victim sex offenders' and who are subject to the SSODSA. It is relevant to record here that Price was the first and only offender to have committed a murder while under such supervision.

Terms of reference for the review

1.3 On 1 June 2015, a panel consisting of the Honourable David Harper AM, Professor Paul Mullen and Professor Bernadette McSherry commenced a review at the request of the Minister for Corrections, the Hon. Wade Noonan MP. The Minister requested the Panel:

> To conduct an independent review of the [Department of Justice and Regulation] internal review of the management of Sean Price and the Chief Psychiatrist's review of the clinical assessments of, and mental health service system responses to, Sean Price.
>
> To provide advice on how the SSODSA could be improved or another post sentence legislative framework be created to strengthen the protection of the community from complex adult victim sex offenders and improve the management of complex adult victim sex offenders.

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[1] Although Price's status as being both on bail and subject to a supervision order was an important aspect of the media's reports of the crime, no balanced account of the offending could justify such an approach. Price had been granted police bail on 2 October 2014 and on 20 November 2014, his bail was continued and a curfew condition was removed by the Magistrates' Court. Both the bail decisions and the decision to place Price under a supervision order were, given the circumstances at the time and the provisions of the current legislation, justified. Neither amounted to a failure in the justice system. This report discusses the current legislative and governance frameworks under which Price was managed under the *Serious Sex Offenders (Detention and Supervision) Act 2009*, as well as the management of other complex adult victim sex offenders under the Act.

[2] Price pleaded guilty to the offences of murder, rape, robbery and attempted theft on 27 August 2015 in the Supreme Court of Victoria. At the time of writing, the matter has been adjourned to 14 December 2015 for a sentence hearing.

> To provide advice on governance models for improved decision making and case management between the criminal justice and mental health service systems in relation to complex adult victim sex offenders.

1.4 The results of the Panel's consideration of the issues raised by the first term of reference are included in the first of the Panel's two reports. This, the second of the two, addresses the second and third terms of reference, each of which directs attention to the management of the complex adult victim sex offender cohort who are, or might qualify to be, the subject of a detention or supervision order under the SSODSA.[3]

1.5 The extent to which either of the reports is published is a matter for the government. For what it is worth, the Panel takes the view that in the interests of open government, publication should be the default position. At the same time, the Panel accepts that because the first report contains information (such as information about an individual's health) to be protected by considerations of privacy, that report should not be published. For the same or like reasons the government might decide to redact portions of the second report.

The focus of the review – complex adult victim sex offenders

1.6 The Panel's terms of reference require it to give particular attention to complex sex offenders who offend against adult victims.[4] These offenders are considered to be 'complex' because they:

- have a complex offending profile by presenting a risk of violent offending (in addition to a risk of sexual offending), and/or
- are by reason of their issues and needs (including one or more of mental health issues, personality traits/behavioural issues, cognitive impairment and substance misuse) difficult to treat and manage.

1.7 The Panel considered the cases of the 46 men who had committed sexual offences against adult victims and were, as at 14 August 2015, subject to orders under the SSODSA. They are of particular interest to this review, as they fall within the Panel's terms of reference.

1.8 The terms of reference include a request by the Minister to 'consider the current management of similar [to Sean Price] supervision order adult victim sex offenders and provide advice on any further action to be taken to mitigate their risk of further violent or sexual reoffending and to improve their treatment and rehabilitation.' The Panel focused in particular on eleven offenders who had been identified by the Department of Justice and Regulation as presenting with issues of possible immediate concern. During the course of the review it provided advice about these offenders to the Secretary to the Department of Justice and Regulation. In giving such advice, the Panel did not identify any further action that was required regarding the management of these offenders.

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[3] Both reports were provided to the Minister for Corrections, Hon. Wade Noonan MP on 27 November 2015.

[4] 'Adult' in this context includes any person aged 16 years or more.

1.9 The report makes recommendations about the treatment and management of complex adult victim sex offenders; but they will necessarily apply to all offenders who are subject to the SSODSA or the legislation which takes its place. Since the scheme expanded in 2008 to include the commission of offences against adult victims, the profile of offenders on post-sentence orders has changed, particularly with regard to a risk of further violent offending, in addition to any sexual reoffence risk. This increases the challenges of managing their behaviour.

1.10 Legislation such as the SSODSA is predicated on the assumption that sex offenders are most likely to reoffend by committing further sexual offences. By extension, the assumption may be made that sex offenders who offend against adults will be most likely to offend further with a sexual offence against an adult, and that sex offenders who offend against children will be most likely to offend with a further sexual offence against a child. However, 'sex offenders should not be considered as a homogenous, specialist group, but instead a group similar to other general criminal offenders'.[5] This is supported by research indicating that child sex offenders are not 'specialist offenders' but can display versatility in their criminal offending history.[6]

'Four pillars' underpinning the panel's advice

1.11 There are, necessarily, links between the Panel's two reports. The Panel's findings in the first report are particularly concerned with reviews of the treatment and management of Sean Price. These findings have informed the reasoning behind the recommendations made in this (the second) report, which relates more broadly to the operation of the SSODSA with respect to the cohort of complex adult victim sex offenders - of which Price was one. The Panel's findings are framed around four pillars:

> *1. Early intervention and continuity of care to reduce the risk of serious interpersonal harm*: The changes recommended by the Panel aim to ensure the careful identification of the most serious of those offenders to whom the attention of the Panel is, having regard to its terms of reference, directed. They are offenders who pose the greatest likelihood of causing serious interpersonal harm. In the Panel's opinion, they must while in prison be provided with incentives and opportunities to engage with treatment and management carefully tailored to their individual circumstances. The Panel has sought to achieve this by recommending the delivery to these offenders, for a selected period during their incarceration (and if necessary beyond), of individually tailored treatment and management interventions. If continuity of care is provided thereafter as envisaged by the Panel, the offender will be released without supervision or detention at the end of the sentence. The offender's incentive to engage with the proposed interventions will therefore be strong. If, however, that engagement is not sufficient, or does not result in the necessary reduction of risk, then the offender may be made subject to post-sentence supervision or detention.

[5] Sentencing Advisory Council, *High-Risk Offenders: Post-Sentence Supervision and Detention: Final Report* (May 2007) [2.2.23].

[6] Stephen Smallbone and Richard Wortley, *Child Sexual Abuse in Queensland: Offender Characteristics and Modus Operandi* (2000) 20.

In that event, the secondary objective will be pursued. That objective is to provide for the seamless and continuous delivery of treatment and management into the post-sentence regime of detention or supervision. The changes recommended by the Panel therefore aim to create a system that, as far as possible, reduces the likelihood that members of the cohort will, on completing their sentence, present such an unacceptable risk to the community that they should be placed under post-sentence constraints, whether under the SSODSA or other relevant legislation. If offenders do continue to pose such a risk, their post-sentence management will proceed without any disruption to programs which are designed to reduce this likelihood to the point at which neither detention nor supervision is required.

2. Reforming the scheme to target the greatest likelihood of serious interpersonal harm: A key gap in the operation of the SSODSA is that it is limited to protecting the community against a risk of further sexual offending; its protection does not, therefore, extend to protection against a risk of violent offending. The Panel's view is that the legislation should be extended to encompass not only the risk of sexual reoffending, but more generally the risk of reoffending which causes serious interpersonal harm whether from sexual or violent crime. Accordingly, the reforms which the Panel has in mind should, if given effect, increase the community's protection against acts which cause serious interpersonal harm, regardless of the characterisation of the offending as sexual or violent or both.

3. Independent and rigorous oversight: A key area of improvement in the management of offenders under the SSODSA is to address areas of fragmentation while continuing to promote rigour in decision making, increasing accountability and introducing – for the small cohort of offenders the subject of this report – the most effective and fiscally restrained system of treatment and management. The Panel's view is that this would be best achieved by creating a new independent authority, the Public Protection Authority, dedicated to this role. It would be responsible for the in-prison oversight of the program of interventions and management designed for each member of the cohort, and the seamless transition into post-sentence detention or supervision of those offenders who have not sufficiently reduced their risk of causing serious interpersonal harm.

4. Responsive inter-agency service delivery and intensive case management: A key area for improvement in the model for case management of offenders under the SSODSA is to strengthen the inter-agency delivery of services, across a range of government and non-government agencies, directed towards minimising their risk. To this end, multi-disciplinary Public Protection Panel/s should be established under the Public Protection Authority. They will be responsible for the coordination of responsive service delivery and effective case management. An essential element of this pillar is the need for more tailored accommodation options to respond to an offender's complex needs and any changes in the level of risk while under supervision.

1.12 The overarching aim of the recommendations upon which each of these pillars of reform is based is to achieve a legislative and governance framework for in-prison interventions and (where necessary) post-sentence detention or supervision that reduces the number of victims of serious interpersonal harm.

The Panel's approach

1.13 This review is concerned with serious offenders who present with complex problems that are difficult to address and risks that are difficult to manage. It is in this context that the Panel thought it appropriate to commence this report by outlining the general considerations which underpin its approach and its conclusions under the four pillars of reform.

1.14 Criminal conduct attracts punishment. It is proper that it does. Such punishment frequently includes detention or supervision. The employment of either for purposes of prevention rather than punishment is nevertheless a significant departure from the principles generally held to be important in a democratic society. It can therefore only be justified under carefully limited circumstances. In particular, the distinction between punishment and prevention must be retained in practice as well as in theory. The rule of law is flouted whenever individuals are punished for crimes which they have not committed but which, according to their prosecutors, they might commit.

1.15 While the principle remains of central importance, the case for a strictly limited regime of preventive detention or supervision is now accepted as a necessary element in the protective armoury which democratic constituents demand from their lawmakers. Individuals with severe mental health problems may be subject to compulsory detention and treatment in order to prevent serious harm to others as well as themselves. Those with infectious diseases may be detained on public health grounds to prevent the spread of disease. Similarly, some offenders would, if allowed unsupervised entry into the community after release, pose an unacceptable risk of reoffending. Their continued post-sentence detention or supervision may be justified on that basis.

1.16 There must, however, be limitations on the use of preventive detention and post-sentence supervision. Unless this use is strictly confined, the detention or supervision of offenders not for what they have done, but for who they are or for what they might do, becomes an instrument of oppression. The power of the state compulsorily to detain or supervise not for punishment but for the protection of the community must therefore be permitted only after judicial intervention, the observance of due process, and upon sufficiently cogent evidence. The rule of law does not allow any room for arbitrariness in the exercise of power by the state.

1.17 There are good reasons for placing strict boundaries around a regime designed to protect the community against offenders who are thought to pose a risk. First, any offender's risk of reoffending cannot be accurately predicted. At best, offenders can with reasonable confidence be placed among categories of risk. The certainty is that many, even in the highest category, and no matter how impervious to reform they might appear to be, will never reoffend, at least not by committing an offence of serious interpersonal violence (sexual or otherwise). The equally valid truth is that some in the lowest category of risk will, despite giving every indication to the contrary, reoffend by acts of serious criminality. Risk cannot be eliminated. Mistakes in the classification of offenders who pose (or might pose) a risk, are inevitable. Some who would never reoffend will be detained or supervised unnecessarily. The considerable resultant cost will have been entirely wasted, and the liberties of those affected will have been uselessly and severely compromised. Others who, if placed in detention or under supervision, would have been prevented from reoffending, will exploit their freedom by committing acts of serious criminality.

1.18 There is no escape from the consequences of schemes for preventive detention and supervision. The harm they inevitably cause is, on a reasonable view of their overall effect, outweighed by the protection, and the community reassurance, which are their advantages. But no fair evaluation of those advantages can avoid an evaluation of their human and financial cost.

1.19 The mistakes in classification, when they inevitably come, must not be hidden from public scrutiny. Any failures in the system, as well as any carelessness in those who operate it, should be exposed. Equally, while there are blameworthy mistakes, there are also mistakes to which no blame can properly attach. The two must not be confused.

1.20 It is often convenient to apportion blame in hindsight. The Panel notes that in the field of crime and punishment, certain sections of the media are especially susceptible to this. However, it would not only be wrong, but it could be very harmful to an individual, or to an entity, or to the community, to place blame in hindsight upon undeserving decision makers. The landscape in which Corrections Victoria now operates, and which forms the background for this report, attracts a great deal of commentary by the media. The importance and complexity of the issues surrounding crime and punishment, however, go well beyond the media's capacity to entertain. These issues demand considered and balanced responses, not those inspired by anxiety and fear. Neither emotion forms a basis from which wise decisions are made. Nor is good policy assisted when risks are magnified beyond their true significance, or simple solutions espoused as being capable of solving complex problems. Yet the magnification of risk and the espousal of simple solutions is a feature of much media coverage. The appropriate response, one which carefully balances the evidence, is not easy.

1.21 Concern has been expressed by those working with post-sentence detention and supervision schemes in other states that the media has 'a negative influence on the development of effective policies' in relation to sex offenders.[7] Media reports of a single high-profile case appear to have hastened the introduction in Victoria of the *Serious Sex Offenders Monitoring Act 2005* (Vic), the predecessor to the SSODSA. However, Ducat and colleagues found that after the *Serious Sex Offenders Monitoring Act* came into operation, there was, ironically, a doubling of newspaper reports about child sex offenders. Here again is an example of the harm the media sometimes causes.[8] Ducat and colleagues point out that:

> [T]here are real consequences for offenders who feel displaced and alienated from society by the media scrutiny … Studies have reported that subjective distress is a significant predictor of deviant sexual fantasies, potentially increasing the risk of recidivism and limiting involvement in treatment. This would undeniably achieve the exact opposite to the stated aims of the legislation to protect the community.[9]

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7 Patrick Keyzer and Bernadette McSherry, 'The Preventive Detention of "Dangerous" Sex Offenders in Australia: Perspectives at the Coalface"'(2013) 2 *International Journal of Criminology and Sociology* 296–305, 302.

8 Lauren Ducat et al., 'Sensationalising Sex Offenders and Sexual Recidivism: Impact of the Serious Sex Offender Monitoring Act 2005 on Media Reportage' (2009) 44(3) *Australian Psychologist* 156–165.

9 Ibid 164.

1.22 There is an obvious need to avoid the vigilantism that occurred in England in 2000 as a result of the publication by the News of the World, a Sunday tabloid, of the whereabouts of convicted sex offenders.[10] One way to avoid this is to emphasise education based on research, such that 'evidence from empirical studies must be shared in more open ways within the public sphere'.[11] One study has suggested that providing factual, less sensationalised, reports may go some way towards changing attitudes.[12]

1.23 Sensationalist media reports can lead to the adoption of ill-informed views about certain offenders – and child sex offenders in particular. Further, post-sentence detention and supervision schemes may perpetuate misconceptions about sex offenders being dangerous strangers who repeatedly offend, thereby drawing attention away from individuals who are much more at risk of reoffending. Media reports which refer indiscriminately to 'sex fiends' and 'sex monsters' employ a stereotypical view of sex offenders as 'sexually deviant and sick stranger[s] who cannot help but repeatedly attack the children [they have] sought out'. The reality, of course, is far more complex.[13] The task of criminologists and governments, ideally with the assistance of the media, is to ensure that justifiable community concern is recognised and reflected in measures which sensibly address it.

1.24 This report is concerned with offenders who have committed either serious sexual offences or other acts of serious interpersonal violence, or both, against adults. Some of these offenders are, and will – if allowed without supervision into the community – continue to be an unacceptable risk of similar reoffending. The fact remains that, contrary to popular opinion, sexual recidivism (or reoffending) is not a common characteristic of sex offenders. Indeed, as is discussed in Chapter 2, sexual recidivism research consistently indicates that most sex offenders do not sexually reoffend. Thus, a meta-analysis of sexual recidivism including 30,000 sex offenders found an average recidivism rate of 13.7 per cent over 5–7 years.[14] As Doyle and colleagues report:

> Given this relatively low base rate of sexual recidivism and the practical difficulties in predicting a low base rate event, attempting to predict who will commit further serious sexual offending will inevitably be accompanied by false accusations.[15]

1.25 Attempts to predict recidivism among violent offenders are somewhat less problematic for what might be termed lesser forms of violence. Similar difficulties remain, however, when predicting the probabilities of seriously injurious offending. The consequence is that there will be 'false positives', whereby offenders who will not reoffend are erroneously included in the cohort of those considered at high risk of

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[10] Malcolm Dean, 'Tabloid Campaign Forces UK to Reconsider Sex-Offence Laws' (2000) 356 (26 Aug) *The Lancet* 745; Henrik Örnebring, 'The Maiden Tribute and the Naming of Monsters' (2006) 7(6) *Journalism Studies* 851–868.

[11] Craig A Harper and Todd E Hogue, 'The Emotional Representation of Sexual Crime in the National British Press'"(2015) 34(1) *Journal of Language and Social Psychology* 3–24, 18.

[12] Sanna Malinen et al., 'Might Informative Media Reporting of Sexual Offending Influence Community Members' Attitudes Towards Sex Offenders?' (2014) 20(6) *Psychology, Crime and Law* 533–552.

[13] Sentencing Advisory Council, *Recidivism of Sex Offenders: Research Paper* (January 2007) 1.

[14] Karl Hanson and Monique Bussiere, 'Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies' (1998) 66 *Journal of Consulting and Clinical Psychology* 348–362; R Karl Hanson and Kelly Morton-Bourgon, *Predictors of Sexual Recidivism: An Updated Meta-Analysis: User Report 2004-02* (2004).

[15] Dominic Doyle et al., 'An Analysis of Dangerous Sexual Offender Assessment Reports: Recommendations for Best Practice' (2012) 18(4) *Psychiatry, Psychology and Law*, University of Melbourne 537–556, 540.

reoffending. There will also be 'false negatives', whereby offenders who will reoffend are erroneously excluded from the cohort of those considered at risk of reoffending. In each case, the result is to be avoided. It is the task of this review to ensure so far as may be, that the number of mistakes is limited.

1.26 The implications of the research into sexual assaults on adults and child victims are clear. Only a small proportion of those committing even the most serious offences, involving the rape of an adult or child, ever come before the courts. Public policy aimed at reducing the number of victims of serious sexual assaults must look beyond the solutions found in the criminal justice and civil justice systems. It is only through social and educational intervention that the terrible toll of sexual assault and abuse can be reduced.

1.27 The intense media focus and public policy concentration has been on those convicted of sexual offences. Consideration of the social and cultural roots of such offending has been almost entirely absent. As a consequence, sustained and coordinated attempts to significantly reduce the number of sexual assaults are lacking. A strategy to reduce the number of these victims must involve social and educational initiatives alongside criminal justice responses. At least as much consideration, together with the necessary resources, should be devoted to programs to prevent, or at least reduce, sexual assault, as are currently being directed towards criminal justice approaches. The criminal justice system, while important, can at best only make a small contribution to reducing the number of victims. It must not be allowed to totally dominate public policy.

Scope and methodology for the review

1.28 The Panel's review has focused on the legislative framework under the SSODSA and the governance arrangements for decision making and case management associated with it. The limitations of the SSODSA have, however, required the Panel to examine a somewhat broader landscape than that envisaged by the terms of reference.

1.29 The Panel has given particular consideration to the operation of the SSODSA as it affects the cohort of offenders, including Sean Price, who are 'complex adult victim sex offenders'. The Panel has also given general consideration to relevant issues concerning those who have offended against children under the age of 16 years and who present at a very high risk of committing an offence of serious interpersonal violence. Accordingly, while the Panel's recommendations primarily focus upon the identification and analysis of issues of relevance to the complex adult victim sex offender cohort, those recommendations, if implemented will also necessarily apply to all offenders who are or may become subject to post-sentence supervision or detention.

Meetings, observations and visits

1.30 In the course of the review, the Panel consulted confidentially with a wide range of individuals and members of organisations who work within and have expertise under the SSODSA legislation, or have had personal experience of the operation of the SSODSA.

1.31 The Panel conducted 48 consultation meetings with organisations, experts and individuals (set out in **Appendix 1**). This included meetings with the following organisations:

- the Secretaries to the Department of Justice and Regulation, Department of Premier and Cabinet and Department of Health and Human Services
- Judges of the Supreme Court and County Court
- the Detention and Supervision Order Division of the Adult Parole Board
- the Commissioner of Corrections Victoria and Deputy Commissioner, Offender Management
- Central and regional staff involved in the post-sentence scheme, including staff from the Sex Offender Management Branch and Corella Place, Community Correctional Services and other Corrections Victoria head office units
- senior staff in the Department of Justice and Regulation, including Regional and Executive Regional Directors, the Director of Criminal Law Policy, the Director of Justice Health and the Director and staff of the Victims Support Agency
- the Commissioner for Victims of Crime
- the Chief Commissioner of Victoria Police and Victoria Police staff
- the Chief Psychiatrist and other senior staff of the Department of Health and Human Services, including the Director of Mental Health and the Executive Director, Service Design & Operations Division
- legal stakeholders, including the Director of Public Prosecutions, staff of the Office of Public Prosecutions and Victoria Legal Aid
- Victorian Institute of Forensic Mental Health (Forensicare) and area mental health services, and
- the Victorian Association for the Care and Resettlement of Offenders.

1.32 The panel also met with a number of individuals with former experience or current expertise in the SSODSA system, including Professor James Ogloff, Dr Danny Sullivan and retired judge of the County Court His Honour David Jones AM.

1.33 With the assistance of the Victims Support Agency the Panel met with three victims of crime, registered on the Victims Register, who shared their traumatic experiences and the ongoing impact of their victimisation.

1.34 The Panel also invited offenders who were subject to supervision and detention orders to provide input to the review through a questionnaire. The Panel received 35 completed responses to the questionnaire and one letter from these offenders.

1.35 A number of additional meetings were also held with organisations conducting work which overlapped with that of the Panel's, specifically, the Victorian Ombudsman and the Royal Commission into Family Violence Victoria.

1.36 The Panel conducted a number of visits and observations as part of its information gathering about the operation of the SSODSA. This included:

- observation of a meeting of the Detention and Supervision Order Review Board in the Department of Justice and Regulation
- observation of a meeting of the Detention and Supervision Order Division of the Adult Parole Board
- observation of a review hearing of a supervision order in the County Court, and
- two site visits to the Greenhill Detention Unit, Hopkins Correctional Facility and Corella Place, including observation of the monthly reviews of offenders on detention orders and quarterly reviews of offenders on supervision orders.

1.37 The Panel has also been greatly assisted by information provided by, and discussions with, staff from organisations involved in similar supervision and detention schemes in other jurisdictions, being Correctional Services of New South Wales and the Risk Management Authority in Scotland.

Data and material reviewed

1.38 The Panel has given particular consideration to Sean Price and the 11 offenders identified by the Department of Justice and Regulation for review and advice. The Panel has undertaken this task by conducting structured 'desktop' reviews of each of these 11 offenders, as well as the two offenders on detention orders, using extensive material provided by Corrections Victoria.

1.39 The Panel has also examined high level offender profiles of the remaining 33 offenders identified as falling within the complex adult victim offender cohort and has conducted an overview analysis of its key features.

1.40 In addition to the information about offenders who are currently subject to the SSODSA, the Sex Offender Management Branch provided the Panel with data on broader aspects of the SSODSA's operation, including throughput of offenders eligible for the scheme by way of consideration for an application for a supervision or detention order and information on the costs of different aspects of the scheme. The Panel has also been greatly assisted by the provision of data by Corrections Victoria on various aspects of the operational functions carried out by the Sex Offender Management Branch and the Offending Behaviour Programs Branch.

1.41 The Panel requested and received data from the County Court of Victoria and the Sentencing Advisory Council on sentencing for charges of breaches of orders under the SSDOSA and the legislation it succeeded, and data on reoffending rates of offenders convicted of sexual offences. The Panel has also been assisted by the Office of Correctional Services Review in providing information on its previous and current review work relevant to various aspects of the operation of the SSODSA.[16] The Panel requested and received de-identified data from the Department of Health and Human Services on previous mental health diagnoses for those subject to the SSODSA.

[16] This recent review work comprises a review of the 'Refresh Program' developed by Corrections Victoria in response to significant changes in the population of residents at Corella Place. Commencing in August 2015 and scheduled to be completed in December 2015, the review focuses on the revised staffing model and initiatives to strengthen organisational culture as part of the Refresh Program (see further Chapter 5).

Overarching principles

1.42 In undertaking this review, the Panel has been guided by the overarching principles which, in its view, ought to be reflected in any civil regime of post-sentence supervision or detention. These are described below. In setting out these principles, the Panel is not suggesting that they are not reflected in the operation of the current scheme; however, the Panel has in this report, made recommendations where it considers that reforms to the current scheme are needed to strengthen these principles.

Doing no harm

1.43 The prevention of harm is the primary and integral principle of the SSODSA.

1.44 The main purpose of the SSODSA is 'to enhance the protection of the community by requiring offenders who have served custodial sentences for certain sexual offences and who present an unacceptable risk of harm to the community to be subject to ongoing detention or supervision'.[17]

1.45 The primary purpose of the conditions of a supervision order imposed by a court is 'to reduce the risk of reoffending by the offender.'[18] The secondary purpose of those conditions is 'to provide for the reasonable concerns of the victim or victims of the offender in relation to their own safety and welfare.'[19]

1.46 A key principle underpinning the Panel's approach is that the scheme should operate to reduce the number of victims of the highest levels of interpersonal harm caused by acts of violence, including sexual violence. Violence can be perpetrated in many ways; through sexual assault, non-sexual physical assault, or intimidation and threats of harm. If a sex offender becomes subject to the SSODSA, that legislation ought to operate to protect his or her potential future victims from acts of violence, sexual or otherwise. The principle of doing no harm, which underpins the SSODSA, should, accordingly, not be limited – as it is at present – to sexual harm.

1.47 It follows that the SSODSA should be amended to encompass offenders who have committed offences involving serious interpersonal harm, whether sexual or not. It is of course true that all sexual offences include an element of violence, much of it serious interpersonal violence. There is no logical reason, however why the protection of the community should be confined to protection against the violence of sex offenders.

1.48 The resources of the community are nevertheless finite. For this reason, the Panel has given thorough consideration to the broadening of the criteria governing possible inclusion in the protection regime which the Panel recommends. It is imperative that the pool of offenders included in the regime be initially, and continually thereafter, confined to those who present the greatest likelihood of serious interpersonal harm. There is an inherent danger, that such a scheme will extend its grasp to an ever larger proportion of offenders. This tendency must not prevail. If it does, the principle that the scheme do no harm will be defeated.

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17 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 1(1).

18 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 15(3).

19 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 15(4).

1.49 Many would conclude that the best way to protect the community is to continue to detain serious offenders even after their sentence has expired. In this sense, community protection is treated as synonymous with containment or 'incapacitation'. However, this presumption is questionable, not only as an issue of common law principle, but also, as is stressed in judgments of the courts, on the basis of utility: given that few will be detained for life, the protection of the community is more likely to be achieved through the treatment of the offender than through years of institutionalisation in prison. For example, in *Director of Public Prosecutions v Moore*,[20] the Victorian Court of Appeal referred to the necessity for 'intensive support' to be provided to the offender 'in the interests of the community',[21] and called for 'concentrated treatment and assistance'[22] for the offender.

1.50 The recent investigation by the Victorian Ombudsman[23] into the rehabilitation and reintegration of offenders, points out that many jurisdictions, including parts of the United States, are now adopting a 'justice reinvestment' approach which refers to 'diverting funds from prisons to initiatives designed to reduce offending'.[24] An emphasis on youth, early intervention programmes and properly resourced treatment programs in prison may ultimately be a better way to increase community safety than by directing so many resources to the post-sentence phase.

1.51 Research conducted on similar schemes in other Australian jurisdictions[25] raises the possibility that there may be unintended consequences of post-sentence supervision or detention, in that it may cause more harm than it prevents. The possibility, raised by this research, that post-sentence detention and supervision may on occasion *cause* rather than *prevent* harm needs to be taken seriously. Accordingly, the Panel has given consideration to this throughout the review. Any scheme designed to provide protection must, of course, cause no avoidable harm, collateral or otherwise, to those affected by it. The Panel is, in this context, conscious of the danger that the process of constant court hearings related to orders and to breaches of them could re-traumatise victims. There is also the possibility that offenders may be more likely to reoffend because of frustration and anger at being notified late of their eligibility for restriction after the completion of their sentence.

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20 *Director of Public Prosecutions v Moore* [2009] VSCA 264.

21 Ibid [30] (Neave and Redlich JJ).

22 Ibid [78] (Lasry AJA).

23 Victorian Ombudsman, *Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria*: *Report* (September 2015).

24 Ibid 3. See also the Senate Legal and Constitutional Affairs References Committee, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (June 2013) 3.

25 Keyzer and McSherry (2013), above n 7; Patrick Keyzer and Bernadette McSherry, 'The Preventive Detention of Sex Offenders: Law and Practice' (2015) 38(2) *UNSW Law Journal* 792–816.

Balancing human rights

1.52 Human rights are considered rights inherent to all human beings, regardless of status. The Victorian Sentencing Advisory Council has previously canvassed the human rights and constitutional issues posed by post-sentence detention and supervision schemes.[26] There has subsequently been a ruling by the majority of the United Nations Human Rights Committee that Queensland and New South Wales' post-sentence detention schemes breach the right to liberty,[27] and Germany's Federal Constitutional Court has taken into account a ruling by the European Court of Human Rights[28] in declaring its post-sentence preventive detention regime breaches the right to liberty.[29] It is therefore of the utmost importance that any post-sentence detention and supervision schemes should be carefully confined to exceptional cases and, as the German Federal Constitutional Court pointed out, must be predicated on a therapeutic regime subject to strict requirements.[30]

1.53 The framework for human rights in Victoria is reflected in the *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('Charter'). It has been in operation for eight years and in September 2015, was reviewed for the second time.[31] It aims to ensure that the laws, policies and services delivered by government have regard to everyone's human rights, freedoms and responsibilities.[32]

1.54 The SSODSA operates within this Victorian human rights framework. When the SSODSA was introduced in 2009, it was accompanied by a statement of compatibility with the Charter. A number of safeguards were identified to 'adequately protect an offender's right to liberty, privacy and freedom of movement and ensure that limitations upon these rights in each case are appropriately limited to what is necessary to achieve the stated purposes.'[33] If a court imposes a supervision order, it must ensure that its conditions (other than the core conditions), 'constitute the minimum interference with the offender's liberty, privacy or freedom of movement that is necessary in the circumstances to ensure the purposes of the conditions.'[34] Offenders subject to detention orders must be treated in a way that is appropriate to their status as an unconvicted prisoner, subject to any reasonable restrictions.[35]

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26 Sentencing Advisory Council (May 2007), above n 5, 37–46.

27 *Re Fardon v Australia* [2010] Human Rights Committee, Communication No. 1629/2007, UN Doc. CCPR/C/98/D/1629/2007 (12 April 2010); Re Tillman v Australia [2010] Human Rights Committee, Communication No. 1635/2007, UN Doc. CCPR/C/98/D/1635/2007 (12 April 2010). See B McSherry, Managing Fear, The Law and Ethics of Preventive Detention and Risk Assessment (New York: Routledge 2014) 180–182 and references therein.

28 *Haidn v Germany* [2011] ECHR 39.

29 *BVerfG* (2011) 2 BvR 2365/09 of 4.5.2011; *BVerfG* (2011) 2 BvR 2846/09 of 8.6.2011. For a discussion of preventive detention laws and the international human rights framework, see Bernadette McSherry, *Managing Fear: The Law and Ethics of Preventive Detention and Risk Assessment* 171–204.

30 Bernadette McSherry, *Managing Fear: The Law and Ethics of Preventive Detention and Risk Assessment* (2014), 184.

31 Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006* (2015).

32 Ibid 3.

33 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic), Statement of compatibility (Mr Cameron, Minister for Corrections) 4028.

34 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 15(6)(a).

35 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 115 (1).

1.55 The rights of victims are also reflected in Victorian law. The Victorian Law Reform Commission is currently reviewing what the role of victims should be before, during and after the trial process.[36] It has released an information paper on victims' rights and human rights.[37]

1.56 The victims interviewed during the course of the Panel's review were as concerned about the infringement of victims' rights by the criminality of which they were the victim as they were about their rights following the offence. This was a concern echoed in the Panel's discussions with the Commissioner for Victims of Crime. Although not articulated in precise terms, it is possible to provide a fair description of the rights of which they believe they have, by the crime to which they were subjected, been deprived. They are the right to life; the right to the respect owed to all as individuals; and the right to pursue unhindered by unwelcome and intrusive memories those interests in which they find satisfaction.

1.57 It is impossible to ignore the force of the argument. It is that the victims' rights have been the subject of grievous infringement by the offender. Meanwhile, the offender has been released, albeit under supervision and has been provided with accommodation and support services; all of which may have been justified, and in accordance with law. The victims nevertheless, and understandably, often conclude that the balance is too much in favour of the rights of offenders and too little in favour of themselves as the victims of serious criminality. The Panel understands and respects this position, and has taken it into account in approaching its task.

1.58 Providing a balance between the rights of victims and offenders will always be a difficult exercise. The Panel is of the opinion that the importance of the duty to rehabilitate offenders may be viewed as central to justifying breaching a person's liberty after a sentence has been served. Mere containment offends not only against human rights, but also against well-established legal principles such as the principles of proportionality and finality in sentencing, the principle that governments should punish criminal conduct, not criminal types, and the principle against double punishment.[38]

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[36] Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process: Information Paper 4, Victims' Rights and Human Rights: the International and Domestic Landscape* (2015).

[37] Ibid 1–2.

[38] See Bernadette McSherry, 'Indefinite and Preventive Detention Legislation: From Caution to an Open Door' (2005) 29(2) *Criminal Law Journal* 94–110.

The value and limitations of risk assessment

1.59 The decision by a court to make a supervision order or detention order is based on its assessment of an offender's risk. The threshold test for risk under the SSODSA is 'unacceptable risk'.

1.60 The court may only make a supervision order if it is satisfied that the offender 'poses an unacceptable risk of committing a relevant offence if a supervision order is not made and the offender is in the community'.[39] Before a court makes a detention order, the court must first be satisfied that there is an 'unacceptable risk of [the offender] committing a relevant offence if a detention order or a supervision order is not made and the offender is in the community'.[40] The court must then be satisfied that 'the risk of the offender committing a relevant offence would be unacceptable unless a detention order were made.'[41]

1.61 Risk assessments are predictions of probability. In this area they apply to large groups sharing certain characteristics but not to individuals with their individual characteristics.[42] Risk assessments by professionals of various types and qualifications currently play a major part in determining what if any programs and rehabilitation prisoners receive to reduce reoffending. Risk assessments also contribute to the decision by a court concerning whether or not offenders are subjected to post-sentence restrictions. The facade of science and objectivity provided by lengthy reports and multiple test results may provide comfort to decision makers. It, however provides little of substance with regard to predicting the risk of the particular individual standing before them.[43] What risk assessments, properly conducted, can add is information, not about what the likely reoffence scenario may be, but on what may reduce that offender's level of risk, whatever that risk may be. The greatest contribution of the best risk assessment procedures is therefore to direct the best approaches to risk management.

1.62 Any post-sentence regime must recognise these are the limitations of risk assessment – that the risk posed by any individual offender cannot be predicted with certainty, or anything approximating certainty.

1.63 For the purposes of the unacceptable risk test used under the SSODSA, the assessment of risk must take into account each of its two aspects:

- the likelihood of some reoffending, and
- the seriousness of that offence if the risk of reoffending is realised.

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39 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 9(1).

40 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 35(1).

41 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 36(1).

42 Terence W Campbell, 'Sexual Predator Evaluations and Phrenology: Considering Issues of Evidentiary Reliability' (2000) 18(1) *Behavioral Sciences and the Law* 111–130; Terence W Campbell, 'Sex Offenders and Actuarial Risk Assessments: Ethical Considerations' (2003) 21(3) *Behavioral Sciences and the Law* 269–279.

43 David Cooke and Christine Michie, 'Limitations of Diagnostic Precision and Predictive Utility in the Individual Case: A Challenge for Forensic Practice' (2010) 34(4) *Law and Human Behavior* 259–274.

1.64 In establishing unacceptable risk, formal risk assessments by experts inevitably play an important role. Given their inherent weaknesses, however, they should not become the final arbiter. Rather, they should form but part of the evidence which needs to be weighed by a court in the decision making process.

1.65 Assessment should support independent decision making about risk. Those with the direct management of offenders have the opportunity to observe behaviours which indicate variance in risk potential. They should receive appropriate training to assist them in the accurate observance and honest, ethical and accurate reporting of relevant behavioural changes. There should be channels that allow for information about risk to be efficiently and accurately provided to those whose responsibility it is to manage and make decisions about risk.

Effective and responsible decision making in the management of offenders

1.66 The SSODSA confers responsibility on a number of different organisations and individuals for decision making in relation to bringing applications for orders, imposing orders and conditions, oversight and administration of orders, monitoring and managing risk, compliance with orders, and case management of offenders under orders.

1.67 As far as possible, governance arrangements to support decision making and case management and the legal processes underpinning the SSODSA should be unified and integrated to avoid fragmentation.

1.68 Where possible, the application for a supervision order should be made to a judge with experience in this jurisdiction and who, if the application is granted, will be likely to preside over further hearings in which the particular offender is involved. If further applications involving that offender come before that judge, he or she should (consistently with the duty to ensure that the parties have the opportunity to address points by which, otherwise, they might be taken by surprise) draw upon his or her knowledge of the circumstances of the offender.

1.69 The court has the responsibility of deciding whether or not to grant an application for an order. If a supervision order is made, the court also has the responsibility to set the conditions by which the broad parameters of the supervision will be governed. These should not seek to cover every possible contingency; and the court's involvement must not transmute into an attempt at micro-management.

1.70 Those responsible for decisions about risk and offender management should have sufficient powers, resources, experience and information to manage the risk posed by the offender to the community and, when the risk is escalating, to intervene before further harm is caused to either victims or offenders.

1.71 Post-sentence supervision and management should include arrangements for the detection of escalating risk and a mechanism for appropriate management intervention, such as an emergency detention order which can be obtained as quickly as is necessary to obviate the risk.

1.72 The appropriate management of offenders subject to the SSODSA is dependent upon the beneficial involvement of several agencies. However, only Corrections Victoria, in the Department of Justice and Regulation, carries the main legal responsibility under the SSDOSA to engage with the offender under the conditions of an order. In many cases, however, the cooperative assistance of other agencies will be vital.

1.73 The necessary cooperation will not be achieved unless relevant information is appropriately shared. Acceptance of shared responsibility is the first step. The sharing of information is a secondary matter, which should flow from the first. Each relevant agency must ensure that it is aware of the particular needs of each other relevant agency for information held by the first agency and without which the responsibilities of the other agency for treatment and management cannot be discharged as they should be. As far as is consistent with ethics and good practice, that information should be shared.

1.74 Resource considerations are also part of responsible decision making. The legal processes for applications for, reviews of, and breaches of orders are expensive and labour intensive. If the intervals between them are inappropriately short, the new material available to the court may be of too little value to justify the expense and inconvenience. In such circumstances, no-one will benefit. Significant expenses are, under the current residential options, also incurred in the management of many people on supervision orders. While our recommendations for change will have cost implications, they have been made with the aim of reducing the overall costs of the scheme in the long term.

Rehabilitation, intervention and service delivery

1.75 The secondary purpose of the SSODSA is to facilitate the treatment and rehabilitation of offenders[44] who have served custodial sentences for certain sexual offences and who present an unacceptable risk of harm to the community.

1.76 Changes to the sentencing and parole landscape in Victoria have changed the way the criminal justice system responds to criminal behaviour and has had a flow on effect on the operation of the post-sentence supervision and detention scheme under the SSODSA. The intervention and supports that are provided to prisoners when in custody and under transition into the community on parole are an integral part of the system alongside which the SSODSA operates.

1.77 It should never be forgotten that the function of parole is to ease the transition of offenders from prison into the community, and to do so in ways which are conducive to their pursuing effective and offence-free lives. Parole has never operated as some kind of reward. It was and is a strategy to avoid the often very deleterious consequences of unsupported release and putting in place supports to manage the high risk of reoffending in the immediate period after release.

[44] *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 1(2).

1.78 The Panel has had regard to the current sentencing, correctional and parole landscape and the recent key changes that have affected the operation of the SSODSA. Significant reforms to the adult parole system have changed the way parole operates in Victoria.[45] Key reforms to sentencing law include the introduction of community correction orders that can now be imposed in conjunction with a sentence of imprisonment and operate as a 'de facto' parole period,[46] and the introduction of baseline sentences[47], which apply to some of the offences covered by the SSODSA.[48]

1.79 The effects of these legislative changes, coupled with a significant influx of offenders into prisons, are well documented in the Victorian Ombudsman's recent report, *Investigation into the rehabilitation and reintegration of prisoners in Victoria*.[49] The Panel supports the Ombudsman's recommendations and is of the view that there should be better transitions than are currently the case between custody, parole and post-sentence detention or supervision, including exit pathways to unrestricted freedom. The Panel shares the Ombudsman's concerns surrounding the links between disadvantage and imprisonment,[50] which are reflected in the cohort of offenders who are the focus of this review.

1.80 For the sake of community safety, offenders who present the greatest risk of serious interpersonal harm should receive the best possible management and, at a point in the offender's incarceration best calculated to have the maximum impact, be offered opportunities, and encouraged, to engage in carefully targeted interventions. This should be an essential part of their experience of prison. Those who have physical, mental, intellectual or sensory impairments should be offered programs which are tailored to meet their needs.

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45 See further discussion in Chapter 2.

46 This has led to suggestions that offenders are less likely to be paroled when serving sentences of imprisonment with a non-parole period and lawyers are tending to seek sentences of imprisonment with community correction orders, resulting in judges being asked to act like a 'substitute' parole board: Anthea Cannon, 'Judges face "parole role": Court told tightening of eligibility means lawyers seek lesser sentences', *The Age* (Melbourne) 29 September 2015. The impact of these reforms are discussed in Chapter 2.

47 The Panel notes these provisions are now likely to be of limited efficacy given the recent Court of Appeal decision in *DPP v Walters (a pseudonym)* [2015] VSCA 303 (17 November 2015) which found that the baseline sentencing provisions are 'incapable of being given any practical operation'.

48 Including persistent sexual abuse of a child under 16, incest with a child, step-child or lineal descendant (under 18), incest with the child, step-child or lineal descendant (under 18) of a de facto spouse and sexual penetration of a child under 12.

49 Victorian Ombudsman (September 2015) above n 23, 12–31.

50 Ibid 32–35.

1.81 The Panel is aware of the profound and complex difficulties faced by Sentence Management in Corrections Victoria in placing and moving prisoners. It nevertheless hopes that these difficulties can be overcome to the point that they do not have an adverse impact upon an offender's capacity to engage with these programs (a subject about which recommendations are made in Chapter 5 of this report). After their conviction, offenders ought to be given as much information and guidance as possible about the possible consequences of their offending and failure to engage in treatment. This is a matter of fairness. They are entitled to all the information they need if they are to maximise their chances of rehabilitation (and thus of a life of benefit to themselves and the community). They must not be left without hope of eventual, complete, rehabilitation.

1.82 The failure to participate fully in available programs should be taken into account in determining what orders should be made at the completion of the sentence, or at the time of the earliest release date. Post-sentence detention or supervision must avoid notions of punishment, emphasise rehabilitative treatment and management and employ conditions that are proportionate to the gravity of the risk posed by the offender.

Structure of this report

1.83 This report is divided into six chapters. It commences with this chapter, which introduces in broad terms the Panel's approach and the context to this review. The remaining chapters flesh out, and provide the detailed reasoning behind, the Panel's recommendations.

1.84 Chapter 2 provides an overview of the SSODSA legislation and the governance model for decision making and case management, and documents how these operate in practice. It also contains an overview of the Panel's findings on the cohort of offenders who are the subject of this review.

1.85 Chapters 3–5 present the Panel's recommendations under the four pillars for reform. The issues surrounding the first pillar (early intervention and continuity of care) have an impact upon each of the areas with which the remaining three pillars are concerned. Pillar 1, therefore, does not have a chapter to itself. Rather, the Panel's consideration of it is interwoven throughout each of chapters 3, 4 and 5. Chapter 3 includes the Panel's recommendations for changes to the legislative framework. These are the concern of the second pillar and are therefore directed at reforms that better target the risk of serious interpersonal harm. Chapters 4 and 5 are concerned with the Panel's consideration of, and recommendations relating to, governance models aimed at achieving independent and rigorous oversight (Pillar 3) and responsive service delivery and intensive case management (Pillar 4). Each chapter examines the issues in the current system that illustrate the need for reform, and describes the Panel's preferred approaches, together with the reasons for them.

1.86 Chapter 6 outlines how the Panel's recommendations may operate in practice and contrasts this to the existing scheme's operation.

2. Legislative overview and introduction to the complex adult victim sex offender cohort

Legislative and policy background

Serious Sex Offenders Monitoring Act 2005

2.1 The *Serious Sex Offenders Monitoring Act 2005* (Vic) commenced operation in Victoria on 26 May 2005.[1] The Act created a scheme pursuant to which an eligible offender would, if the application was successful, be made subject to an extended supervision order in the community for a period of up to 15 years.[2] The applicant in such matters was the Secretary to the Department of Justice and Regulation, and both the Supreme Court and the County Court had jurisdiction to hear and decide them.[3]

2.2 The court making the order was required to impose a number of core conditions on the order, and the offender was required to obey not only these but also directions issued by the Secretary and the Adult Parole Board.[4] Failure to comply with a condition or direction constituted an indictable offence, punishable by a term of imprisonment of up to five years.[5]

2.3 Initially restricted to the supervision of offenders who had committed sexual offences against children,[6] the *Serious Sex Offenders Monitoring Act* was amended in June 2008 to expand eligibility under the scheme to include offenders who had committed specified sexual offences against adults.[7] This amendment was the result of a recommendation made by the Sentencing Advisory Council, discussed below.

2.4 There was no provision for the detention of offenders under the *Serious Sex Offenders Monitoring Act*, and Victoria was the only Australian jurisdiction to introduce a post-sentence scheme without that option. However, one of the directions which could be made by the Adult Parole Board included a power to direct that an offender subject to an extended supervision order live in a transitional accommodation centre established by Corrections Victoria within the walls of Hopkins Correctional Centre.[8]

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1 Victoria, *Victoria Government Gazette,* No G21, 26 May 2005, 1069.

2 *Serious Sex Offenders Monitoring Act 2005 (Vic)* s 1(2)(b).

3 *Serious Sex Offenders Monitoring Act 2005 (Vic)* ss 5(1)–(2).

4 *Serious Sex Offenders Monitoring Act 2005 (Vic)* ss 15(1), (3).

5 *Serious Sex Offenders Monitoring Act 2005 (Vic)* ss 40(1), (3).

6 With the exception of the offence of bestiality: see *Serious Sex Offenders Monitoring Act 2005* (Vic) Schedule to s 3(1).

7 See *Justice Legislation Amendment Act 2008* (Vic).

8 Formerly known as Ararat Prison. See *Serious Sex Offenders Monitoring Act 2005* (Vic) s 16(3A).

Sentencing Advisory Council: High-Risk Offenders – Post-Sentence Supervision and Detention Report

2.5 Shortly after the commencement of the *Serious Sex Offenders Monitoring Act*, the Sentencing Advisory Council was asked to advise the then Attorney-General, the Honourable Rob Hulls MP, about the merits of introducing a post-sentence continued detention scheme for those offenders who on the expiration of their sentence continued to pose a serious danger to the community.[9]

2.6 In May 2007, the Sentencing Advisory Council released its final report. Its advice was that, 'whilst a narrow majority of the Council has concluded that regardless of how carefully a continuing detention scheme is to be structured, the inherent dangers involved outweigh its potential benefits … a significant minority of the Council was of the view that a continuing detention scheme should be introduced in Victoria to deal with the "critical few" offenders who pose a serious risk to the safety of community members.'[10]

2.7 Notwithstanding these philosophical differences, the Council was conscious of the Victorian Government's commitment to continuing a post-sentence supervision scheme and enacting preventive detention provisions. It therefore made a number of reform proposals on the basis that the existing Victorian legislation was inadequate to give effect to the government's position.

Serious Sex Offenders (Detention and Supervision) Act 2009

2.8 The *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) ('SSODSA') commenced operation on 1 January 2010.[11] It repealed the *Serious Sex Offenders Monitoring Act*, and put into place a new scheme, which remains in operation (with some modification). It provides for the continued supervision (and, in the most serious cases, detention) of particular sex offenders beyond the term of their sentence. The current scheme applies to offenders who have committed 'relevant' sexual offences against either adult or child victims. Offenders serving a sentence for violent offences, but not sexual offences, are not 'eligible' offenders for the purpose of the scheme.[12]

2.9 Section 1 of the SSODSA provides that the main purpose of the Act is to enhance the protection of the community by requiring offenders who have served custodial sentences for certain sexual offences and who pose an unacceptable risk of harm to the community to be subject to either a detention or a supervision order. Facilitation of treatment and rehabilitation of offenders is the secondary purpose of the SSODSA[13] but, of course, if the secondary purpose is achieved the primary purpose will be advanced as well.

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9 Sentencing Advisory Council *High-Risk Offenders: Post-Sentence Supervision and Detention*: *Final Report* (May 2007) ix.

10 Ibid x.

11 Victoria, *Victorian Government Gazette,* No G52, 24 December 2009, 3397.

12 See *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 4.

13 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 1(2).

2.10 The SSODSA provides two tiers of protective measures. The first allows for the post-sentence detention of those sex offenders who present the highest risk of committing further serious sexual crimes. The second tier is directed to the supervision in the community of serious sex offenders whose risk can with relative safety be managed by this means.

2.11 The SSODSA empowers the Supreme Court, on the application of the Director of Public Prosecutions, to make a detention order of up to three years, or an interim detention order of up to four months, in respect of an eligible offender.[14] The Director must apply for review of a detention order at least every 12 months (or at shorter intervals as determined by the court).[15] Those subject to such orders are likely to be detained in a purpose-built unit within Hopkins Correctional Centre. However, their placement within the prison system is also subject to a security classification. Very few applications for detention orders have been made and, at the time of the preparation of this report, there were only two offenders subject to such orders in Victoria.

2.12 The SSODSA also empowers the Supreme Court or the County Court, on the application of the Secretary to the Department of Justice and Regulation, to impose a supervision order of up to 15 years, or an interim supervision order of up to four months, on an eligible offender.[16] The Secretary must apply for review of a supervision order at least every three years (or at shorter intervals as determined by the court).[17] A number of 'core' statutory conditions are imposed by every such order,[18] and the court must consider also imposing conditions relating to the matters enumerated in section 17 of the SSODSA. By section 119 of the SSODSA, the Adult Parole Board is empowered to give directions to an offender to whom the order applies if, and to the extent that, the order authorises the Board to do so.

Corella Place: A residential facility established under the SSODSA

2.13 Corella Place in Ararat is the only residential facility established under the SSODSA.[19] It is not a prison but, rather, has been appointed as a residential facility within the community. The residents are nevertheless required to accept supervision, including monitoring and restrictions on their movements, as specified in their supervision orders. Corella Place is thus a hybrid institution managed by staff who, although trained for the discharge of their specialist responsibilities (which they exercise with competent professionalism), do not have all of the powers of prison officers. Their ability to maintain the good order and management of Corella Place is limited accordingly. This has diminished the ability of the staff to respond to incidents instigated by an occasionally volatile resident population. The Panel notes that the powers of specified officers have recently been increased.[20] They remain limited nevertheless.

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14 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) ss 1(3)(b), 40(1), 57(2).

15 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 66(1).

16 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) ss 1(3)(c), 12(1), 57(2).

17 *Serious Sex Offenders (Detention and Supervision) Act 2009* Vic) s 65(1).

18 See *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 16.

19 See *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 133.

20 Serious Sex Offenders (Detention and Supervision) and other Acts Amendment Bill 2015 (Vic).

2.14 Corella Place provides transitional accommodation, supervision and support for those serious sex offenders who are subject to supervision orders and for whom appropriate accommodation has not for various reasons been found elsewhere.

2.15 The Commissioner, Corrections Victoria is responsible for the management and good order of Corella Place.[21] The residential facility has a staffing model of 76 staff which includes a General Manager, Managers, Team Leaders, Principal Practitioners, operations and administration staff, Specialist Case Workers and Specialist Case Managers.

2.16 Because the residents of Corella Place are not prisoners, the facility is not a locked facility; nor is it surrounded by a wall. It is 'secure' insofar as each resident is subject to such supervision and movement restrictions as are contained in his supervision order. A number of residents have absconded from the facility since it was first opened. In the past, there have also been incidents during which residents have assaulted staff and other fellow residents, and caused damage to property. Despite the demarcation between Corella Place and prison, the media tend to convey news of an absconding from the former as if the Corella Place staff had the powers of prison officers, and as if the absconding resident were an escaping prisoner.[22]

2.17 On 6 September 2013 the government announced the expansion of Corella Place to increase its capacity from 40 beds to 55 beds, with additional staff and security to be added to support the new facilities. The second Corella Place campus opened in April 2015.

2.18 On 1 October 2015, a further expansion to the Corella Place facility was announced as an interim strategy to address demand pressures at the existing dual-campus site. This third site, adjoining Langi Kal Kal Prison, is anticipated to open before the end of the year. It will initially house up to 10 residents, all of whom are subject to supervision orders. Once fully commissioned, it is expected that a maximum of 20 supervision order offenders will be accommodated there, and be managed by staff from the Corella Place Ararat campus.

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21 *Serious Sex Offenders (Detention and Supervision) Act 2009* s 134(1).

22 [redacted]

Recent amendments to the SSODSA

2.19 During the course of this review, the government introduced a number of relevant changes to the SSODSA. The Serious Sex Offenders (Detention and Supervision) and other Acts Amendment Bill 2015 (Vic) ('SSODSA Amendment Bill') was introduced to the Legislative Assembly on 1 September 2015. The SSODSA Amendment Bill formed part of the government's response to recent issues identified in the supervision and management of serious sex offenders. On 2 September 2015, the Honourable Wade Noonan MP, Minister for Corrections, noted that the 'Bill will strengthen the current scheme for sex offenders' while the government await the recommendations of this Panel.[23]

2.20 The Bill proposed a number of significant amendments to both the SSODSA and the *Bail Act 1977* (Vic) including, but not limited to:

- the introduction of a new operational unit in the Sex Offender Management Branch, Corrections Victoria, with members of Victoria Police embedded in that unit to assist in the supervision of serious sex offenders and to respond to recognised risks
- enhanced entry, arrest and drug/alcohol testing powers for Victoria Police when dealing with individuals subject to supervision orders
- new safety powers that can be exercised by 'specified officers' when supervising sex offenders (including the ability to use reasonable force, batons and capsicum spray), in addition to the power to search an offender and his or her residence, and seize items on safety and welfare grounds
- a presumption against bail for individuals subject to supervision orders who are charged with further offending (indictable offences only), and
- the addition of offences contained in sections 41DA (distribution of intimate image) and 41DB (threat to distribute intimate image) of the *Summary Offences Act 1961* (Vic) to Schedule 1 of the SSODSA.

2.21 In his second reading speech, the Minister further stated that 'the government will consider additional reforms and associated legislative amendments that may be required as a result of the Harper (that is, the present) review.'[24]

2.22 On 8 October 2015, the SSODSA Amendment bill passed parliament. The reforms are to be introduced in two stages, with the first amendments to the SSODSA and the *Bail Act* having come into operation on 14 October 2015. The second stage of amendments have been proclaimed to commence on 1 December 2015. In conducting the present review, the Panel has had regard to these amendments.

[23] Victoria, Parliamentary Debates*, Legislative Assembly*, 2 September 2015, 3007 (Hon. Wade Noonan, MP Minister for Corrections).

[24] Victoria, Parliamentary Debates*, Legislative Assembly*, 2 September 2015, 3007 (Hon. Wade Noonan, MP Minister for Corrections).

Sexual offending in context

Rates of reoffending of sex offenders

2.23 There is a large body of evidence about the nature of sexual offending and the characteristics of sex offenders. Nevertheless, 'misconceptions still abound'.[25] One of the most ingrained of all the myths about sex offenders is that they invariably reoffend.

2.24 It is appropriate to describe this ingrained belief as a 'misconception'. It derives little support from the research that has been conducted on the reoffending rates of sex offenders. The findings from this large body of international research and the few Australian studies conducted indicate that 'most serious violent and sexual criminals do not have previous convictions for violent or sexual offences and are not reconvicted for sexual and violent reoffending'.[26]

2.25 The consistent conclusions that can be drawn from the research about the reoffending of sex offenders were set out in a research paper published by the Sentencing Advisory Council in 2007. They include:

- only a small proportion of sexual offences that occur in the community come to the attention of police
- only a small proportion of sex offenders who enter the criminal justice system are imprisoned
- most victims of sexual offences are victimised by someone who they know
- almost all sex offenders are men, and
- most sex offenders are not mentally ill. [27]

2.26 Perhaps the most important consistent conclusion to come from the research is that the risk of reoffending is greatest for sex offenders who start offending at an early age, have stable deviant sexual preferences, have multiple convictions for sexual offending, and have committed diverse sexual offences.[28]

2.27 Research into the recidivism of sex offenders has indicated that there are some characteristics which increase the likelihood of reoffending sexually. [29] These, less firmly established, correlates of sexual reoffending, include:

- factors related to the offender's criminal history, such as the number and type of offences and victims
- stable factors related to the offender, such as personality traits often associated with the notion of a psychopathic personality and deviant sexual preferences, and
- factors that are more immediate precipitants of risk, such as notably negative emotional states, poor interpersonal/self-management and poor social support.[30]

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25 Sentencing Advisory Council, *Recidivism of Sex Offenders: Research Paper* (January 2007) vii.

26 Ibid 21–22, citing Walker, (1996). Ethical and Other Problems. In N Walker (ed.), *Dangerous People*. Oxford: Blackstone Press.

27 Ibid vii.

28 Ibid.

29 Karl Hanson and Kelly Morton-Bourgon, 'The Characteristics of Persistent Sexual Offenders: A Meta-Analysis of Recidivism Studies' (2005) 73(6) *Journal of Consulting and Clinical Psychology* 1154–1163, 1.

Reoffending research in Victoria

General rates of reoffending

2.28 A 2015 report by the Sentencing Advisory Council on an overview of reoffending provides more recent evidence of the low rates of sexual reoffending. The Council reports that over a nine year period, the reoffending rate of all offenders sentenced in 2004–05 was 44.9 per cent. This means that over half of offenders (adults and children) sentenced in all Victorian criminal courts were sentenced for reoffending committed over a nine-year period following being sentenced.[31] Offenders, no matter what their criminal record, were only 0.4 per cent of the total offenders who reoffended committing such an offence.[32] Only 9.8 per cent of the small number of offenders who had been convicted of a sexual offence, reoffended by committing another such offence in the nine-year period. [33]

Focus on reoffending by sex offenders

2.29 To gain a better understanding of the reoffending patterns of sex offenders in Victoria, the Panel requested data from the Sentencing Advisory Council on reoffending by offenders sentenced for sexual offending.[34] The Council provided the Panel with data on the reoffending rates of offenders who had been sentenced for particular sexual offences[35] in 2004–05 and which tracked their reoffending according to whether they had been sentenced to a further sexual offence in a nine-year follow up period. There were 215 offenders in total, of which almost all were male (98.1 per cent). A quarter of offenders were aged 35–44 years, and almost a quarter were aged 25–34 years.

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30 Sentencing Advisory Council (Jan 2007), above n 25, 30, citing Perkins, D.S. Hammond et al., (1998). *Review of Sex Offender Treatment Programmes*, Report to the High Security Psychiatric Services Commissioning Board (HSPSCB).

31 Sentencing Advisory Council, *Reoffending Following Sentence in Victoria: A Statistical Overview* (May 2015) 8.

32 Ibid 9. Traffic offences are by far the most prevalent offence type in reoffending, comprising 42.4%.

33 Ibid 5–7. The most common offences that people were sentenced for on the first occasion were traffic (42.3%) and theft and deception (17.0%) and the most common sentences imposed were fines (52.5%) and low-end orders (24.0%). There were 546 people in the sample that were sentenced for sexual offences (0.9%).

34 The data was sourced from the Council's reoffending database which contains sentencing records from the Supreme, County, Magistrates' and Children's Courts. That database contains a unique person identifier was created by the Sentencing Advisory Council that is used to link sentencing records belonging to the one person**.**

35 Not all sexual offences were included. The total sexual offences sentenced in the same period was 546. In the same period, there were 6,663 offenders sentenced for violent offences, comprising assaults and homicides.

2.30 There were 148 offenders (68.8 per cent) convicted of offences involving a child victim[36] and 67 offenders (31.2 per cent) convicted of offences that usually involve an adult victim.[37]

2.31 The majority (84.7 per cent) of all sex offenders did not 'reoffend'; that is they were not sentenced for a new offence in the follow-up period. Only 33 of the 215 offenders (15.3 per cent) were sentenced on a subsequent occasion for a new offence. Of the 33 offenders who were sentenced for any new offence (whether sexual or non-sexual), two-thirds had only one subsequent sentence, while 21.2 per cent had two subsequent sentences. This research supports existing commentary that the reoffending rate of sex offenders is low compared to other offenders. However, this needs to be understood in context.

2.32 Many sex offenders receive lengthy imprisonment sentences which, while being served, of course affects their ability to reoffend. The low re-sentence rate could therefore partly be a reflection of the types and lengths of sentences imposed on these offenders for their prior sexual offending. Just over half of offenders were sentenced to imprisonment (53.0 per cent) and 22.3 per cent were sentenced to a wholly suspended sentence.[38] The median total effective[39] imprisonment term for the adult victim sex offenders was 6.0 years, while the median term for child victim sex offenders was 5.5 years. This is important, as it means that some offenders would have been in prison serving a sentence of imprisonment for a significant portion of the nine-year follow up period within which reoffending was tracked.

2.33 The data suggested that the reoffending rates of offenders sentenced for sexual offences against adults were lower than those who offended sexually against children. The percentage of offenders who were sentenced for a new offence was higher for offenders whose index offence was a sexual offence against a child (18.5 per cent or 28 of 148 offenders) than for offenders whose index offence was a sexual offence against an adult (7.5 per cent or 5 of 67 offenders).

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[36] Indecent act with a child under 16, Sexual penetration with a child under 10, Sexual penetration with a child aged 10 to 16 (not under care), Sexual penetration with a child aged 10 to 16 (under care), Incest (natural or de facto parent). The most common offences in this category were sexual penetration of a child aged 10–16 (18.6%), indecent act with a child under 16 years (14.4%) and incest (natural or de facto parent) (14.4%).

[37] Rape and indecent assault. Rape was the most common offence overall (20.5%). It is possible that some of the offences included in the 'sexual offences against adults' group could have been committed against victims who were not adults. It has not been possible to ascertain the precise age of the victims in each of these offences.

[38] For offences committed on or after 1 September 2014, the Magistrates' Court can no longer impose a suspended sentence. Likewise, for offences committed on or after 1 September 2013, the County and Supreme Courts can no longer impose a suspended sentence. The Panel notes sections 172(5) and (6) of the *Serious Sex Offenders (Detention and Supervision) Act 2009* which apply the practice and procedure of the Magistrates' Court to a breach of supervision order hearing in the Supreme or County Courts in circumstances where a summary hearing is granted.

[39] In a case involving multiple charges, the total effective imprisonment term is the total term of a sentence resulting from all charges in the case, following orders for concurrency and/or cumulation. In a case involving a single charge, the total effective imprisonment term is the sentence imposed for that charge.

2.34 However, when the nature of the reoffending is examined, the majority of reoffending consisted of a failure to comply with laws that exist to monitor and supervise sex offenders—those laws being the SSODSA and the *Sex Offenders Registration Act 2004* (Vic). For all offenders who were sentenced on a subsequent occasion, the type of principal offence in the first subsequent sentencing episode was most commonly an offence against justice procedures[40] (60.6 per cent or 21 of the 33 offenders who reoffended). Most commonly this was an offence of failing to comply with reporting obligations under the *Sex Offenders Registration Act*.[41] Two offenders reoffended by breaching an extended supervision order under the *Serious Sex Offenders Monitoring Act* (superseded by the SSODSA) and one offender reoffended by failing to comply with a supervision order under the SSODSA.[42]

2.35 The Panel's conclusion from this data is that (the highly publicised and terrible exceptions not withstanding) reoffending by sex offenders is uncommon. This is not, of course, an excuse for failing to lower the reoffence rate further.

2.36 Statistics go some way in providing information about the comparatively low reoffending rates of sex offenders, and the difficulties in predicting which sex offenders will reoffend. However, there are limits to what statistics can indicate about the extent of reoffending, because they only measure sexual offending that has been either reported or is the subject of criminal proceedings. This means that such statistics under-estimate the true prevalence of sexual offending and, as such, they cannot be relied on as the sole mechanism for measuring its extent and identifying the most effective means of preventing the harms it causes.

Prevalence of sexual offending in Victoria

2.37 There are three broad groups of sex offenders:

- those who have been convicted of a sexual offence
- those who have been accused of a sexual offence, but did not face prosecution or, if prosecuted, were not convicted, and
- those who have never come to the attention of the justice system.

2.38 The third group is likely to be the largest, as most sexual offences are never reported to the police.[43] The numbers in each group can be established from a combination of crime statistics and victim surveys.[44]

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[40] An offence against justice procedures refers to offences that constitute the breach of a court order or obligation imposed an offender by reason of a court order or an administrative requirement. This includes offences, such as fail to comply with bail, fail to comply with parole, breach of intervention order, fail to comply with a supervision order or fail to comply with reporting obligations as a registered sex offender.

[41] *Sex Offenders Registration Act 2004* (Vic) s 46(1).

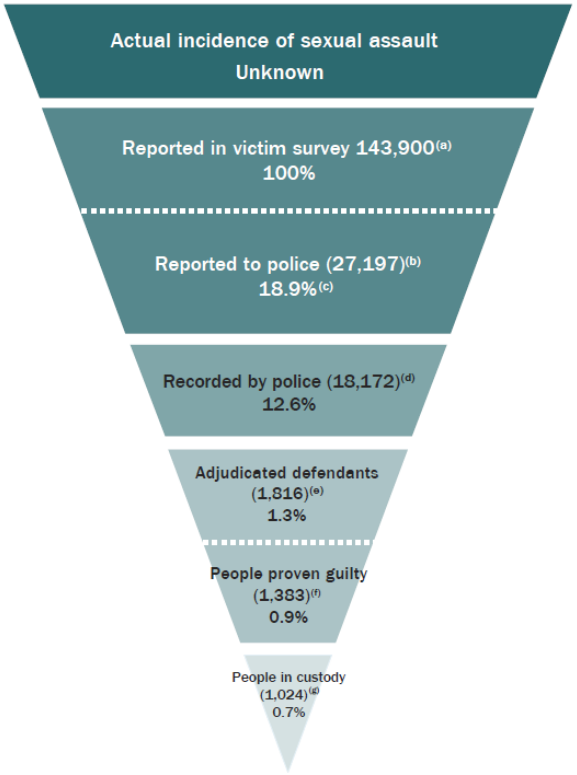
[42] Of the 28 offenders sentenced for child sexual offences and subsequently re-sentenced, only one offender was sentenced for a subsequent sexual offence against a child and two offenders were sentenced for a subsequent sexual offence against an adult. Of the five offenders sentenced for adult sexual offences, and re-sentenced, none were sentenced for a sexual offence.

[43] Sentencing Advisory Council (Jan 2007), above n 25, 22.

[44] Ministry of Justice, Home Office and Office for National Statistics, *An Overview of Sexual Offending in England and Wales: Statistics Bulletin* (January 2013).

2.39 Prevalence studies of sexual offending cannot fully depict the true rate of harm, given the hidden nature of much sexual criminality and barriers to disclosing it. Figure 1 below, which has been replicated with the permission of the Sentencing Advisory Council from its research paper on the recidivism of sex offenders,[45] highlights why reoffending and prevalence data must be viewed cautiously. It represents a conservative estimate in terms of the attrition rates through the criminal justice system for sexual assaults.[46]

Figure 1: The attrition of sexual assaults through the criminal justice system, Australia, 2005



2.40 The current Royal Commission into Institutional Responses to Child Sexual Abuse provides a sobering reminder of the way in which sexual offending can not only devastate the lives of victims and their families, but also adversely affect the entire community.

[45] Sentencing Advisory Council (Jan 2007), above n 25, 22.

[46] Ibid.

2.41 The reporting of sexual offending in Victoria continues to rise. This may be viewed as a testament to the reforms undertaken in recent years. These have provided for a specialist response from a range of agencies, including police. The flow on effects are apparent: between 2002–03 and 2012–13 there was an 81 per cent increase in the number of sexual offence trials in the County Court of Victoria.[47] This growth continues as more historical offences come to light. Of the sexual offences recorded in the Law Enforcement Assistance Program (LEAP)[48] for the year to 30 June 2015, 31.4 per cent were related to offences committed before 2010.[49]

2.42 In the year ending 30 June 2015, 3,607 offender incidents were recorded where the principal offence was sexual in nature. This was an increase of 14.3 per cent (that is, an increase of 452 offender incidents) compared to the same period last year.

2.43 Data from the Crime Statistics Agency suggests that the age and sex profile of alleged offenders for sexual offences varies significantly from that of most other offenders. In the year to 30 June 2015, a male perpetrator was responsible for 96 per cent of incidents with a sexual offence being the principal offence; and 12 per cent of male offenders were aged 65 years or over.[50] It is important to note that the ages of those charged and convicted of sexual offences do not reflect the ages of perpetrators (at the time of committing the crime) identified in victim surveys and studies of reported sexual abuse in large community studies. Reports of victims of child sexual abuse indicate that adolescent boys are the single largest group of perpetrators and that those between 15 and 25 years account for most sexual offending.[51]

Operation of Victoria's post-sentence scheme

Eligible offenders under the SSODSA

2.44 With more offenders subject to incarceration for sexual offending, the number of offenders eligible for post-sentence supervision under the SSODSA has risen accordingly.

2.45 Corrections Victoria staff routinely check offence codes to identify new eligible offenders serving a custodial sentence following conviction for one or more of the offences specified in Schedule 1 of the SSODSA (which identifies all 'relevant' offences).

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47 Department of Justice, *Review of Sexual Offences Consultation Paper* (September 2013) Part 1—vii.

48 LEAP is an online database that stores particulars of all crimes bought to the notice of police as well as family incidents and missing persons.

49 Crime Statistics Agency, Alleged Offender Incidents (Crime Statistics Agency, October 2015) <http://www.crimestatistics.vic.gov.au/home/crime+statistics/year+ending+30+june+2015/alleged+offender+incidents>.

50 Crime Statistics Agency, Alleged Offender Incidents (Crime Statistics Agency, October 2015) <http://www.crimestatistics.vic.gov.au/home/crime+statistics/year+ending+30+june+2015/alleged+offender+incidents>.

51 David Fergusson and Paul Mullen, *Childhood Sexual Abuse: An Evidence Based Perspective* (1999).

2.46 Relevant prisoners are generally identified up to two years ahead of their earliest parole eligibility date. While prisoners may have been flagged as 'sex offenders' from the outset, this does not guarantee their eligibility under the SSODSA. Some offences that are sexual in nature but less serious when compared to more serious offences are excluded from the SSODSA (for example, wilful and obscene exposure). Others require close examination to determine whether they are sexual in nature. Aggravated burglary (item 28 in Schedule 1) is an example of an offence which may or may not include an element of sexual criminality.

2.47 There are 579 sex offenders in Victorian prisons at present whose eligibility will need review before their sentences expire.[52]

Applications for post-sentence orders under the SSODSA

2.48 The Secretary to the Department of Justice and Regulation has established a Detention and Supervision Order Review Board with representation from a range of agencies to provide executive, cross-sectoral and independent advice on whether an application for a supervision order may be warranted. The Panel benefited from the opportunity to observe a meeting of this Board, which demonstrated the diversity of sexual offending typically reviewed in a single sitting.

2.49 Factors considered by the Board in making its recommendations to the Secretary include the individual's offending history, the presence or absence of protective factors such as employment, education, relationships and accommodation, transition plans, progress in treatment and the likelihood of reoffending.

2.50 The Board also considers the gravity of the offending should the risk eventuate. For example, while the Board may review a high risk offender with numerous convictions for indecent acts consisting of inappropriately touching women's legs on public transport, in balancing the limited gravity of that offending with the high probability it may happen again, their overall recommendation may be that no application be made. Conversely a moderate-high risk offender with two rape convictions and the absence of protective factors or progress in treatment may concern the Board sufficiently to recommend an application to the Secretary.

2.51 Only the Secretary can ultimately make the decision regarding an application. He or she can accept or reject the Board's recommendations, which are presented to him or her in briefings accompanied by the internal or external risk assessment.

2.52 In the first six months of 2015, the Detention and Supervision Order Review Board considered 233 eligible offenders' risk assessments, consisting of:

- 51 detention and supervision order assessment reports prepared by independent external psychologists
- 29 detention and supervision order progress reports prepared by independent external psychologists (for those already subject to an order and due for review by the court), and
- 153 internal assessment reports prepared by clinicians in the department's Specialised Offender Assessment and Treatment Service.

[52] Data provided by Corrections Victoria to the Panel as at 29 September 2015.

2.53 Of the 51 detention and supervision order assessment reports for new eligible offenders presented to the Detention and Supervision Order Review Board in the first six months of this year, the Secretary initiated applications for post sentence supervision for 14 offenders – that is, approximately 27 per cent.[53]

2.54 Fourteen new applications may seem like a small number over a six month period, but it is a sizeable group in proportion to the total number of offenders subject to the scheme.

Number of offenders on SSODSA orders

2.55 The number of offenders who were subject to the post-sentence scheme in Victoria as at 14 August 2015 is outlined below.[54] An overview of the 46 offenders identified to come within the complex adult victim sex offender cohort is discussed below from [2.84].

Table 1: Number of individuals subject to the SSODSA, 14 August 2015

Status	No. of offenders
Supervision Orders	109
Interim Supervision Orders	7
Detention Orders	2
TOTAL	**118**
Applications lodged and yet to be determined by the court	8

2.56 It is not surprising that an increase in eligible offenders has seen an increase in the number of offenders subject to the scheme.

2.57 The Adult Parole Board reports on orders under the jurisdiction of its Detention and Supervision Order Division in annual reports tabled in parliament.[55] Should the current applications lodged by the Secretary convert to orders made by the court, the number of orders over which the Division will have jurisdiction will have almost doubled since the scheme came into effect.

[53] An internal Specialised Offenders Assessment and Treatment Service (SOATS) assessment report would generally not be lodged at court, and if an offender in this category was concerning, a full DSO assessment would be procured and used as the basis for determining an application. In the same six month period, the DSO Review Board requested full DSO Assessments on two offenders for whom it had already considered internal SOATS reports, before deciding whether to recommend an application. It should also be noted that some of these Assessment Reports have related to renewals of existing Supervision orders and note necessarily new applications.

[54] Analysis based on data as at 14 August 2015. The Panel notes that subsequent orders have been made and as at 1 October 2015 the total numbers subject to post-sentence orders in Victoria has grown to 122 offenders.

[55] The Division was established after the commencement of the legislation and conducted its first official sitting day on 15 March 2010: Adult Parole Board of Victoria, *Annual Report 2009-10* (2010) 38.

Table 2: Number of SSODSA orders, Detention and Supervision Order Division, Adult Parole Board, 2010–11 to 2014–15

Year ending	Post –sentence orders under the jurisdiction of the Detention and Supervision Order Division, Adult Parole Board
30 June 2011	67
30 June 2012	85
30 June 2013	101
30 June 2014	109
30 June 2015	118

2.58 The growth in the number of offenders subject to the scheme has flow on effects elsewhere, including on the courts making and reviewing these orders, and the agencies involved in managing the scheme. Victoria Legal Aid advised the Panel that grants of legal assistance for SSODSA matters have approximately tripled in the last five years, from 23 matters in 2010–11 to 61 matters in 2014–15.[56]

Factors influencing the growth of SSODSA orders

2.59 A number of Australian jurisdictions implemented post-sentence schemes around the mid-2000s. Given that Victoria has a smaller population than New South Wales, it is of interest to compare the number of applications for post-sentence orders made in each of the jurisdictions since that time.

Table 3: Post-sentence orders by jurisdiction, 2004–2014[57]

Commencement of scheme	Jurisdiction	Post-sentence orders sought
2005[58]	Victoria	164
2006[59]	New South Wales	85
2006	Western Australia	56
2003	Queensland	157

[56] Correspondence from Victoria Legal Aid to the Panel (12 August 2015).

[57] Freiberg, A, Donnelly, H and Gelb, K, 2015, *Sentencing for Child Sexual Assault in Institutional Contexts*, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney.

[58] The predecessor to the SSODSA was the *Serious Sex Offenders Monitoring Act 2005* (Vic).

[59] Note that in 2013, New South Wales extended its regime of post-sentence preventive detention and supervision of serious sex offenders to high risk violent offenders.

2.60 In subsequent years, other jurisdictions have established post-sentence schemes, including South Australia most recently and the Northern Territory last year.

2.61 Despite New South Wales now having a scheme that captures both sexual and violent offenders, Victoria has more than double the numbers of offenders (118 as opposed to 56) subject to post-sentence orders. The reasons for this are complex. Two of relevance are differences in the eligibility criteria, and the fact that supervision orders can, in Victoria, be made for up to 15 years. By contrast, in New South Wales the duration of orders is determined by the court, but cannot be longer than five years. The scheme also has a minimum sentence that offenders must be liable to face in order to qualify as eligible for a post-sentence order. No such provision applies in Victoria. Other differences between the jurisdictions may also be relevant, for example differences in sentencing practices between the two jurisdictions;[60] however, the Panel has not had the opportunity to explore these factors in detail.

2.62 Figures provided by Corrective Services New South Wales indicate that as at August 2015 there were 52 offenders subject to an extended supervision order, and four offenders subject to a continuing detention order. The New South Wales scheme for sex offenders has been in operation since 2006 and the expanded scheme to include violent offenders came into effect through the *Crimes (Serious Sex Offenders) Act 2006* (NSW) and was on 19 March 2013 extended from sex offenders to high risk violent offenders. The Act is now known as the *Crimes (High Risk Offenders) Act 2006* (NSW).

2.63 Other factors may also be relevant. In Victoria, community correction orders have been available since January 2012. Before September 2014, a community correction order could be combined with a sentence of imprisonment of up to three months. However, since 29 September 2014, it has been possible for a court to combine these orders with longer terms of imprisonment (less than two years). [61] The number of combined community correction orders and imprisonment sentences has tripled in the higher courts and increased by two-thirds in the Magistrates' Court in the September and December quarters of 2014.[62]

[60] A recent report published by the Tasmanian Sentencing Advisory Council contains data that suggests that there are differences in the sentencing practices for sexual offences between Victoria and New South Wales. For example using national data from the Australian Bureau of Statistics, the report indicates that the average aggregate sentence length of imprisonment for sexual assault and related offences was 8.9 years in New South Wales and 7.4 years in Victoria, with average expected time to serve in New South Wales 6.3 years, compared with 5.5 in Victoria. Given the limitations of these comparisons, the report also compared sentencing statistics using local data which showed that longer sentences of imprisonment were imposed in New South Wales for the offences of rape (median in New South Wales was 84 months compared with 60 months in Victoria) and persistent abuse/maintaining a sexual relationship with a child (median in New South Wales was 120 months compared with 72 months in Victoria). For a detailed discussion of these comparisons and their limitations, see Sentencing Advisory Council (Tasmania), *Sex Offence Sentencing: Final Report* (August 2015), 50–52.

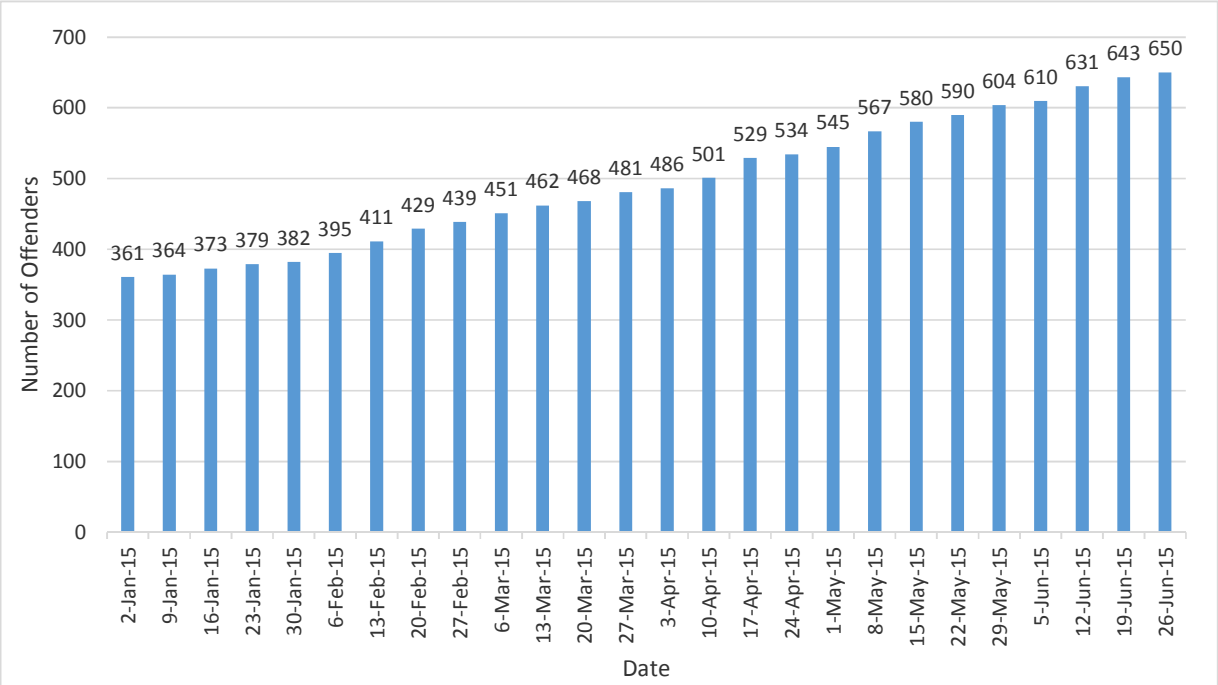
[61] *Sentencing Act 1991* (Vic) s 44.

[62] Sentencing Advisory Council, Use of Community Correction Orders Increasing (Sentencing Advisory Council, Research, Statistics and Education about Sentencing in Victoria, 9 September 2015) <https://www.sentencingcouncil.vic.gov.au/news-media/news/use-community-correction-orders-increasing>.

2.64 As this form of sentence includes a term of imprisonment, offenders with relevant offending are eligible under the SSODSA. For sexual offending of a lower tariff, the Secretary to the Department of Justice and Regulation may consider that a community correction order facilitates community protection and provides for assessment and treatment without the need for a post-sentence supervision order. However if the risk of reoffending and the gravity of that offending are concerning, an application would proceed irrespective of the existence of any community correction order.

2.65 The growth in the number of combined community correction orders and imprisonment orders is evident in Figure 2 below.

Figure 2: Number of offenders with combined community correction-imprisonment orders, 2 January 2015–26 June 2015



2.66 Following the Victorian Court of Appeal's confirmation that a community correction order can serve all the purposes of punishment, even in quite serious cases,[63] use of community correction orders as stand-alone deterrents has also risen, in part due to the phase-out of suspended sentences of imprisonment.[64] Sex offenders receiving only a community correction order are not eligible offenders under the SSODSA.

[63] *Boulton v The Queen; Clements v The Queen; Fitzgerald v The Queen* [2014] VSCA 342 (22 December 2014).

[64] Sentencing Advisory Council, *Use of Community Correction Orders Increasing* (Sentencing Advisory Council, Research, Statistics and Education about Sentencing in Victoria, 9 September 2015) <https://www.sentencingcouncil.vic.gov.au/news-media/news/use-community-correction-orders-increasing>.

2.67 Widespread reforms to parole have also had an impact on the consideration of eligible offenders under the SSODSA. In May 2013, a former Justice of the High Court (the Hon. Ian Callinan AC) was appointed to conduct a review of Victoria's parole system. His review recommended 23 measures for reform.[65] Before this review, two other key reviews also contributed to the recent significant scrutiny of, and change to, the adult parole system:

- A Sentencing Advisory Council review, completed in 2012, of the legislative and administrative framework governing the release and management of sentenced prisoners on parole in Victoria.[66]
- A review conducted in 2011 by Professor Ogloff and the Office of Correctional Services Review of 11 offenders who were convicted of committing, or were alleged to have committed, murder while under the supervision of parole or Community Correctional Services.[67]

2.68 The implementation of Mr Callinan's recommended measures have resulted in significant changes to parole law and practice. This has in turn had a significant and well documented effect on the operation of the Victorian adult parole system. The changes to the operation of that system are most evident in the available data on the decision making practices of the Adult Parole Board, most particularly in its 2013–14 annual report. The 2013–14 report demonstrates that there were noticeable changes in trends relating to the granting and cancellation of parole in that financial year, compared with previous years, as follows:

- fewer prisoners have been released on parole (36 per cent decrease), despite more prisoners becoming eligible for such release (12 per cent increase)
- there has been an increase in the number of parole orders denied (96 per cent)
- there has also been an increase in the number of parole cancellations, with a slight decrease by 18.2 per cent in 2013–14 with the fewer parole orders being in existence that could be cancelled, and
- parole was also being cancelled earlier, generally within the first three months after release.[68]

2.69 Trend analysis of parole grants and cancellations over a 10-year period shows that, while the number of prisoners eligible for parole from 2003–04 to 2012–13 increased by 65 per cent, in the same period grants of parole increased by just 20 per cent, and then fell a further 36 per cent in 2013–14. The number of parole cancellations were steady from 2003–04 and then sharply increased (by 75 per cent) between 2010–11 and 2012–13. In 2013–14, the number of parole cancellations fell slightly. The Adult Parole Board attributed these trends to:

- the low number of parole orders made
- the greater scrutiny of parolee behaviour by Community Correctional Services and the Board, and
- an increased focus on community safety.[69]

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65 Ian Callinan AC, *Review of the Parole System in Victoria*: *Report* (2013).

66 Sentencing Advisory Council, *Review of the Victorian Adult Parole System: Report* (March 2012).

67 Professor James Ogloff and Office of Correctional Services Review, Department of Justice, *Review of parolee reoffending by way of murder: Report* (September 2011).

68 Adult Parole Board of Victoria, *2013–2014: Annual Report* (2014) 7.

69 Ibid 14.

2.70 Another key indicator of the effect of these reforms is the number of prisoners who, on completion of their sentence, have been released without parole – and therefore without supervision.

2.71 The Victorian Ombudsman raises this issue in the discussion paper which she issued in conjunction with her investigation into the rehabilitation and reintegration of prisoners in Victoria:

> A consequence of the parole reforms and the need to provide additional programs, is that prisoners who have been either unable or unwilling to participate in programs are being released at the end of their full sentence. Prisoners who are not released on parole leave custody without the reporting requirements and controls that apply to parolees. There are legitimate concerns that some prisoners are being released without having addressed their offending behaviour.[70]

2.72 The Ombudsman reports that, according to the records maintained by Corrections Victoria, in 2012–13 160 prisoners exited on 'straight release' (that is, not having served any time on parole). This more than doubled to 365 prisoners exiting on straight release in 2013–14.[71]

2.73 These trends relate to all prisoners and not just sex offenders who may be currently eligible under the SSODSA. Further analysis is required to determine the extent to which the parole reforms have affected the rate of sex offenders accessing parole. The Panel is nevertheless concerned about these trends. Those released without having the benefit of parole may have had no opportunity to demonstrate (whether to themselves, a parole officer, or friends or family) their capacity (or lack thereof) to self-manage in the community. The Ombudsman has noted that offenders exiting prison on straight release are more likely to reoffend.[72] The trends noted above in the increasing number of short sentences of imprisonment combined with community correction orders are also of concern. Offenders may not be able to access in-prison treatment programs before being released under the community corrections portion of the sentence. Yet the level of monitoring provided by community corrections may be less robust than that available when on parole; and the available responses, if an offender is not doing well outside prison, are limited to prosecution for a failure to comply with the conditions of the community correction order.

2.74 In these circumstances, concerns about the availability or efficacy of risk management strategies may be the basis for a decision by the Secretary to apply for a post-sentence supervision order; whereas, had parole been granted and been successfully negotiated without incident, no application may have been made. In such circumstances, orders of a shorter duration may be sought (perhaps for two or three years) to provide an opportunity for the offender's progress to be monitored and for the Secretary to satisfy himself or herself that the risk to the community is not unacceptable.

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70 Victorian Ombudsman, *Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria: Discussion Paper* (2014) 19.

71 Ibid.

72 Victorian Ombudsman, *Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria*: *Report* (September 2015) 147.

Costs of the SSODSA scheme to Corrections Victoria

2.75 Corrections Victoria advised the Panel that in the 2013–14 financial year, the following costs[73] reflected the average impost to the state for each offender subject to the scheme:

- $159,316 if the offender resides in the community on a post-sentence order, and
- $323,248 if the offender resides at Corella Place.

2.76 The costs incurred to the state for managing a sex offender in custody serving a sentence was $126,241 per prisoner during the 2013–14 financial year.

2.77 The total legal costs paid by Corrections Victoria for offenders under the SSODSA for 2013–14 was approximately $2.7 million.[74]

2.78 These figures highlight the significant expense involved in managing offenders on post-sentence orders. Expenditure of this magnitude is clearly a relevant, but not necessarily determining, factor in assessing the merits of different correctional policies or options. Equally, it is important to ensure that the maximum return is achieved for this investment. This requires consideration not only of the total outlay and associated benefits, but the distribution of resources.

2.79 At present, significant resources are expended on legal and assessment fees, yet fragmentation in service delivery means an offender costing the state more than $300,000 per annum may not have timely access to treatment recommended to reduce his or her risk to the community. For example, in Sean Price's case, he did not gain access to a program for violent offenders. This was despite such a program being identified as an intervention that would reduce his risk; but service delivery and resourcing boundaries on offence-specific programs delivered by the Offending Behaviour Programs Branch in Corrections Victoria proved to be impassable barriers. The problem, being systemic and resource based, was not one which any individual could readily solve.

2.80 Despite significant investment, the complexity of the needs of these offenders demonstrates that a fragmented approach or the efforts of a few, without support provided by all relevant social services, will not deliver the interventions necessary to reduce risk and protect the community.

2.81 In the ensuing chapters, the Panel makes recommendations that, if implemented, would deliver more coordinated whole of government service delivery, earlier intervention and additional rigorous oversight. The Panel believes that these measures are necessary if maximum advantage is to be taken of opportunities to reduce the risk posed by the offenders in question. It is to that cohort of offenders that this report now turns.

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[73] Data provided to the Panel by Corrections Victoria on 24 September 2015. The costings for prison, community and Corella Place include direct operating, legal and other costs. For this reason, the costings for prisoners are greater than those outlined in the Review of Government Services data.

[74] This figure has been rounded to the nearest $100,000.

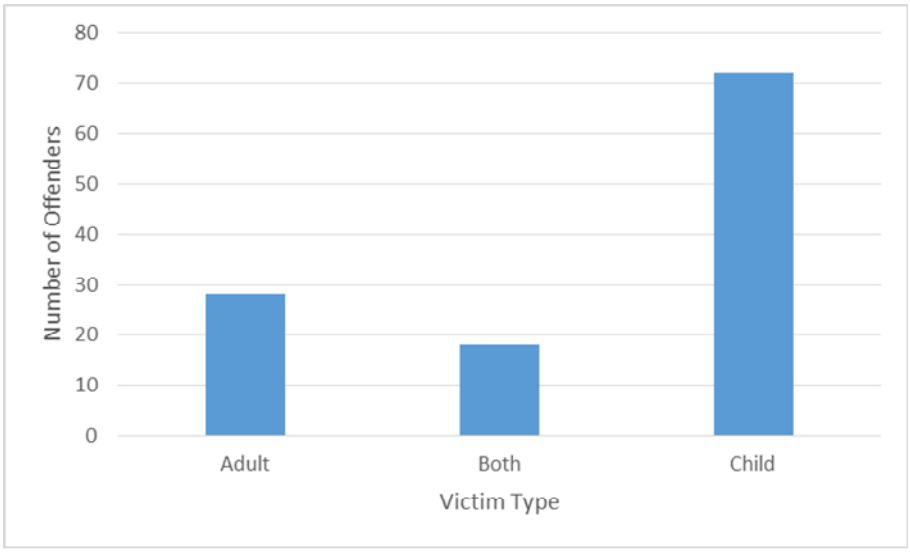
The complex adult victim sex offender cohort

An overview of the cohort the Panel was asked to consider

2.82 The terms of reference request the Panel to focus on a particular cohort of offenders: 'complex adult victim sex offenders', a segment of the 118 offenders subject to post-sentence orders in Victoria.[75] Two of the 118 offenders were on detention orders and the remaining 116 were subject to supervision orders.[76]

2.83 Figure 3 shows the number of offenders according to whether they had offended against children, adults or both.

Figure 3: Distribution of offenders under the SSODSA according to victim type



2.84 Of the total offenders, 46 had offended against adult victims only (28 offenders), or both adult and child victims (18 offenders). These 46 were therefore considered by the Panel to fit within the complex adult victim sex offender management cohort.

2.85 The 72 offenders who have offended only against children will be referred to as the child victim sex offender management cohort. It is noted that while their cases were not individually examined for this review, all offenders subject to post-sentence orders were invited to provide feedback on their experiences of, and views about, the scheme, (as were those of their victims who were registered as such). Furthermore, the Panel's recommendations have equal relevance to, and may equally affect the experience of, post-sentence supervision for this cohort.

[75] Analysis based on data provided by Corrections Victoria to the Panel as at 14 August 2015.

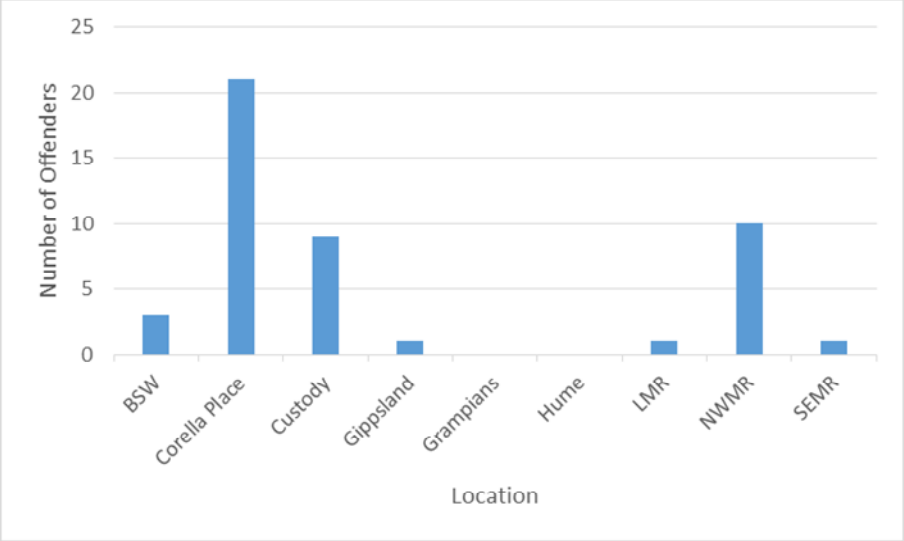
[76] As at 23 October 2015 the total numbers subject to post-sentence orders in Victoria has grown to 122 offenders.

2.86 The following discussion gives an overview of the information about the complex adult victim sex offender cohort which was examined and analysed by the Panel. To ensure that it understood the complexities of the cohort, and how the scheme applied to it, the Panel reviewed comprehensive documentation covering a sample of 11 offenders (approximately 25 per cent of the 46 offenders who are considered by the panel to fit within the complex adult victim sex offender management cohort). This involved the detailed examination of file material, including previous assessments, treatment reports, court transcripts and incident reports.

Supervising location

2.87 The location of the 46 offenders within the complex adult victim sex offender cohort is consistent with that of the remaining offenders who are subject to post-sentence orders; that is, two thirds of those in the Panel's cohort are either in prison (9 offenders) or reside at Corella Place (21 offenders). Figure 4 shows the distribution of offenders according to supervising location.

Figure 4: Distribution of offenders by supervising location[77]



2.88 The Panel visited Corella Place twice, and is the beneficiary of the experience, insights and professionalism of staff and management. The visits were of particular value, given that approximately 40 per cent of the residents there (21 of the 52) are members of the cohort.

2.89 Of those in the broader community, the North West Metropolitan region is responsible for managing over half.

2.90 Of the 46 offenders in the cohort, 31 are registered under the *Sex Offenders Registration Act*. Their registration periods vary from 8 years to life.

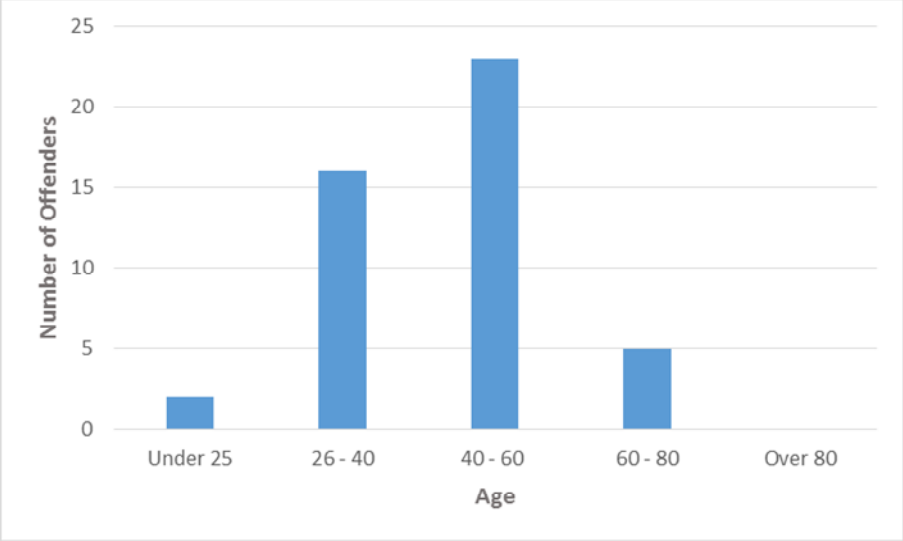
[77] BSW = Barwon South West; LMR = Loddon Mallee Region; NWMR = North West Metropolitan Region; SEMR = South East Metropolitan Region.

Demographic information

2.91 Of the 46 offenders, 13 per cent identify as Indigenous. This is a significantly greater proportion than that which the Indigenous population of the State bears to the Victorian population as a whole. Ensuring that the treatment and management of Indigenous offenders is culturally appropriate, and that supportive connections within the relevant community are established and maintained, is important. This, however, can be more difficult for those residing at Corella Place than it is for others.

2.92 The average age of an offender subject to post sentence supervision in Victoria is 47 years. Age distribution of the complex adult victim sex offender cohort is shown in Figure 5, with the average age of adult victim offenders being 43.

Figure 5: Number of SSODSA offenders by age in complex adult victim sex offender cohort



2.93 Hanson and colleagues have investigated the relationship of age to sexual recidivism using data from 10 follow-up studies on male sex offenders (total sample, n = 4,673).[78] The risk of recidivism for people convicted of rape approached zero at around 50 years. For child sex offenders little reduction was noted until after the age of 50. Extra-familial offending approached zero by age 60; intra-familial offending also virtually disappeared when offenders reached ages between 60 and 70.

[78] R. Karl Hanson et al., 'First Report of the Collaborative Outcome Data Project on the Effectiveness of Psychological Treatment of Sex Offenders' (2002) 14(2) *Sexual Abuse: A Journal of Research and Treatment* 169–195.

Recent information about risk

2.94 An analysis of the most recent detention and supervision order assessment or progress report of the complex adult victim sex offenders cohort reveals that, based on administration of the Risk of Sexual Violence Protocol (RSVP):

- 65 per cent were assessed to be a high risk of sexual recidivism
- 33 per cent were assessed to be in the moderate band (including moderate-high), and
- one offender was assessed to be a low risk of contact offending and a moderate risk of non-contact offending.

2.95 The risk of violent offending for offenders in the complex adult victim sex offender cohort has been difficult to ascertain in a quantitative sense, as it is not routinely assessed as part of the detention and supervision order assessment process (which, consistent with the purpose of the legislation, focuses on risk of sexual reoffending). Nevertheless, feedback in consultations and following the Panel's an in-depth review of offender files highlight this as an issue requiring a legislative response, as outlined in Chapter 3.

Complex offender characteristics

2.96 The following table depicts the prevalence of some complexity measures across key groups, including the eleven offenders, the complex adult victim cohort, the child victim sex offender management cohort, and Corella Place residents, allowing for comparisons across these and the total population of post-sentence offenders.

Table 4: Characteristics of SSODSA offenders[79]

Complexity measure(% of known cases)	Eleven case studies n=11	Adult victim sex offender cohort n=46[80]	Child victim sex offender cohort n=72	Corella Place residents n=52	All post sentence offenders n=118
Registered intellectual disability[81]	45%	26%	32%	29%	30%
Unregistered intellectual disability[82]	27%	18%	10%	13%	13%
Acquired brain injury	27%	15%	8%	12%	11%
Mental health issues[83]	55%	58%	67%	60%	63%
Substance use	100%	89%	61%	78%	72%

Substance use

2.97 All 11 of the offenders in the sample of offenders whose cases were examined in detail by the Panel had problems associated with substance abuse. Across all post-sentence offenders this measure was high, being around 72 per cent, and in the complex adult victim sex offender cohort (which includes the 11 offenders) it was 89 per cent. Even if not directly linked as an offence-pathway for some offenders, substance abuse can result in disinhibition and risk-taking behaviour, or correlate with broader lifestyle instability, including homelessness.

Mental health issues

2.98 A 2004 study indicated that 58 per cent to 94 per cent of sex offenders in forensic settings have a history of substance misuse and mood and personality disorders. On the other hand, less than 2 per cent have a history of psychosis.[84]

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79 This table has been compiled drawing on information collated by Corrections Victoria, with reference to detention and supervision order assessment or progress reports and other relevant materials.

80 This includes the 11 case study offenders.

81 A person who has been assessed by the Secretary to the Department of Health and Human Services as having an intellectual disability and is eligible for services under the *Disability Act 2006* (Vic).

82 An individual with an intellectual disability who has not been assessed by the Secretary to the Department of Health and Human Services as having an intellectual disability or has been so assessed and has been found not to have an intellectual disability within the meaning of the *Disability Act 2006* (Vic), and is therefore not currently eligible to access these services.

83 Based on data contained in assessment reports. This figure may include self-reports of mental health issues by offenders and/or diagnosed mental illnesses.

84 Niklas Langstrom et al., 'Psychiatric Disorders and Recidivism in Sexual Offenders' (2004) 16(2) *Sexual Abuse: A Journal of Research and Treatment* 139–150, 140.

2.99 While mental health issues were lower for the eleven offenders (55 per cent) and the complex adult victim sex offender cohort (58 per cent) compared to the average across all post-sentence offenders (63 per cent), it remains true that numbers were high across the board. (It should be noted that these figures were based on detention and supervision order assessment reports that may have relied on either file material or self-reporting by offenders).

2.100 The Panel's review of offender files identified some offenders whose mental health was of great concern. Staff at Corella Place were also concerned about the mental health of certain residents, who despite their health problems, neither engaged in treatment nor met the criteria for compulsory treatment under the *Mental Health Act 2014* (Vic). The same observation can also be made in relation to Sean Price. Some Corella Place residents experience periods of stability, followed by imminent and significant escalations in risk, including a risk of self-harm or serious interpersonal violence. Others may be on a downward trajectory. Staff have few options in managing these issues other than to attempt to engage local mental health services, and to encourage compliance with medication regimes. Enforcement is beyond their power.

2.101 Despite their best efforts, the training and knowledge of the correctional staff supervising the residents of Corella Place is not, at least as a general rule, tailored towards managing serious mental health issues.

2.102 The Panel sought to cross reference the information on mental health available in the detention and supervision assessment reports with data from Department of Health and Human Services' Client Management Interface/Operational Data Store (CMI/ODS) database, to provide a reliable indicator of mental health diagnoses of people in the complex adult victim sex offender cohort. The data indicated that 96 of the 118 people subject to SSODSA orders were known to the database. Of the 96 offenders, the vast majority (80 offenders, or 83 per cent) had a recorded mental health diagnosis and close to half had three or more diagnoses.[85]

2.103 This data confirms the high prevalence of mental health issues in the cohort of offenders subject to the SSODSA, and highlights the need for access to mental health treatment, particularly where failure to obtain such access could lead to escalated risk. For these reasons, the Panel is of the opinion that the options now available to those on supervision orders, including Corella Place residents, are inadequate during periods of escalated risk and/or mental health instability. These concerns are addressed in Chapter 5. The recommendations set out there are designed to strengthen the coordination of case management services under the governance framework for, and the provision of, flexible accommodation options to cater and respond to individual needs and risks as part of a step up-step down approach.

[85] These diagnoses are 'points in time' and it is not possible to determine any recovery that the offender might have made or whether their mental health condition is still problematic today on the basis of this data.

Cognitive impairment

2.104 There were offenders in the complex adult victim sex offender cohort with a registered intellectual disability (26 per cent), an unregistered intellectual disability[86] (18 per cent) or an acquired brain injury (15 per cent). These offenders are of interest to the Panel, because such cognitive impairments add to the complexity of their management.

2.105 Disability Pathways, in the Specialised Offender Assessment and Treatment Service in Corrections Victoria, tailor treatment for offenders with cognitive impairments; however, realising treatment gains can be a slower process for this cohort.[87] There is also a tension between the need to deliver more cost effective group treatment in prison settings, and tailored interventions to the offender, which sometimes require individual treatment and incur commensurate cost.

2.106 It was evident from the file review and consultations that there can be variability in the engagement to the Department of Health and Human Services' Disability Client Services with these offenders. Consultations with those who were involved in their case management highlighted the limits that restrictions on information sharing can place on the ability for agencies to collaborate in the provision of disability services to those who are under case management. Case workers at Corella Place stated that it can be difficult at times to engage the disability support services provided by the Department of Health and Human Services. It is therefore sometimes difficult to establish interagency collaboration on case management, and to find suitable accommodation and support in the community for this cohort. It was noted during consultations with representatives from the Department of Health and Human Services that the focus of disability support services is to put in place supports in response to the individual's disability needs, which are not always compatible with the strict requirements of the supervision order. The lack of an appropriate accommodation option for offenders with a disability as an alternative to Corella Place was also highlighted.

History of abuse

2.107 Adding to this already complex picture, a recurring theme in the histories of the members of the cohort has been their own experiences of abuse in childhood or adolescence, such as sexual abuse, domestic violence, negligence and a lack of pro-social modelling.

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[86] An individual with an intellectual disability who has not been assessed by the Secretary to the Department of Health and Human Services as having an intellectual disability or has been so assessed and has been found not to have an intellectual disability within the meaning of the *Disability Act*, and is therefore not currently eligible to access these services.

[87] Department of Justice and Regulation, *Embracing the challenges – Corrections Victoria Disability Framework 2013 – 2015* (2013), notes a program for prisoners with an intellectual disability that addresses violent offending will take around seven months to complete compared to three to four months for mainstream prisoners, due to the need for repetition of material.

2.108 Some of those members (13 per cent) have been made wards of the state. Some have experienced abuse in care settings. Many have commenced offending, whether sexual or general offending, in adolescence. Eighty three per cent reported being subjected to child abuse, whether it be neglect, trauma, sexual abuse or domestic violence, or some combination of these. Nearly a quarter (24 per cent) had experienced homelessness, transient living conditions as a child, or living in a boarding house. A similar proportion (24 per cent) has also experienced foster care or adoption.

2.109 A wide range of studies have examined the frequency with which offenders give histories of having been sexually or physically abused during childhood.[88] High rates, particularly of such sexual abuse, are reported from studies of both male and female prisoners in Australia.[89] The rates of reported experiences of child sexual abuse are particularly high in those convicted of sexual offences.[90] Some scepticism is justified, as child sex offenders might provide histories of having been sexually abused in the hope of mitigating the punishment for their own acts of abuse.

2.110 A 2012 Victorian study has posited a link between being a victim of child sex abuse, especially for boys abused in early adolescence, and later offending. [91] The research has suggested that while a large majority of victims of childhood sexual abuse do not go on to offend, there is a higher likelihood of later offending for victims of child abuse, compared with other members of the general community. For example, male and female child sexual abuse victims were significantly more likely than non-abused people to be charged with all types of offences, in particular violence and sexual offences.

2.111 This study, which provides by far the best evidence to date of an association between having been a victim of child abuse and later sexual offending, emphasises the importance of early interventions. The research was a prospective study which followed up a cohort of 2,579 children known to have been sexually abused, and ascertained whether they had offended as adults. It involved subjects on a register of children ascertained by the Victorian Institute of Forensic Medicine as having been sexually abused during the period 1964 to 1995. The study identified that 9.2 per cent of males abused after the age of 12 years went on to be convicted of a sexual offence (further results are set out in Table 5).[92] Boys like these need help which in future should include interventions to assist in their developing appropriate sexual attitudes and behaviours, for their sake and the sake of potential future victims.

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88 See for example, Crime and Misconduct Commission, *Breaking the Cycle*, *A Study of Victimisation and Violence in the Lives of Non-Custodial Offenders* (July 2007) and Richards, Kelly, *Misperceptions About Child Sex Offenders, Trends and Issues in Crime and Criminal Justice* no. 429 (September 2011).

89 Crime and Misconduct Commission, *Breaking the Cycle, A Study of Victimisation and Violence in the Lives of Non-Custodial Offenders* (July 2007) 23–26.

90 James Ogloff et al., *Child Sexual Abuse and Subsequent Offending and Victimisation: A 45 year follow up study, Trends and Issues in Crime and Criminal Justice* no. 440 (Australian Institute of Criminology, June 2012), 1–2.

91 Ibid.

92 Ibid.

Table 5: Results on association between child sexual abuse and contact with criminal justice system

	Child sexual abuse cases[93] (2,759)	Controls[94] (2,677)	Odds Ratios	95% Confidence Intervals
Violent offences	9.80%	1.30%	8.22	5.76-11.74
Theft	15.50%	2.80%	6.4	4.95-8.19
Sexual offences	1.10%	0.10%	7.59	2.68-21.54

2.112 Another earlier study using the same Victorian Institute of Forensic Medicine data source as the 2012 study, followed up a slightly smaller sample of 2,677 children who had been sexually abused between 1964 and 1955, the results of which are set out in Table 6, which illustrates the difference in rates of mental health disorders of children who experienced sexual abuse and the matched participants from the general community.

Table 6: Comparison of rates of mental health disorders between child sexual abuse and control groups

	Child sexual abuse cases[95] (2,677)	Controls[96] (2,688)	Odds Ratios	95% Confidence Intervals
Mental health Contact	23.3%	7.7%	3.7	3.09–4.32
Psychotic Disorders	2.9%	1.4%	2.1	1.4–3.1
Posttraumatic Stress Disorder	4.0%	0.7%	5.56	3.44–8.99
Other Anxiety Disorders	5.8%	2.2%	2.67	1.97–3.61
Personality Disorders	3.6%	0.7	5.47	3.30–9.08

[93] Child sexual abuse cases were identified using the records of the Victorian Institute of Forensic Medicine, which since 1957 has provided medical examinations in cases of suspected child sexual abuse.

[94] The comparison group was drawn from a random sample of 4,938 Victorian residents on the electoral role.

[95] Child sexual abuse cases were identified using the records of the Victorian Institute of Forensic Medicine, which since 1957 has provided medical examinations in cases of suspected child sexual abuse.

[96] The comparison group was drawn from a random sample of 4,938 Victorian residents on the electoral role.

2.113 This study indicates that there is a significant association between having been a victim of child sexual abuse and later mental health problems, including psychotic disorders, anxiety, substance abuse and personality disorders. Those children identified by teachers, child protection, and police as sexually abused are even more likely than those identified in the community survey to have come from impoverished, disrupted, abusive, and disorganised backgrounds.[97]

2.114 The associations between being sexually abused in childhood and both mental health problems and criminality in adult life are likely to reflect the interaction of a range of influences including various forms of abuse, family disadvantage and social disadvantage.

2.115 Causal links are impossible to draw and offenders should of course be held responsible for their crimes under the law. There is, nevertheless, an overlap between criminality and mental health problems, abuse, and social and family disadvantage. This overlap is one which, in the Panel's view, must be approached by the whole of government with more purpose and commitment than is currently the case. In considering the disadvantaged backgrounds of Victorian prisoners in her recent review, the Ombudsman noted:

> High school completion rates are negligible: 6 per cent for men and 14 per cent for women. The average prisoner was unemployed at the time of committing the offence and has a history of substance abuse. Many female prisoners have a history of abuse, and over 40 per cent are homeless upon release. Children of prisoners are six times more likely to be imprisoned than their peers. Mental illness and cognitive disabilities are also common.[98]

2.116 Consideration should be given to the effects of the attitudes, assumptions, and interpersonal and social deficits left behind by the childhood abuse and disadvantage suffered by so many of this cohort, particularly recidivist offenders. It is imperative, if the prevalence of offending is to be reduced, that governments invest in inter-agency solutions to ameliorate the conditions by which offending is cultivated. Governments cannot do everything. Individual responsibility remains. But those who are not responsible for being placed in circumstances which cultivate criminality should be supported in their own efforts to escape. The Panel notes a positive development in this area comprising the recent announcement made by government, following the Ombudsman's recommendations, to commit $78m to test the literacy and numeracy of Victorian prisoners and provide education and vocational skills.[99]

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97 Margaret Cutajar et al., 'Psychopathology in a Large Cohort of Sexually Abused Children Followed up to 43 Years' (2010) 34(11), *Child Abuse & Neglect,* 813–822.

98 Victorian Ombudsman (September 2015) above n 72, 5.

99 Minister for Corrections, the Hon Wade Noonan MP, Jobs To Cut Reoffending At The Heart Of Prison Education, Media Release (9 November 2015).

Complex offending profiles

2.117 Within the complex adult victim sex offender cohort there are sex offenders whose risk is managed more or less effectively under the SSODSA. While these offenders may have complex individual characteristics, such as lifestyle instability, mental health issues, or complex offending histories, the scheme has generally been capable of containing their risk, perhaps because their primary risk is a sexual one (even if violence was used by some in commissioning the sexual offences).

2.118 Some offenders in the cohort display general criminality and antisocial lifestyles. One young offender had over thirty court appearances and multiple convictions for a range of offences, only two of them with a sexual component. The SSODSA's focus on sexual risk is therefore a constraint upon its ability to manage such offenders.

2.119 Likewise, some other members of the cohort have been assessed as posing a risk of serious interpersonal harm that may not include any sexual element. The risk may be either ongoing or more episodic, but in either case have the potential to cause real harm. The limitations of the SSODSA in responding to instances when an imminent escalation of risk, whether of sexual or violent criminality may require a commensurately swift response, are addressed in Chapter 3.

2.120 The cohort also includes some who have been assessed as posing a risk of serious harm to their intimate partner. As indicated in the Sentencing Advisory Council's report on high risk offenders,[100] schemes that primarily aim to protect potential victims from attacks by strangers are directed at only one aspect of a much wider problem. Assaults by strangers occur less frequently than those on victims known to the offender. A post-sentence scheme which focusses on reducing sexual reoffending generally, when the more urgent need is protection against violence (sexual or otherwise) perpetrated upon a family member, therefore has limited value. A recent report published by the Australian Institute of Criminology identified that 'intimate partners accounted for 23 percent of all homicide victims recorded within the [National Homicide Monitoring Program] since 1 July 2003'.[101] The report also found that 75 per cent of the victims of intimate partner homicides were female, and 77 per cent of the offenders were male.

[100] Sentencing Advisory Council (May 2007), above n 9 [2.5.35].

[101] Tracy Cussen and Willow Bryant, *Domestic/family homicide in Australia*, Research in Practice no. 38 (2015) 2.

2.121 Historically, the justice system has failed to afford the same level of sanction for intimate partner violence or the same level of protection to its victims as that afforded to 'stranger' victims. The Panel notes that there has been recognition of these failures, both nationally and in Victoria, reflected by the establishment of the Family Violence Royal Commission.[102] The question of whether, from a policy point of view, a post-sentence scheme such as the SSODSA is the most effective or appropriate way of protecting future victims of family violence, is a broader question that ought to be considered by government in the context of the Family Violence Royal Commission's findings. However the Panel's general approach is that the application of the SSODSA to prevent serious interpersonal harm should not only be afforded to 'stranger' victims, but also to 'known' victims. Indeed, legislation of the SSODSA kind should be especially concerned to reduce extreme forms of interpersonal harm, including murder, inflicted by an offender on a family member.

2.122 Offenders with complex offending profiles pose problems the solutions to which depend on coordination between relevant agencies, including corrections, mental health and disability services, housing, drug and alcohol services, and police. Such inter-agency coordination is necessary for improving oversight, strengthening responses to risk and more effective service delivery. While the agencies are doing their best under different legislative frameworks, there is room for improvement to support community safety and maximise the prospects of reducing risk.

Perspectives of offenders subject to the scheme

2.123 So that the Panel might better understand the perspective of offenders who are subject to post-sentence detention or supervision orders, a confidential survey was developed and distributed to them. A total of 117 surveys were distributed. Thirty-five completed surveys, and one letter, were returned.

2.124 Those who were invited to submit a response were informed that their participation was completely voluntary and that whether or not they chose to respond would have no impact on their order.

Treatment and supervision

2.125 Responses to treatment were largely positive. Over 80 per cent of those engaged in offence-specific treatment said that it was of value. Of those engaged in counselling, 77 per cent also reported favourably. Eighty per cent of offenders receiving anger management treatment (five offenders) assessed it as of assistance, while one indicated that he was undecided. The sample was, however, very small.

2.126 Sixty-eight per cent of respondents who said they were receiving supervision indicated that this was beneficial.

[102] The Family Violence Royal Commission is inquiring into Victoria's response to family violence and providing practical recommendations on how this can be improved. The Commission commenced work on 22 February 2015 and is due to report no later than 29 February 2016.

2.127 Treatment and supervision services were described as helping to change offender's thinking patterns, allowing for improved insight into behaviour, helping to provide risk management strategies and assisting to minimise offender's chances of reoffending. The respondents also commonly reported that these services provide additional support for them.

2.128 One offender indicated that 'my supervision and caseworker are the only people I can talk to if any problems. It is good for me to have support'. Another comment was made by one offender in which he stated that 'all programs are beneficial if you want them to be and over all does help to keep you on the straight and narrow'.

2.129 When respondents were asked to explain why some services were not beneficial, common themes appeared.

2.130 Respondents commonly reported that treatment was not tailored to their needs and that 'it's the same thing asked all the time'. Some offenders felt that they were not supported adequately and had negative experiences with Corrections Victoria staff, which impeded their progress.

2.131 Some respondents perceived supervision as being either a form of punishment, or an imposition to achieving goals, or both. One offender stated 'I had a very good case worker but I also had some very bad and spiteful ones as well which hasn't helped me on my road to transitioning.'

Pro-social activities and relationships

2.132 Respondents were asked to explain what things were considered helpful for living a crime free life. The common themes which emerged were related to having something to keep themselves busy and their mind occupied. One offender noted that 'having these things in place keeps my mind occupied on healthy living and thinking. They also distract the mind from any thoughts of committing a crime'. Others described having something meaningful to work towards which also helped them to gain independence including financial stability. It is in this context that pro-social activities and relationships can support rehabilitation.

2.133 Of the 35 respondents, 22 (62.9 per cent) reported engaging in activities and of these respondents, 20 (90.9 per cent) reported that such engagement was of benefit.

2.134 Only three (8.6 per cent) respondents reported having employment (31 gave a negative answer, and one did not respond to the question). All three that reported employment said it was helping them. One respondent who reported having employment was residing at Corella Place, one was in the community and one was in prison.

2.135 When asked if respondents have contact with other people in the community such as community groups, friends or family members, 28 (80 per cent) answered in the affirmative. Of these 27 respondents 22 (78.6 per cent) reported that this was of value.

2.136 Respondents were asked to explain how social activities and their relationships were helping them. The responses suggest they:

- provided mental stability and helped avoid reoffending
- helped to build social connections (with positive relationships helping to reduce the risk of reoffending), and
- added to a generally positive attitude, together with an increased perception of connectivity with the community.

2.137 It appears that these activities and relationships also instilled a sense of hope for the future as well as providing a sense of purpose. [redacted]

2.138 Offenders indicated that having support when needed – support which is provided by the supervision order – is also helping to build positive relationships. For example it was noted by one offender that his Specialist Case Manager had 'encouraged me to maintain family/friends contact on a regular basis'.

2.139 Those that thought the order was not helpful consistently reported believing that, because of the conditions of their order, their ability to develop and maintain relationships was severely limited. One respondent said the order was too restrictive to allow for meaningful associations, and another felt that due to having too many, and unnecessary, conditions, the ability to have positive relationships was blocked.

2.140 Other negative responses related to the order impeding the ability to engage in beneficial activities, with many noting that a prohibition on contact with children was especially restrictive on engagement in various social activities. Others felt that the conditions of their orders negatively affected their ability to gain and maintain employment.

2.141 It was also reported that maintaining existing relationships is quite difficult, particularly for those residing at Corella Place. Sometimes the staff needed to facilitate contact are not available and geographical distance from family and friends can also be a barrier.

Order conditions

2.142 Of the 35 respondents, 27 (78.9 per cent) indicated that they understood the conditions of their order and of these 27 respondents, 21 (77.8 per cent) said there were conditions on their orders that frustrated them.

2.143 While some offenders made comments that reflected their understanding that the order conditions were in place for community protection and to help prevent them from engaging in unlawful activity, others described the conditions as being there to stop them from living a 'normal life':

> The conditions that impact my daily life are frustrating. Affect work, play, social life. There needs to be a more common sense approach and probably a more individual approach to each person rather than a blanket ban. I appreciate that different offenders are at different levels and so the orders must cater for individuals rather than collective group. The conditions that I do find frustrating are those that continue to punish me and prevent me from undertaking normal lawful activities.

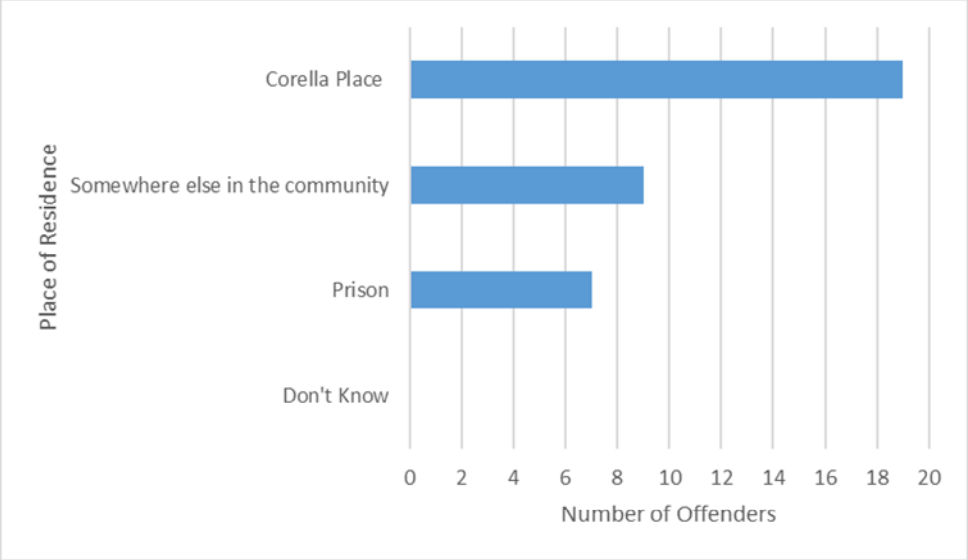
2.144 When respondents were asked to explain why conditions frustrate them, key criticisms included:

- conditions are not relevant to the individual
- conditions are punitive and/or overly restrictive
- conditions prohibit engagement in pro-social activities (like employment), and
- they could not prove how they have changed, or that they have been rehabilitated, because the conditions of the order are such that demonstrating their rehabilitation is not possible.

Accommodation

2.145 Figure 6 shows the place of residence as indicated by the 35 offenders who responded to the survey. It shows that the majority (19) of respondents were residing at Corella Place at the time of completing the survey. Nine offenders indicated they were living somewhere else in the community and seven offenders indicated they were in prison.

Figure 6: Place of residence of survey respondents



2.146 Of the 35 who responded to the survey, 23 said they felt safe in their place of residence at the time of completing the survey. Thirteen respondents indicated that having residential accommodation was helping them. Of these 13 respondents, eight were in the community, three were in Corella Place, and one was in prison. One offender indicated they were living both in Corella Place and the community. Respondents' views about accommodation under the SSODSA are documented in more detail in Chapter 5.

Perspectives of registered victims in relation to the scheme

2.147 Registered victims whose offenders were subject to the SSODSA were invited to provide their perspective on their interaction with the system. A total of three registered victims attended for consultation with the Panel.

2.148 A particularly noteworthy point was made by the victims throughout their interviews. It was that their rights have been traduced by the offenders; and this affront to their rights is then compounded by the offenders' rights subsequently receiving greater consideration than that which the authorities accord to those who have suffered at the offenders' hands.

2.149 Another important point that could be extrapolated from these consultations arises from the victims' interaction with the judicial process. It was mentioned in more than one consultation that at times these encounters could have been handled more tactfully. It was suggested that those who represent the criminal justice system and are likely to come into contact with registered victims receive appropriate training. This is a point the Panel considers important if the scheme which the Panel recommends is to best serve the community and the victims of these offenders. It might usefully be brought to the attention of the Judicial College of Victoria.

2.150 A theme of information sharing and access to information was also evident throughout the consultations, with the victims expressing a desire to receive appropriate and clearly explained information regarding the scheme and the relevant offender. Inter-agency information sharing, or the lack of it, was also raised as an issue that can complicate the lives of registered victims. For example, when agencies who are responsible for the management of offenders on the scheme are, within the current legislative requirements, unable – or do not – share appropriate information, both the management of the offender and the protection of the victim and community are compromised.

2.151 The responses from offenders, and the interviews with victims, have assisted the Panel in its approach to the review. They have provided the Panel with perspectives which have been taken into consideration throughout the review and the development of the Panel's recommendations.

How do we know if the scheme is working?

2.152 The Victorian Association for the Care and Resettlement of Offenders works to build links between criminal justice systems and communities, ensuring that all people can access the services and support needed at any point in the criminal justice pathway. The Victorian Association for the Care and Resettlement of Offenders often provides services to offenders subject to supervision orders, including at Corella Place. The Panel met with senior members of its staff.

2.153 Staff consulted by the Panel identified the following common features of the paths taken by clients who, although subject to supervision orders, have gone on to reoffend:

- inability or unwillingness to set goals, to examine needs, or prepare plans for the long term
- unwillingness to discuss risk management, on the basis that there was no further risk, and
- unwillingness to acknowledge support requirements, sometimes with elements related to delusional thinking.

2.154 Staff also reported that there were common themes that emerged with clients who were subject to supervision orders where the scheme had supported them to reduce their risk, including their:

- ability to achieve goals – not necessarily across the board, but at least to some extent being able to make positive ground
- being prepared to engage with services and make some level of commitment to progress and proactive engagement, rather than engagement that is crisis driven, and
- active awareness of risk management strategies.

2.155 The various themes associated with success were reported to be achieved following long term support and supervision, with long term support allowing change to be tracked over time and positive change to be noted and celebrated.

2.156 The provision of assistance from a variety of centres of support that had strong communication with each other, and with the client being aware of that communication; was considered essential.[103]

2.157 The diversity of offenders subject to the scheme, including their age, offending profiles, the absence or presence of protective factors, individual characteristics and amenability to treatment all impact on what 'success' should look like. For some it will be avoiding further offending, whether by an exercise of their own will, or through their opportunities to reoffend being restricted by the conditions of their orders. For others, engagement with supervision, treatment and order conditions, along with proactive goal-setting and risk management, may support their ability to transition from the post-sentence scheme.

2.158 Since the SSODSA came into effect five offenders' orders have expired without renewal, as their risk had reduced while subject to the scheme. The orders of a further 12 were revoked upon review, as their risk had also reduced while subject to the scheme. It may be that for these offenders, their access to rehabilitation and reintegration programs contributed towards such reduction in their risk. That, of course, is precisely the aim of the scheme.

[103] Correspondence from Victorian Association for the Care and Resettlement of Offenders to the Panel, 20 August 2015.

2.159 While any breach of a supervision order by serious offending is unacceptable as an outcome – not only (and especially) for the victim of that offending but also for those who have invested much professional and personal endeavour into the management of the offender – the fact is that serious breaches are rare. This suggests that the Department of Justice and Regulation has, in the vast majority of cases, managed (and is managing) the risk of reoffending appropriately. However, the risk that may be managed under the SSODSA is limited to sexual reoffending. The Panel also notes that, for some offenders, being on the scheme for a long time does not equate to a 'failure' of the system, but reflects the reality of the very complex challenges that such offenders pose to the Victorian community.

3. Reforming the scheme to target the risk of serious interpersonal harm

Introduction

3.1 The second of the Panel's terms of reference asks it to advise on how the SSODSA could be improved or another post-sentence legislative framework be created to strengthen the protection of the community from complex adult victim sex offenders and improve the management of such offenders.

3.2 The Panel gave specific consideration to these issues by examining how the SSODSA operated in practice in relation to the complex adult victim sex offender cohort. The Panel also consulted with those who had professional and personal experience under the SSODSA to understand their perspectives as to the limitations of the current legislative regime.

3.3 A key finding made by the Panel on its first term of reference in relation to Sean Price (reported on separately) is that the ability to address his risk of committing a serious violent offence was seriously hampered under the legislative framework provided by the SSODSA. The Panel has identified that other offenders, currently subject to the SSODSA, pose not only a risk of sexual offending but also a risk of committing a serious violent offence which in some cases cannot be addressed at all, and in others inadequately at best. In the Panel's opinion, this is a significant gap. It should be filled by legislative provisions designed to protect the public against either sexual or violent offending, or a combination of them.

3.4 The Panel is of the view that the legislation must be reformed to support a post-sentence supervision and detention regime which seeks to protect the community from offending that results in serious interpersonal harm, whether sexual or not. The Panel has formulated recommendations that, in its view, will so far as possible achieve its second pillar of reform – 'Reforming the scheme to target the risk of serious interpersonal harm'. The recommendations seek to achieve this by increasing the precision with which legislation targets those offenders who pose the greatest likelihood of causing serious interpersonal harm to the community. The recommendations in this chapter seek to achieve this by:

- reforming the eligibility criteria for post-sentence supervision or detention orders to include serious violent offenders, in addition to, sex offenders, and
- increasing the options available to manage and respond to an escalation of risk of serious interpersonal harm.

Limitations of the current legislative framework in the harm that can be targeted

Eligibility is restricted to 'relevant' sexual offending

3.5 Under the existing legislation, only offenders who have committed a 'relevant' offence (which forms the basis for part or all of their current term of imprisonment) are eligible for post-sentence supervision or detention.[1] 'Relevant' offences are set out in Schedule 1 of the SSODSA, and each of the offences in the list share a common characteristic – they have a sexual element.

3.6 Further, a court may only make a supervision or detention order in respect of an eligible offender if it is satisfied that, in the absence of such an order, the offender would pose an unacceptable risk of committing a 'relevant' sexual offence.[2] Accordingly, a court cannot, for example, make a supervision order in respect of an offender who is presently serving a sentence for sexual assault unless it finds the offender to be an unacceptable risk of committing another 'relevant', that is, sexual, offence. Likewise, the court cannot have regard to an offender's risk of future non-sexual offending (including violent offending), except insofar as it bears on that sexual risk.[3]

Management of risk is restricted to 'relevant' sexual offending

3.7 Importantly, the restriction to 'relevant' sexual offending also affects the management of those subject to supervision under the SSODSA. In this context, two points should be made. First, while it is a 'core condition' of every supervision order that the offender must not commit a relevant sexual offence in Victoria or elsewhere,[4] no other category of offence comes within its scope. It follows that, if an offender commits a serious violent offence whilst subject to an order, this on its own will not constitute a breach of the supervision order.[5] Secondly, it is the view of the Panel that, properly construed, the legislation requires that any additional conditions imposed at the discretion of the court (or instructions and directions made by the Adult Parole Board) must likewise be referable to an offender's risk of 'relevant' offending.[6]

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1 See *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 4.

2 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) ss 9, 35, 36.

3 These limitations were noted in numerous consultations conducted by the Panel.

4 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 16(2)(a).

5 This limitation was noted in numerous consultations with Corrections Victoria staff involved at various levels in the management of offenders subject to supervision and detention orders.

6 The primary purpose of conditions is to reduce the reoffending of the offender. In addition to being reasonably referable to the gravity of the risk of reoffending, these must also 'constitute the minimum interference with the offender's liberty, privacy or freedom of movement that is necessary to ensure the purpose of the conditions: *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) ss 15(3), 15(6), 20(2). The Panel nevertheless concedes that while the courts have considered the imposition of conditions at length, they have not yet had cause to address this specific issue, which therefore means it remains unresolved by judicial authority.

Operation of the legislative restrictions in practice

3.8 It is apparent to the Panel that, in practice, the restriction of the SSODSA to 'relevant' sexual offending gives rise to a number of limitations in the Act's ability to enhance the protection of the community. These limitations are evident at a number of different junctures across the operation of the scheme:

- An offender serving a sentence for a serious violent offence (that is, a non-relevant offence) is not eligible to be considered for post-sentence supervision or detention, even if that person poses a risk of serious sexual harm to the community. A most extreme example of this anomaly arises in the context of sexually motivated murders. A number of examples were brought to the attention of the Panel of homicides with a sexual element, or which involved the commission of a sexual offence, but which did not result in prosecution for a sexual offence.[7] This is not to say that these offenders are necessarily an unacceptable risk of committing a sexual (or other offence) at the time of release, but rather an observation that, presently, those serving a sentence for the gravest of sexually motivated crimes may not even be eligible for consideration for post-sentence supervision or detention.
- The same point can of course be made about offenders serving a sentence for a serious violent offence (that is, a non-relevant offence), which has no sexual connotations at all. The SSODSA does not apply to them, and they are for that reason not eligible to be considered for post-sentence supervision or detention, even if they pose a risk of further serious violent harm to the community. An example of this arises if and when an offender is released following the expiry of a sentence for murder and, at the time of release, is considered to be at a high risk of committing a further serious violent offence. While such offenders may have outstanding treatment needs that, if not addressed, indicate that they continue to pose an unacceptable risk of harm to the community, there are presently no means available to supervise them, or compel their participation in ongoing post-sentence programs.
- It was evident from the issues raised in the Panel's consultations that the requirement that conditions of a supervision order, and the instructions and directions given under them, be referable to the risk of sexual offending, limits or excludes the ability to manage other risks that are equally unacceptable. For example, appropriate conditions may not apply to an offender who is both subject to a supervision order and who has been assessed at high risk of committing an act of violence against an intimate partner. Although the conditions of the supervision order that are directed at reducing the risk of committing a sexual offence may have the ancillary benefit of reducing the risk of violence to the intimate partner (for example, through the imposition of a drug and alcohol testing condition), the legislation does not provide for the making of conditions which directly address the offender's risk of violent behaviour to the intimate partner (for example, a condition that the offender attend a men's behaviour change program).

[7] This may in part be due to previous pleading conventions at the time when homicides were capital offences, and when it was the Director of Public Prosecutions' policy that in homicide cases, only the principal offence should be alleged on an indictment, despite there being evidence of other lesser or peripheral offences (including a sexual offence) also having been committed in circumstances which would normally permit their joinder in the same indictment.

- The requirement that supervision orders be referable to the risk of sexual offending also limits the ability to manage behaviour which does not constitute 'relevant' sexual offending, but which is indicative of an overall escalation of a risk of violence, sexual or otherwise. The result may be an inability to intervene before the risk eventuates. This was a concern expressed particularly strongly in the Panel consultations with those who are tasked with managing, and responding to incidents involving, offenders under supervision in Corella Place and elsewhere in the community.
- Another example of the SSODSA's limitations can be seen in relation to the circumstances surrounding the supervision of Sean Price. This is the subject of the Panel's first term of reference. Price had been assessed as at a moderate risk of sexual offending, but as at a high risk of violent offending. Like the hypothetical offender mentioned above, despite the risk of violent offending posed by Price to the community, it was not possible to seek conditions or instructions and directions that were purely directed to addressing his risk of violent offending. Even more importantly, his risk of sexual offending was insufficient to support the making of an application for a detention order, which may have at least offered some temporary containment of his risk to the community. The risk of violent offending posed by Price, even though by all accounts grave, was not relevant to the test for the making of a detention order.

3.9 The Panel notes that whilst the Victorian courts have the power under section 18A of the *Sentencing Act 1991* (Vic) to order an indefinite sentence of imprisonment for an offender found guilty of one of a number of 'serious offences' (which include a range of violent offences such as murder, manslaughter, intentionally causing serious injury, armed robbery, rape and sexual offences against children), in practice very few offenders have received indefinite sentences in Victoria.[8] In addition, in the recent decision of *Carolan v The Queen*,[9] which discharged the last prisoner subject to an indefinite sentence and made him subject to a five year integration period, the Court of Appeal noted:

> Where the risk posed by the appellant can be managed by means other than an indefinite sentence — including, in particular, by use of the SSODSA regime of supervision and detention — it should be. We should guard against the 'banalisation of indefinite imprisonment'.[10]

3.10 This suggests that indefinite sentencing is now of limited utility as a sentencing disposition or as a means of managing a risk of future sexual or violent offending.

[8] As at September 2012, just five offenders in Victoria have been sentenced to an indefinite sentence, one of whom successfully appealed and received a fixed-term sentence. All five offenders had committed sexual offences and had previous convictions for such relevant offences.

[9] *Carolan v the Queen* [2015] VSCA 167 (26 June 2015), 38.

[10] *Buckley v the Queen* (2006) 224 ALR 416, 426 cited in *Carolan v the Queen* [2015] VSCA 167 (26 June 2015).

The Panel's view: targeting eligibility to the risk of serious interpersonal harm

3.11 The Panel considers that the post-sentence supervision and detention scheme in Victoria should operate to reduce the number of victims of the most serious interpersonal harm caused by acts of violence, whether sexual or not. In the Panel's view, this is best achieved by directing the greatest resources and expertise towards those offenders who present the greatest likelihood of committing an offence involving serious interpersonal harm and it should be irrelevant to categorise offences according to whether they involve sex, or violence, or both. The existing post-sentence supervision and detention scheme should therefore be reformed to the extent required to achieve these ends.

Broadening eligibility to incorporate serious violent offences and serious sexual offences

3.12 In considering possible changes to the eligibility criteria to target the risk of serious interpersonal harm, the Panel has had regard to a number of Australian as well as international approaches, including those adopted in Scotland, England, Wales, New Zealand, New South Wales and the recent introduction of a high risk offender scheme in South Australia.

3.13 In addition, and of particular relevance and assistance, were the comprehensive reports authored by the Victorian and New South Wales sentencing advisory councils in relation to the development of high risk offender schemes.[11]

3.14 Research has consistently indicated that most sexual and violent offenders are generalists, not specialists, in their offending.[12] A minority of sex offenders confine their antisocial behaviour largely to their sexual crimes. These specialist sex offenders predominantly target children in the onset of, or after, puberty, or are serial rapists, or offenders who commit less serious offences repeatedly, such as exhibitionists. By contrast, the majority of those who offend sexually have histories of committing property and/or violent offences not infrequently together with drug and alcohol related infringements. Despite this, the current legislation is underpinned by the assumption that sex offenders are most likely to reoffend with further sexual offences. The risk of recidivism posed by violent offenders is not addressed at all.

[11] Sentencing Advisory Council, *High-Risk Offenders: Post-Sentence Supervision and Detention: Final Report* (May 2007); Sentencing Council of New South Wales, *High-Risk Violent Offenders Sentencing and Post-Custody Management Options: Report* (May 2012).

[12] See for example, the Sentencing Advisory Council, *High-Risk Offenders: Post-Sentence Supervision and Detention: Discussion and Options Paper* (January 2007) [3.33]–[3.41].

3.15 The behaviour and offending histories of the complex adult victim sex offender cohort examined by the Panel provided further evidence that there are currently offenders who are subject to the SSODSA who have past and current offending profiles that include both sexual and non-sexual violent offending. It was not uncommon for the offender's sexual offending to form part of a far broader pattern of violent behaviour. This included, in some cases, family violence, including sexual violence committed against intimate partners and other acts of physical violence against family members, such as children.[13]

3.16 Most sexual offences, by their very nature, are violent offences. Each of the registered victims[14] consulted by the Panel was the subject of assaults of a seriously violent and sexual kind. The consultations with them indicated that it was of paramount importance to reconsider the criteria that renders a person eligible to be considered for a scheme designed to protect the community from acts of violence.

3.17 Many of those consulted by the Panel flagged the need to include violence as either a relevant offence to be included for eligibility on the scheme or as relevant offence for the purposes of managing offenders on orders. In such discussions, the following points were made:

- the current limitation of the legislation is contrary to the public's expectation that the SSODSA exists to protect the community from harm, regardless of whether that harm was caused by a sexual or violent offence, and
- some serious violent offenders posed a greater risk to the community than some of the offenders currently subject to the SSODSA.

3.18 In the Panel's view, there is no justification for the exclusion of serious violent offences from eligibility for any scheme that has the enhancement of community protection as its purpose.[15]

Recommendation 1

Eligibility for the post-sentence supervision and detention scheme should be broadened to include serious violent offenders, in addition to sex offenders.

[13] For this reason, the Panel met with the Family Violence Royal Commission and discussed the issues common to both the Panel and the Commission.

[14] A 'registered victim' means a victim of crime who has been registered on the Department of Justice and Regulation's Victims Register. The register gives registered victims information about offenders. In order to be eligible for the register, an individual must have been a victim, or related to a victim, of a particular type of crime (including a sexual crime), and the offender must have been sentenced for the crime.

[15] Currently the main purpose of the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) is 'to enhance the protection of the community by requiring offenders who have served custodial sentences for certain sexual offences and who present an unacceptable risk of harm to the community to be subject to ongoing detention or supervision': s 1(1).

Statutory criteria to determine eligibility for post-sentence supervision and detention scheme

3.19 The first key element in giving effect to this reform is to examine and amend the criterion that renders an offender eligible for consideration under the SSODSA. Currently, offenders convicted of a 'relevant offence' (sexual offence) and currently serving a sentence of imprisonment (for that relevant offence or another sentence concurrently, or cumulatively in the relevant sentence) are eligible under the SSODSA.[16] The Panel considers each of these elements in turn.

3.20 The Panel considers that the scheme can be better targeted against serious interpersonal harm by amending the current statutory criteria for eligibility under the SSODSA to:

- add certain and specified violent offences to the list of relevant offences under the SSODSA, and
- mandate that eligibility be confined to those serving a specified minimum sentence of imprisonment for a relevant offence.

3.21 As will be outlined in Chapter 4, the Panel considers it essential that the Public Protection Authority should have flexibility in deciding which of the eligible offenders referred to it should be included in the limited cohort of those assessed to present the greatest likelihood of committing an offence causing serious interpersonal harm. But this flexibility should not be free of limitations. It is therefore appropriate, in the Panel's view, that there be precise statutory criteria to provide a basis for the identification and referral by the Department of Justice and Regulation to the Public Protection Authority (under the process recommended in Chapter 4) of those who may be appropriate for possible inclusion in the Public Protection Authority's relevant cohort of offenders.

3.22 It is important that the criteria for eligibility for a post-sentence supervision or detention order be precise.

3.23 The inclusion of violent offenders into Victoria's post-sentence scheme will, however, give the scheme a markedly different profile. Whilst the Panel is of the view that eligibility for the existing post-sentence supervision and detention scheme should be enlarged to allow inclusion of offenders convicted of certain violent offences, it acknowledges that this is a significant extension of the existing post-sentence scheme, and potentially has substantial resourcing ramifications for the state, the courts and other non-government organisations involved in the support of offenders. As this report has already endeavoured to make plain, the Panel is of the view that such extension must not be allowed to serve as an avenue to the admission into the scheme of offenders other than those who present with the greatest likelihood of committing an offence causing serious interpersonal harm.

[16] *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 4.

3.24 The difficulties inherent in setting definitional boundaries on the cohort of high risk violent offenders compared with high risk sex offenders were expressed by the New South Wales Sentencing Council.[17] This report summarised the key mechanisms used (alone or in combination) in comparable jurisdictions to identify offenders who may be covered by schemes which provide sentencing or post-custody management options:[18]

- specifying a list of qualifying offences or classes of offences, and limiting application of the scheme to offenders who have been convicted of such an offence[19]
- limiting the application of the scheme to repeat offenders who have in the past committed a qualifying offence[20]
- confining application of the scheme to those cases where a court would have imposed a sentence of at least a specified duration, had it not utilised the sentencing option(s) available under the scheme,[21] and
- requiring the court, at the time of sentencing or subsequently, to consider an assessment of future risk and limiting the scheme to those offenders considered likely to be dangerous on release.[22]

3.25 The Panel has considered these approaches. Selecting one approach in isolation presents some philosophical and practical difficulties.

3.26 For example, the difficulty with an approach that is based only on a list of qualifying offences is that the offence committed does not in and of itself reflect the likelihood of an offender committing further offences and the level of harm that may be caused if the offender were to so reoffend. This is especially apparent when an offender with a very low risk of recidivism is convicted of a very serious offence involving violence. Offenders convicted of murder are a case in point. They seldom murder more than once.[23] This is in part because they very often spend long periods of time in prison following commission of the offence, which incapacitates them from committing further offences, were they to be so pre-disposed. A system which automatically placed all offenders convicted of murder in the very high risk category would be antithetical to the reforms which the Panel recommends. Conversely, the exclusion of offences that are lower on the scale of seriousness, such as a serious assault, may fail to capture offenders who have committed less serious acts than murder, but who have a pattern of offending which, without intervention, indicates an unacceptable risk of committing further and more serious offences of violence in the future.

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17 Sentencing Council of New South Wales (May 2012), above n 11, 10–11.

18 Sentencing Council of New South Wales (May 2012), above n 11, 17.

19 For example, *Sentencing Act 1991* (Vic) ss 3, 18A; *Penalties and Sentences Act 1992* (Qld) ss 162; *Sentencing Act 1995* (NT) s 65; *Criminal Law (Sentencing) Act 1988* (SA) s 23.

20 For example, *Sentencing Act 1997* (Tas) s 19; *Criminal Law (Sentencing Act) 1988* (SA) s 20B; *Criminal Code 1985* (Canada) s 753.

21 For example, *Criminal Justice Act 2003* (UK) s 224(2).

22 For example, *Sentencing Act 1995* (WA) s 98; *Criminal Procedure (Scotland) Act 1995* s 210 F.

23 Data provided to the Panel by Corrections Victoria indicated that as at 15 October 2015, of the 416 prisoners under sentence for a single homicide offence, 2.8% (12) had a prior homicide offence and of the 43 prisoners under sentence for multiple homicides, 1 prisoner had a prior homicide.

3.27 By way of further example, a concern with the approach of setting a minimum term as a prerequisite for eligibility for a post-sentence regime for high risk offenders is that it may have a net-widening effect. The New South Wales Sentencing Council identified the problem, 'whereby sentences for offenders, who present as dangerous but are being sentenced for a low-level offence, are increased in order to meet the requirements for any such scheme'.[24] In other words, the prerequisite of there being a sentence of a particular length may inappropriately influence sentencing practices.

3.28 The latter phenomenon was surely not contemplated by those who sought to confine the scheme. Another aspect of that phenomenon is that it can risk injecting an element of punishment into a civil regime which, if it is to be a valid exercise of power, must eschew punishment and confine itself to protection.

3.29 On balance, the Panel has concluded that a combination of these approaches represents the best method for reforming the eligibility criteria for the community protection scheme. Critically, the Panel considers that the paramount principle underpinning the selection of the eligibility criteria is that it be precise. This is important for a number of reasons, including that it provides:

- fairness to offenders by ensuring that notice can be provided of their eligibility for post-sentence supervision or detention, upon conviction of, and sentence for, an eligible offence
- an appropriately clear foundation for the Department of Justice and Regulation to develop manageable administrative and governance processes for the assessment and review of offenders for the purposes of referring eligible offenders to the Public Protection Authority and determining whether to bring an application for a supervision order or refer the matter to the Director of Public Prosecutions to consider an application for a detention order, and
- an appropriately consistent platform for the Public Protection Authority to consider eligible offenders referred to it.

3.30 The Panel's preferred approach for defining eligibility for offenders is, therefore, that it commences with a broad base of qualifying offences and is further narrowed so that only offenders who receive a sentence above a minimum threshold are eligible offenders. Accordingly, the Panel envisages that there should be two parts to the criteria for determining eligibility:

- a list of relevant offences defined in legislation encompassing sexual offences and serious violent offences, and
- a sentence of imprisonment of a minimum length defined in legislation imposed on any relevant sexual or violent offence.

[24] Sentencing Council of New South Wales (May 2012), above n 11, 19–20.

3.31 An approach that combines offence type and imprisonment sentence length incorporates the key elements from the approaches above, which are necessary in the Panel's view to identify the pool of eligible offenders, which the Victorian post-sentence scheme should target to identify and protect the community from those who present the greatest likelihood of causing serious interpersonal harm:

- the offence type captures the nature of the most recent offending behaviour, and is broad enough to cover offences that result in the commission of interpersonal harm, whether it be sexual or non-sexual
- the length of the sentence of imprisonment reflects a judicial assessment of a range of important factors taken into account by a court in the sentencing process, including the seriousness of the offence committed and the offender's previous convictions, including any pattern of similar offending or a course of conduct, and
- the length of the sentence of imprisonment also reflects a court's assessment of the offender's prospects for rehabilitation and the extent to which there is a need for the sentence to protect the community from such offending in the future, which bring in an appropriate measure of judicial assessment at the time of sentence of the extent to which the offender might be likely to commit such an offence in the future.

3.32 The Panel's view is that these are all appropriate considerations that ought to be imported in the selection of the eligibility criteria.

3.33 The Panel notes that a two-part approach is reflected in the eligibility criteria for post-sentence supervision in the New South Wales scheme. The New South Wales criteria, which differ from those recommended by the Panel, include a requirement that an offender must have been, at any time, convicted and sentenced to imprisonment for a specified 'serious' sexual or violent offence (which, in some instances, incorporates a requirement that the offence be punishable by a sentence of imprisonment of seven years or more) and be currently subject to a post-sentence order or a sentence of imprisonment for that offence or a broad range of sexual or violent offences (or offences co-sentenced with such offences).[25] While the scheme in New South Wales is broader than the current Victorian scheme in terms of including violent offenders, it uses different eligibility criteria to that in Victoria and has less than half the number of offenders (56 compared with 118) subject to post-sentence orders.[26]

Recommendation 2

Eligibility of offenders for post-sentence supervision or detention should be determined by:

- conviction of an offence specified in a list of offences (an 'eligible offence') defined in legislation, and
- a sentence of imprisonment of a certain length imposed for an eligible offence.

[25] See *Crimes (High Risk Offenders) Act 2006* (NSW) ss 4–5J.

[26] Data provided by New South Wales Correctional Services to the Panel on 4 September 2015.

3.34 The Panel is of the view that the additional assessment of an eligible offender's future risk should occur at an appropriate time after sentence, after there has been sufficient time for the offender to be clinically assessed and provided with a program of management and appropriate interventions. The Panel makes recommendations to this effect in Chapter 4 to provide for a process by which the Public Protection Authority considers eligible offenders for possible inclusion in its cohort at least three years before the earliest eligibility date for release on parole. The Panel makes clear, later in this chapter, that the existing powers of the Secretary to the Department of Justice and Regulation will continue, such that if an eligible offender is considered to pose an unacceptable risk, an application can be brought for a post-sentence supervision order, or the matter referred to the Director of Public Prosecutions to consider whether to apply for a detention order.

Implications to consider in defining the criteria

Selecting the offences to be included in the list of eligible offences

3.35 The current approach under the SSODSA to determining eligibility is by a list of offences defined as 'relevant offences' in Schedule 1 of the Act.[27]

3.36 This list is relatively wide and includes sexual offences that are of a range of seriousness.

3.37 The list encompasses an offender with a history of sexual offending who is serving a sentence for a less serious sexual offence but who presents with an unacceptable risk of that behaviour escalating into much more grave sexual offending. Such an offender is eligible to be considered for post-sentence supervision or detention. The justification for applying for an order in such cases would seem to be that, had the offender not been apprehended at a relatively early stage, his or her criminality would have escalated to include grave sexual offending.

3.38 If the list is broad, there is a danger that those who do not pose a risk to the necessary level and of the necessary seriousness will nevertheless (out of an excess of caution or otherwise) be admitted into the scheme. This would amount to a failure to preserve a vital element of it – that it be confined to those who present the greatest likelihood of committing an offence causing serious interpersonal harm.

[27] *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) ss 3–4.

3.39 One approach is to retain the list of eligible sexual offences under the existing SSODSA and add to it by including violent offences defined as 'serious violent' offences within the meaning of the *Corrections Act 1986* (Vic).[28] This has the advantage of being consistent with the categorisation of 'serious violent offenders' currently used in the assessment processes by which, on reception into the prison system, offenders are screened by Corrections Victoria. The categorisation of 'sex offenders' by Corrections Victoria already applies the same list of offences as those contained in the 'relevant offences' under the SSODSA.[29] This would therefore achieve the result that the list of offences for initial eligibility for the SSODSA would marry with the list of offences for in-prison assessment of offenders by Corrections Victoria.

3.40 However, there may also be danger in using such a broad list of offences. The Panel does have concerns that simply adding to the current list of eligible offences has the effect of casting an ever-widening net under which offenders may become subject to post-sentence supervision or detention, who may not properly fall within the category of offenders for whom ongoing supervision is justified. This was a concern expressed by many of those whom the Panel consulted, particularly legal stakeholders.

3.41 It is also important to consider the resourcing ramifications of such a broad list of offences to identify initially eligible offenders, in terms of how many offenders could potentially form this initial cohort and be liable for inclusion in the following stages of eligibility.

3.42 Data provided to the Panel by Corrections Victoria indicates that as of 15 October 2015, there were 1,939 'serious violent offenders' in Victorian prisons and 399 subject to parole. This is around four times the number of serious sex offenders who were in custody (587) and subject to parole (141) at this time. The number of offenders falling into both categories was 167 in prison and 16 on parole. If the current practice of screening all 'eligible' sex offenders for post-sentence supervision or detention were extended to all those deemed serious violent offenders, the resource burden would likely be very significant indeed.

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[28] *Corrections Act 1986* (Vic) ss 77(9)(a)–(e). A serious violent offence is as an offence covered by clause 2 of Schedule 1 to the Sentencing Act 1991, namely: murder; manslaughter; child homicide; defensive homicide; causing serious injury intentionally or recklessly; intentionally causing a very serious disease; threats to kill; threats to inflict serious injury; kidnapping; intentionally causing grievous bodily harm (including shooting etc. with intention to do grievous bodily harm or to resist or prevent arrest); attempting to choke etc. in order to commit an indictable offence; making demand with threat to kill or injure or endanger life; and conspiracy to commit, incitement to commit or attempting to commit any of these offences. Under section 77(9) of the Corrections Act, a serious violent offence also includes armed robbery, aggravated burglary, arson causing death, false imprisonment, and conspiracy to commit, incitement to commit or attempting to commit such offences. This definition was introduced as part of the reforms to the Victorian parole system introduced in 2013.

[29] *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) sch 1.

3.43 Further limiting of the eligibility criteria could be achieved by the list of eligible offences comprising only the most serious violent offences, namely homicide offences. Data provided to the Panel by Corrections Victoria, indicates that as at 29 September 2015, there were a total of 444 sentenced prisoners with homicide as their most serious offence. Of these, there were:

- 295 sentenced for murder
- 60 sentenced for manslaughter
- 55 culpable sentenced for culpable driving causing death
- 12 sentenced for attempted murder
- 19 sentenced for defensive homicide, and
- 3 sentenced for conspiracy to murder.

3.44 However, as discussed above, the presence of a homicide conviction alone, does not necessarily equate to a high risk of committing a further offence. Corrections Victoria provided a further data extract on 15 October 2015, to assist the Panel in considering how many offenders serving a sentence for a current homicide conviction had repeat serious violent offending. The data is illustrated in Table 7 below.

Table 7: Number of prisoners with current homicide conviction by serious violent offender flag and prior homicide status, 15 October 2015

Current homicide status	Serious violent offender flag	No serious offender flag	Total	Prior homicide	No prior homicide	Total
Homicide	361 (86.8%)	55[30] (13.2%)	**416 (100%)**	12 (2.9%)	404 (97.1%)	**416 (100%)**
Multiple homicide	43 (100%)	0 (0%)	**43 (100%)**	1 (2.3%)	42 (97.7%)	**43 (100%)**
Total	404 (88%)	55 (12%)	**459 (100%)**	13 (2.9%)	446 (97.2%)	**459 (100%)**

3.45 Table 7 shows that the vast majority (88 per cent) of all offenders with a current homicide conviction also had a current flag as a serious violent offender. There were 55 prisoners (13.2 per cent) whose single homicide offence was culpable driving causing death, and did not have a serious violent offender flag, because this offence does not fall within the legislative definition. All of the multiple homicide offenders had a serious violent offence flag. In contrast, a small minority of homicide offenders had a prior homicide offence. Only 2.9 per cent of offenders (12) with a single homicide offence had a prior homicide and 2.3 per cent of multiple homicide offenders (one offender) had a prior homicide offence.

[30] These 55 homicide prisoners with no serious violent offender flag relate to prisoners convicted of culpable driving causing death, which are categorised as homicide but are not within the legislative definition of a serious violent offender under the *Corrections Act 1986* (Vic).

3.46 Even if eligibility for post-imprisonment assessment were limited to include only some of these homicide offences, there could still be significant resourcing implications. Notwithstanding this, the Panel considers that, at a minimum, the list of offences should include murder, manslaughter and attempted murder. The inclusion of such offences was a key recommendation of the Victorian Sentencing Advisory Council in 2007.[31]

3.47 The Panel notes that some offences, such as intentionally causing serious injury, can result in permanent incapacitation, which may be tantamount to 'ending' a victim's life. A somewhat wider pool for initial assessment would encompass such criminality. It is noted that this approach was taken in New South Wales where a serious violence offence for the purpose of the *Crimes (High Risk Offenders) Act 2006* (NSW), is defined as a serious indictable offence that is constituted by a person engaging in conduct that causes the death of another person or grievous bodily harm to another person, with the intention of causing, or while being reckless as to causing, the death of another person or grievous or actual bodily harm to another person, or attempting to commit, or conspiring with or inciting another person to commit an offence of such a kind.[32] The Scottish regime for preventive detention uses the definition of a 'serious incident' defined as 'harmful behaviour of a violent or sexual nature, which is life threatening and/or traumatic and from which recovery, whether physical or psychological, may reasonably be expected to be difficult or impossible.'[33]

3.48 Another way of defining the list of offences to be included in the eligibility criteria for possible inclusion in the cohort would be to adopt a very narrow list of offences, such as that reflected in the definition of a 'serious offence' under the *Sentencing Act*.[34] This includes some of the violent offences within the meaning of a 'serious violent offence' under the Corrections Act, and some of the sexual offences currently listed as 'relevant offences' under the SSODSA, but is a narrower list of offences than either of these categories. This would thereby narrow the number of offenders who would potentially be subject to post-sentence detention and supervision, and may be an appropriate response to concerns about the potential for net widening if the scheme were broadened to include violent offences, without any restrictions on the level of seriousness of the offences considered for inclusion.

3.49 An implication of using the definition of a 'serious offence' within the meaning of the *Sentencing Act*, for both sex and violent offences, is that it would remove from the list of eligible offences a number of sexual offences that are currently included in the list of 'relevant offences' for the SSODSA. Mindful of this, the Panel has contemplated how such a restriction on the list of eligible offences would apply to the cohort of 46 complex adult victim sex offenders subject to the SSODSA, considered by the Panel in this review. A review of the 'index' offences for which offenders were eligible for the SSODSA indicated that 12 of the 46 offenders (26 per cent) would not have met the first stage of eligibility for a post-sentence supervision order. This includes two of the 11 offenders with particularly concerning offence histories, flagged by the Department of Justice and Regulation for individual consideration by the Panel. This illustrates that narrowing the eligible offences to those that are at the highest level of

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31 Sentencing Advisory Council (May 2007), above n 11, 100–101.

32 *Crimes (High Risk Offenders) Act 2006* (NSW) s 5A.

33 Scottish Government, *Framework for Risk Assessment and Management Evaluation (FRAME) Planning for Local Authorities and Partners* (September 2011).

34 *Sentencing Act 1991* (Vic) s 3(1).

seriousness would result in a narrowing of the initially eligible cohort. However, it also illustrates the risks in doing so, in that the offence type alone is not a sufficient basis on which to identify whether offenders may reach the end of their sentence and present such significant concerns about their risk of reoffending that a court deems a post-sentence order is to be necessary.

3.50 The Panel notes that a number of offences currently included in the list of relevant offences under the SSODSA would not be included if the 'serious offence' definition in Victorian legislation was used to define initial eligibility. This includes offences relating to the grooming of children for sexual offences, producing child pornography and aggravated burglary. Relevant Commonwealth sexual offences would also not be included; therefore consideration would need to be given to ensuring that provision is made for the inclusion of Commonwealth offences to the same degree of seriousness as those ultimately included in any list of offences for initial eligibility.

Fixing the minimum length of sentence

3.51 The Panel has given consideration to the length of sentence that should be used as a minimum requirement for eligibility.

3.52 To assist the Panel in doing so, Corrections Victoria provided the Panel with data on the number of offenders sentenced in 2014–15 by serious violent or sex offender status. The data comprised the effective sentence length of the non-parole period when one had been imposed or the fixed term sentence (if there was no non-parole period).[35]

3.53 The data indicated that 24 per cent (1,233) of a total of 5,169 offenders sentenced in 2014–15 were sex offenders, violent offenders or both. As the data represented non-parole periods, rather than overall sentence lengths, two years was selected to examine the implications of setting eligibility at this level. In that year, 81.8 per cent of serious violent offenders received sentences of two years or less, and 64.6 per cent of sex offenders received sentences of two years or less.

3.54 If sexual offences and serious violent offences were used to define the list of eligible offenders and a minimum sentence of two years or more was applied to these offenders for the purposes of eligibility:

- 72 of 206 sex offenders would be eligible
- 179 of 992 serious violent offenders would be eligible, and
- 20 of the sex and serious violent offenders would be eligible.

3.55 In total this equates to 271 offenders sentenced in the 12 month period being eligible, being approximately 22 per cent of the sex, violent and sex and violent offenders sentenced in that year, and five per cent of the total offenders sentenced in that year.

[35] The data captured sentences recorded was the first sentence imposed on the offender during the reference period of imprisonment and prisoners who were sentenced during the reference period irrespective of when they were received into prison.

3.56 The Panel considers that it may be appropriate to consider the total period of imprisonment an offender is liable to serve, rather than the non-parole period examined in the data above. If so, this may necessitate selecting a longer sentence length for the imposition of a limit on the eligibility of offenders for consideration for post-sentence supervision or detention, for example three or four years.

3.57 The Sentencing Advisory Council's sentencing snapshots provide further insights into how a minimum sentence limit might operate with regard to current sentencing practices. The Panel examined the median sentences[36] imposed in 2013–14 in the County and Supreme Courts for a number of currently eligible sexual offences currently listed as 'relevant offences' and a number of serious violent offences that would be included as eligible offences if the scheme were to be broadened to include such offences in the list of relevant offences (in order of prevalence). The data below indicates the number of offenders sentenced to a principal sentence of imprisonment, median sentence length and the number and percentage that would be excluded if the sentence limit was capped at four years or more for the purposes of eligibility:[37]

- Rape – 192 offenders sentenced to imprisonment (median = five years): 40 or 20.8 per cent excluded.
- Murder – 114 offenders sentenced to imprisonment (median sentence = 20 years): 0 excluded.
- Sexual penetration with a child 12–16 years – 113 offenders sentenced to imprisonment (median sentence = two years and six months): 85 or 75.2 per cent excluded.
- Manslaughter – 84 offenders sentenced to imprisonment (median sentence = eight years): three or 3.6 per cent excluded.
- Indecent act with a child under 16 years – 90 offenders sentenced to imprisonment (median = one year and 11 months): 66 or 73.3 per cent excluded.
- Sexual penetration with a child under 12 years – 54 offenders sentenced to imprisonment (median sentence = four years): 19 or 35.2 per cent excluded.
- Indecent assault – 42 offenders sentenced to imprisonment (median sentence = one year and six months): 22 or 52.4 per cent excluded.
- Make threat to kill – 13 offenders sentenced to imprisonment (median sentence = one year): 13 or 100 per cent excluded.

3.58 This simple analysis illustrates how the minimum sentence length as part of the eligibility criteria would have a varying impact on the exclusion of certain offences and the number of eligible offenders according to the number of the offenders sentenced and range of sentencing practices for the offence. Further analysis is required to gain a better understanding of how such a cap on eligibility might operate and the implications of fixing it at two, three or four years, or any other length not considered by the Panel.

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[36] According to the number of people who received a principle sentence of imprisonment for each offence.

[37] Sentencing Advisory Council, 'Murder', *Sentencing Snapshot* 171 (2015); Sentencing Advisory Council, 'Manslaughter', *Sentencing Snapshot* 172 (2015); Sentencing Advisory Council, 'Making a Threat to Kill', *Sentencing Snapshot* 174 (2015); Sentencing Advisory Council, 'Rape', *Sentencing Snapshot* 176 (2015); Sentencing Advisory Council, 'Indecent Assault', *Sentencing Snapshot* 177 (2015); Sentencing Advisory Council, 'Indecent Act with a Child Under 16', *Sentencing Snapshot* 178 (2015); Sentencing Advisory Council, 'Sexual Penetration with a Child Under 12', *Sentencing Snapshot* 180 (2015); Sentencing Advisory Council, 'Sexual Penetration with a Child Aged 12 to 16', *Sentencing Snapshot* 181 (2015).

3.59 The Panel notes that including a minimum sentence length in the eligibility criteria will import an additional significance to the sentence imposed by the judge and may, therefore have the unintended consequence of submissions made by counsel to the judges on the sentence that ought to be imposed for a relevant offence, or be the basis of a ground of appeal against a sentence. The Panel has not had the scope within this review, to consult on and consider the full implications of this possibility. Further work is therefore needed to investigate the extent to which these implications may be borne out.

3.60 The Panel has raised the approaches to defining the offence and sentence criteria for consideration. It has not had sufficient time to consider all of the implications of a particular approach to defining the list of eligible offences. The Panel considers that further work is required prior to identifying the implications of using some of the suggested existing definitions of offences within the list of offences to proscribe possible inclusion under the broadened eligibility recommended by the Panel. The New South Wales Sentencing Council had the advantage of such an audit when it completed its High-Risk Violent Offenders Sentencing and Post-Custody Management Options Report[38] and the Panel consider it sensible and prudent, given the potential policy and resourcing ramifications, that a similar process be undertaken in Victoria before the government determines how the current list of sexual offences is to be narrowed and violent offences are to be added to the list of additional qualifying offences.

3.61 Further, careful and individual assessment of the eligibility of sex offenders and serious violent offenders for entry into the regime is appropriate to ensure that only those offenders who present the greatest likelihood of committing in the future an offence involving serious interpersonal harm, whether sexual or otherwise, are included in the Public Protection Authority's cohort of offenders, who are afforded intensive in-prison interventions and, to the extent necessary, are the subject of an application by the Secretary to the Department of Justice and Regulation for post-sentence, treatment and management.

3.62 There are additional factors that in the Panel's view, should be considered in determining the criteria for eligibility, to ensure that the cohort of eligible offenders is restricted only to those who pose the greatest risk of causing serious interpersonal harm. In particular, the Panel is of the view that consideration should be given to the exclusion of offenders who are aged 60 years old at the time of their expected release date from prison. This is consistent with research discussed by the Panel in Chapter 2 at [2.93], which indicates that the recidivism of offenders convicted of rape and child sexual offences reduces significantly or ceases after the age of 60 years.[39]

[38] Corrective Services NSW, Serious Violent Offender Audit (2010) as cited in Sentencing Council of New South Wales, *High-Risk Violent Offenders Sentencing and Post-Custody Management Options: Report* (May 2012).

[39] R. Karl Hanson et al., 'First report of the Collaborative Outcome Data Project on the Effectiveness of Psychological Treatment of Sex Offenders' (2002) 14(2) *Sexual Abuse: A Journal of Research and Treatment* 169–195.

Recommendation 3

In defining the criteria under Recommendation 2, consideration should be given to:

- including in the legislative definition of an eligible offence 'sexual offences' as currently defined under the *Serious Sex Offenders (Supervision and Detention) Act 2009* (Vic) and 'serious violent offences' as currently defined under the *Corrections Act 1986* (Vic), and
- fixing the minimum length of an eligible sentence of imprisonment imposed on an eligible offence at three or four years' imprisonment.

Recommendation 4

To inform the determination of the approach envisaged by the Panel under Recommendation 3, the Department of Justice and Regulation should undertake an audit of offenders that includes an examination of the number of 'sex offenders' and 'serious violent offenders' and the sentences imposed on such offenders for eligible offences, to ensure there is careful consideration of the implications of defining the criteria in this way. This should be undertaken with a view to achieving the Panel's aim, that the cohort of offenders eligible for post-sentence supervision or detention and possible inclusion in the Public Protection Authority's purview is appropriately confined to those offenders who present the greatest likelihood of causing serious interpersonal harm.

Notice of eligibility

3.63 It follows from the Panel's recommendations that there be clear eligibility criteria that offenders who fit such criteria should be given notice of their eligibility for post-sentence supervision and detention and be informed as to what is expected of them in terms of engaging in management and interventions that may reduce the likelihood that they will reach the end of their sentence and be subject to an application.

3.64 Corrections Victoria advised the Panel that offenders are currently notified of their eligibility for the post-sentence scheme at the beginning of their sentence. Assessments under the SSODSA are conducted in the last 12 months of an offender's sentence, to allow time for an application for a detention or supervision order to be made should this be deemed appropriate. Therefore, there may be a significant period of time between the first notification at the time of sentence and the offender being informed they are being assessed at a time closer to the end of sentence.

3.65 The timing of notification was an issue raised for the consideration of the Panel by those who manage offenders. Also, in its review of the offenders who come within the complex adult victim sex offender cohort, a theme that was observed in some cases by the Panel was the unintended consequences of the negativity of offenders as a result of their perception that they had not known, as they reached the end of their sentence, that they were being considered for, and could become subject to, post-sentence supervision or detention.

3.66 To date, there has been little exploration of what offenders think of post-sentence detention and supervision schemes. Research conducted with those working with offenders in other states has evidenced their concerns about the effect that such schemes have on offenders, particularly when advised towards the end of their sentence that they would be subject to an application for further detention.[40] For example, a Queensland psychologist referred to the scheme in that state as making offenders 'angrier and nastier' when they come out of prison,[41] while a New South Wales social worker said offenders become more dangerous under the scheme because 'they have nothing more to lose'.[42]

3.67 In Scotland, the processes required to ultimately place an offender on its post-sentence scheme, known as an Order for Lifelong Restriction, are put in train following an offender's conviction for a relevant offence. [43]

3.68 This can be contrasted with current practice in most Australian jurisdictions, including Victoria, whereby applications for post-sentence supervision or detention are made towards the end of an offender's sentence and offenders may only be notified that they are being considered for a post-sentence order at the time that they are being assessed and reviewed by the relevant authorities.

3.69 A requirement for a statutory warning was introduced in recent years in New South Wales. Under the *Crimes (High Risk Offenders) Act* a court that sentences a person for a 'serious violence offence' is required, under section 25C of the Act, to advise the offender of the existence of the Act and of its application to the offender.[44] A failure by a court to issue such a warning does not prevent the making of an order against a person under the Act.[45] There is no equivalent requirement for sex offenders who commit offences which make them eligible under the scheme.

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40 Patrick Keyzer and Bernadette McSherry, 'The Preventive Detention of "Dangerous" Offenders in Australia: Perspectives from the Coalface' (2013) 2 *International Journal of Criminology and Sociology* 296–305; Patrick Keyzer and Bernadette McSherry, 'The Preventive Detention of Sex Offenders: Law and Practice' (2015) 38(2) *UNSW Law Journal* 792–816.

41 Ibid 296–298.

42 Ibid 299.

43 See *Criminal Procedure (Scotland) Act 1995* (Scot) s 210B.

44 *Crimes (High Risk Offenders) Act 2006* (NSW) s 25C(1).

45 *Crimes (High Risk Offenders) Act 2006* (NSW) s 25C(1).

3.70 The Panel considers that, as soon as practicable after an offender has been sentenced and identified as being eligible under any reformed criteria for a post-sentence supervision or detention order, the offender should be told that he has been so identified. The offender should also be told that he may be referred to the Public Protection Authority (if the referral criteria set out in Chapter 4) are met. The offender should also be told that if the Authority decides to include the offender under its purview, treatment and management will be available, and that unless the likelihood of relevant further offending is significantly reduced he or she could be subject to post-sentence detention or supervision, and that failure to participate fully in the scheme will be taken into account if an application for a post-sentence detention or supervision order is made.

3.71 This approach supports procedural fairness and is important for two reasons:

- it may assist in the management of offenders' expectations, and minimise the likelihood of negative reactions, if from the outset of their sentence they are aware of the possibility of further supervision or detention, and
- it ensures that offenders are provided with an incentive to engage in opportunities for intensive rehabilitation and treatment pathways, when they are assessed as suitable, and will put them on notice of the ramifications for electing not to so engage.

3.72 The Panel has considered whether this notice should take the form of a statutory notification from a judge. While this will carry the weight of judicial authority, and has merit, the Panel believes that at the point of sentencing, offenders are unlikely to be sufficiently receptive to comprehend the significance of the notice. Moreover, the post-sentence aspects of the scheme are civil, not criminal, and the contemplated interventions, which may take place upon entry into prison, are an aspect of inmate management, not punishment. Nor should an obligation be imposed on the courts unnecessarily, especially when others may be better placed to discharge this administrative duty.

3.73 The Panel is of the opinion that, in the interests of procedural fairness, Corrections Victoria should continue to give notice to offenders of their eligibility for a post-sentence order, and that in the event that they are referred to the Public Protection Authority, it will in deciding which offenders are included in the cohort, view the clinical assessments performed by Corrections Victoria at the time of the offenders' reception into the prison system.

Recommendation 5

All offenders identified by the Department of Justice and Regulation as eligible under any amended criteria should be notified at the earliest opportunity of their eligibility for post-sentence supervision or detention and their options for intensive rehabilitation and treatment.

The Panel's view: retention of the unacceptable risk test and discretion to bring applications

3.74 Following eligibility criteria, the final threshold for an offender to be included in the cohort of offenders subject to post-sentence supervision or detention is whether the offender would pose an 'unacceptable risk' of committing a relevant offence if released into the community without such restrictions. This is the test applied by the court when it is required to determine whether to make an order.

3.75 Currently, the process for determining who is referred for an external detention and supervision order assessment report (as opposed to an internal assessment by the Specialised Offender Assessment and Treatment Service) is triaged according to actuarial risk as revealed following administration of the 'Static-99'.[46] Generally, offenders assessed as 'moderate-high' and 'high' risk using the Static-99 receive a further assessment from an external assessor; while those assessed as 'moderate' and 'low' risk offenders receive an internal assessment on the basis that this is more cost effective and less detailed than having all offenders externally assessed.

3.76 Typically, an external assessment uses a combination of actuarial tools and structured professional judgement to formulate an overall assessment of risk.[47] The matters which must be addressed in an assessment or progress report under the SSODSA are set out in section 109 and s 112 of the Act respectively, and include:

- the expert's assessment of the risk that the offender will commit another relevant offence if released into the community and not made subject to a detention or supervision order
- the reasons for that assessment,[48] and
- an outline of the nature of the most likely reoffending.

3.77 The results of the detention and supervision order risk assessments are considered by the Detention and Supervision Order Review Board to formulate a recommendation to the Secretary to the Department of Justice and Regulation.[49] Three possible recommendations are open:

- that the matter should be referred to the Director of Public Prosecutions – who would then decide whether or not to apply for a detention order
- that an application ought to be made for a supervision order, or
- that neither application is warranted.[50]

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46 The Static-99 is a 10 item actuarial assessment instrument developed in Canada by R. Karl Hanson and David Thornton for use with adult male sexual offenders who are at least 18 year of age at time of release to the community: Karl Hanson and David Thornton, *Static-99: Improving Actuarial Risk Assessments for Sex Offenders:* (1999–02).

47 Actuarial tools refer to risk assessment tools that are based on statistical or actuarial risk prediction. These scales assess the particular offender against a range of factors that are thought to be associated with future offending. The structured professional judgement approach uses instruments that are designed to act as guidelines for clinical assessment. See, in general, Bernadette McSherry, *Managing Fear: The Law and Ethics of Preventive Detention and Risk Assessment* (2014) 32–60.

48 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) ss 109 (2), 112(2).

49 Specialist Case Managers and clinicians may also use the assessment report to guide case management and treatment interventions when individuals are subject to post-sentence orders.

50 The Board may make this recommendations subject to the implementation of requested actions, such as referrals for appropriate housing or community supports.

3.78 In practice, the recommendations of the Detention and Supervision Order Review Board and the decisions of the Secretary to the Department of Justice and Regulation or the Director of Public Prosecutions are underpinned by an assessment of the likelihood of a relevant offence occurring and the gravity of the offence should it occur.[51] This then determines whether or not in the opinion of the Board, they meet the statutory criteria for the making of an application for a post-sentence order. The care with which the process is conducted is evidenced by the overall very high success rate of the applications made by the Secretary and Director of Public Prosecutions, particularly as the scheme has become more established and a useful body of case law assembled.[52]

3.79 For these reasons, as well as practical and resourcing reasons, despite some reservations about whether the Director of Public Prosecutions should be involved in a civil scheme aimed at public protection rather than punishment, the Panel has concluded that, the Secretary to the Department of Justice and Regulation should remain the applicant in supervision order matters, and the Director of Public Prosecutions should remain the applicant in detention order matters.

3.80 The discretion of the Secretary and Director of Public Prosecutions to apply for a supervision or detention order will remain irrespective of whether or not the offender is included in the cohort of offenders subject to the oversight of the Public Protection Authority, and included in its cohort of offenders who present the greatest likelihood of causing serious interpersonal harm, as is the process envisaged by the Panel's recommendations set out in Chapter 4. The Panel is of the opinion that the Authority should not be the applicant for a detention or supervision order as this could compromise its independence and/or affect its ability to undertake its proposed core duties.

3.81 Further, as the Secretary will retain discretion to apply for a post-sentence order in respect of those offenders who are eligible, the Secretary should remain responsible for procuring the necessary detention and supervision order assessments for court.

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[51] The Director of Public Prosecutions, *Director's Policy: Continued Detention* (12 November 2015) 4 also notes that the decision to apply for a detention order in respect of an 'eligible offender' rests with the Director of Public Prosecutions and will be decided on a case-by-case basis. The following considerations are relevant to the Director's decision: (a)The level of risk of an eligible offender, as contained in the assessment report (or progress report in the case of a review or renewal application); (b) The sentencing remarks of the sentencing judge in respect of a relevant sentence; (c) The eligible offender's criminal history; (d) The primary purpose of the SSODSA (being the protection of the community); and (e) Any other matter the Director considers relevant.

[52] The Secretary to the Department of Justice and Regulation and the Director of Public Prosecutions, and those providing them with legal representation, are bound by the State of Victoria's Model Litigant Guidelines. These are an important safeguard and require the State of Victoria, its departments and agencies, to behave as a model litigant in the conduct of litigation. This includes, among others, an obligation to act fairly in the conduct of litigation and to make an early assessment of the State's prospects of success in legal proceedings.

3.82 The Panel makes no recommendation relating to the Detention and Supervision Order Review Board, given that it is a non-legislative body established by the Secretary to support him or her in discharging his or her functions under the Act by recommending applications for post-sentence supervision or referrals to the Director of Public Prosecutions. Nor does the Panel make any recommendations in relation to the Sex Offender Management Branch's role in this regard, as it is envisaged that there will be a need for the Branch to continue in its role in reviewing eligible offenders and supporting the functions of the Secretary (with whatever changes are considered necessary by Corrections Victoria with the broadening of eligibility for the scheme to serious violent offenders).

3.83 The Panel notes that there is merit in the varied experience and expertise of the membership of this board being available to the Secretary, and that its membership may be enhanced through representation from the Public Protection Authority, should the latter's establishment be adopted by government.

3.84 The task of making an authoritative determination of 'unacceptable risk' is a matter for the court. It may make a supervision order 'only if it is satisfied by acceptable, cogent evidence, and to a high degree of probability', that the offender poses an unacceptable risk of committing a relevant offence if a supervision order is not made and the offender is in the community.[53] Like considerations apply when the court hears an application for a detention order.[54]

3.85 The Panel did not discern any need from those consulted for a change to either the considerations applicable to the unacceptable risk test, or the test itself. Judges of the County Court consulted by the Panel noted that the 'unacceptable risk' test required giving weight to all the relevant considerations and therefore should not be changed.

[53] *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) ss 9(1), 9(2).

[54] *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) ss 35(1), 36(1), 37.

3.86 The Panel notes that the Victorian Law Reform Commission has recently considered the unacceptable risk test in its Review of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic).[55] The Commission recommended that the Act move away from the endangerment test and instead adopt a test based on 'unacceptable risk' of physical or psychological harm.[56] The Commission expressed the view that an 'unacceptable risk' is an appropriate measure of the likelihood of the risk for three reasons:

- it mitigates against any assumption that offenders must prove that they pose no risk before their level of supervision can be reduced[57]
- it recognises that assessing risk is a 'social judgment'[58] requiring subjective decision making by the decision maker on 'the level of risk that society is prepared to accept when balanced against the supervised person's right to liberty and freedom', and
- it is more in line with modern risk assessment than a test based on 'dangerousness'.[59]

3.87 In relation to the type of harm, the Commission recommended a test based on physical or psychological harm, referring to examples of Victorian legislation that also use a test of unacceptable risk, including the *Bail Act 1977* (Vic) and the SSODSA. The Commission considered that 'physical or psychological harm' is the type of harm that justifies the preventive detention of people found not guilty because of mental impairment or found to have committed the offence charged following a finding of unfitness to stand trial.

3.88 The Panel shares these views and does not recommend a departure from the 'unacceptable risk' test presently contained in the legislation. Any extension of the scheme to violent offenders should also employ the same test.

Recommendation 6

The Secretary to the Department of Justice and Regulation or the Director of Public Prosecutions, as the case requires, should retain discretion, independent of the Public Protection Authority, to determine which eligible offenders will be the subject of an application for post-sentence supervision or detention on the basis of the 'unacceptable risk' test.

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55 Victorian Law Reform Commission: *Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997: Report* (June 2014) [10.203]–[10.215].

56 Ibid [10.206].

57 Ibid [10.207].

58 Sentencing Advisory Council (May 2007), above n 11, 158.

59 Victorian Law Reform Commission (June 2014), above n 55, [10.210].

Limited legislative options to manage or respond to risk

3.89 A further element of reforming the scheme to target the risk of serious interpersonal harm relates to the legislative provisions that apply once an offender is subject to a supervision order. The Panel's findings from its examination of the case of Sean Price and feedback received in consultations, indicate the difficulties in containing a risk of reoffending for sex offenders, who have violent offending histories, when the SSODSA is limited to the risk of sexual offending and when the options for managing an offender on a supervision order do not support a swift intervention when there is evidence of a gradual or imminent escalation of risk of violence.

3.90 In the Panel's opinion, reforms are necessary so that:

- conditions can be imposed and enforced in response to a risk of causing further serious interpersonal harm through sexual and non-sexual offending, and
- there are powers to intervene and manage an offender when there is an escalation of risk or concerning behaviour.

3.91 The Panel was also specifically asked to consider whether breach of supervision order offences should be expanded to include the commission of offences other than sexual offences. The Panel's view is that the core conditions of a supervision order should be expanded to include the commission of serious violent offences.

Current legislative powers

3.92 Under the existing legislation, a range of powers exist to intervene when an offender's behaviour becomes problematic, or there is non-compliance with the conditions of the supervision order, or it appears that the risk of reoffending is escalating, including:

- issuing a formal warning[60]
- issuing or varying instructions and directions[61]
- exercise of the emergency powers[62]
- applying to the court for a review of conditions[63]
- using holding powers[64]
- commencing proceedings for breach of supervision order,[65] and
- applying to the court for a detention order where the risk has proved unacceptable to manage on a supervision order.[66]

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60 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 163(b).

61 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) ss 121, 163(c).

62 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 120.

63 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 77.

64 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) Part 11, Division 3.

65 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 172.

66 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 33.

Investigation and Management by Corrections Victoria

3.93 A number of steps generally precede any exercise of the Adult Parole Board's powers under Parts 10 and 11 of the SSODSA (discussed below).

3.94 A concern regarding an offender's behaviour may be referred by the offender's Specialist Case Manager to his or her line manager, being the Principal Practitioner in the first instance, followed by the General Manager of Community Correctional Services and the Regional Director. The Sex Offender Management Branch may also be notified and would provide guidance as appropriate. Depending on the seriousness of the concern, an incident report is likely to be prepared for the consideration of the Adult Parole Board.

3.95 A case conference may be set up to discuss issues of concern, de-escalation approaches and how to proceed. Parties to such a case conference would usually include the Sex Offender Management Branch, regional staff supervising the offender, management from community corrections and head office, and the Specialised Offender Assessment Treatment Services clinician involved in the treatment of that offender.

3.96 It is not uncommon for police (for example, where relevant the offender's compliance manager[67]), the Victorian Association for the Care and Resettlement of Offenders, Disability Client Services or others involved with the offender to be part of the case conference. Additionally, Corrections Victoria staff may also liaise with a Support and Awareness Group member to discuss the offender's current presentation and strategies to manage this.

3.97 These steps support local inter-agency management of the concerning behaviour and consistent communication with the offender from a range of agencies regarding boundaries and potential consequences.

Warning to the offender

3.98 A warning from either the Adult Parole Board or the Secretary to the Department of Justice and Regulation may be used to complement case management where offenders appear to be failing to comply with the conditions of their supervision order.

3.99 In the case of concerning behaviour which is of insufficient seriousness to justify a prosecution, the Adult Parole Board may issue a formal warning.[68] The Secretary to the Department of Justice and Regulation may also provide infringing offenders with a formal written warning regarding their conduct. Corrections Victoria may also recommend to the Adult Parole Board that an offender present to the Board for the purpose of the Board making inquiries into the alleged breach.[69] This may, in effect, provide an opportunity for the offender to be given feedback by the Board regarding his or her conduct.

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[67] The Chief Commissioner of Police approves compliance managers within Victoria Police to receive reports from registered sex offenders under section 23(3) of the *Sex Offenders Registration Act 2004* (Vic).

[68] *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 163(b).

[69] *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 161.

Instructions and directions

3.100 While only the court may specify the conditions of a supervision order, the Adult Parole Board is empowered to give instructions and directions to offenders. A condition pursuant to section 20 of the SSODSA is the primary source the Adult Parole Board's power to issue directions. In addition, the Adult Parole Board has an emergency power of direction[70] and a power to issue instructions 'necessary to give effect to' the conditions of or directions under the supervision order.[71] Instructions and directions provide the Board and Corrections Victoria with the flexibility to 'operationalise' the day-to-day management of offenders.

3.101 In the event that Corrections Victoria staff become aware of an offender exhibiting concerning behaviour that could be managed through the issuance of a relevant instruction or direction, a recommendation would be made to the Adult Parole Board, who appear to generally accept the expertise of those directly managing the offender.[72]

3.102 When determining whether to approve such requests, the Adult Parole Board must consider whether it represents the minimum interference necessary to manage the risk and is reasonably related to the gravity of the risk of the offender reoffending.[73] With regard to the latter, it is envisaged that the Board will, amongst other matters, consider the judge's original intentions in imposing the order and setting the conditions and any change in circumstances.

Emergency power

3.103 The emergency power allows the Adult Parole Board to give directions designed to manage the offender in a way that is inconsistent with, or not provided for by, the conditions of the supervision order. [74]

3.104 The Adult Parole Board may exercise this power if there is an imminent risk of harm to the offender or to the community, or accommodation specified by the court as a condition of the order becomes unavailable. In either case, the Board must believe that because of the urgency of the situation it is not practicable for an application to be made to the court for a variation of the conditions of the supervision order.[75]

3.105 This power ceases to have effect 72 hours after the direction is given by the Adult Parole Board, who must notify the Secretary to the Department of Justice and Regulation of its issue. However in practice, the recommendation to exercise the power will generally have been made by Corrections Victoria and so the Secretary will already be cognisant of the situation.

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70 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 120.

71 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 121.

72 In a recent statement, the Adult Parole Board stated that 'The [Detention and Supervision Order] Division's primary function is to consider reports and recommendations from Corrections Victoria for the setting of directions to assist their management of the conditions of a supervision order'. Adult Parole Board, 'Media Statement from the Adult Parole Board of Victoria', (8 September 2015).

73 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 20 (2).

74 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 120(1).

75 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 120(2).

3.106 If the Adult Parole Board considers that the management of the offender under the emergency direction should continue for more than 72 hours, the Board may recommend to the Secretary that an urgent application be made to the court for a review of the conditions of the supervision order.

3.107 After making an emergency direction, the Secretary must, within five working days, report to the court that made the supervision order, setting out:

- details of the emergency situation
- why the offender could not be managed consistently with the conditions of the order
- how the emergency power was exercised, and
- how the emergency situation was resolved.[76]

3.108 The Adult Parole Board has outlined the frequency with which it has drawn on its emergency powers.[77]

Table 8: Exercise of emergency powers by the Adult Parole Board, 2009–10 to 2014–15

Detention and Supervision Orders	2014–15	2013–14	2012–13	2011–12	2010–11	2009–10
No. of persons upon whom an emergency power was exercised	0	2	1	1	0	0

3.109 It appears more common for the Adult Parole Board to direct persons to reside in a residential facility (Corella Place) as a way of managing risk, which can be done without relying on emergency powers where a condition of the supervision order empowers the Adult Parole Board to do so. As already outlined, the capacity of Corella Place to manage some of these risks is limited.

Table 9: Directions to reside in a residential facility, 2009–10 and 2014–15

Detention and Supervision Orders	2014–15	2013–14	2012–13	2011–12	2010–11	2009–10
No. of persons upon whom an emergency power was exercised	18	14	12	8	8	4

[76] *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 132.

[77] Adult Parole Board of Victoria, *2013–2014: Annual Report* (2014); Adult Parole Board of Victoria, *2014–2015: Annual Report* (2015).

Review of conditions

3.110 If an offender is showing an escalation of risk that requires the variation or issue of a new condition, the Secretary may apply to the court for leave to review the conditions of the supervision order.[78]

3.111 Leave may be granted by the court if:

- new facts and circumstances have arisen since the conditions were made that would justify the review, or
- it would generally be in the interests of justice, having regard to the purposes of the conditions and the manner or effect of their implementation, to review the conditions.

3.112 Upon review, the court must grant the Secretary, the Adult Parole Board and the offender the right to be heard in respect of the application. [79] However, historically, the Board has not sought to avail itself of this right.

3.113 After hearing submissions from the parties, the court may then either:

- vary, add or remove any conditions of the supervision order
- confirm the conditions of the supervision order, or
- review the supervision order.[80]

Holding powers

3.114 Division 3 of the SSODSA allows a police officer to exercise a holding power in relation to an offender only if there are reasonable grounds to suspect that there is an imminent risk that the offender will breach a condition of a supervision order.[81] This requires the relevant police officer to know a person is subject to such an order and be familiar enough with the legislation to be aware of what behaviour may be in breach of a supervision order. Consultations reflected a concern that this is not always the case.

3.115 The power can be invoked for a maximum of 10 hours[82] and the offender can be detained in a police gaol only if the officer considers it necessary to do so for the protection of any person or property, or to prevent the offender from escaping from detention.[83]

3.116 The officer must immediately notify the Secretary to the Department of Justice and Regulation if an offender is detained using holding powers,[84] who in turn must notify the Adult Parole Board as soon as practicable.[85]

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78 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 77.

79 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 78(1).

80 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 78(3).

81 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 164.

82 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 168.

83 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 165(2).

84 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 169(1).

85 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 169(2).

3.117 During the holding period police may not interview or question the offender in relation to any offence or alleged offence[86] and must ensure the offender is afforded reasonable facilities to communicate with a friend, relative or legal practitioner.[87]

3.118 Due to their proximity to Corella Place and the frequency with which they respond to incidents there, Ararat Police have a great deal of experience in dealing with offenders subject to supervision orders. In the Panel's consultation with them, Ararat Police informed the Panel that they had invoked the holding powers on only one occasion, outlining their belief that such powers are only appropriate in unique situations given there is very little that can be achieved in holding an offender for 10 hours; and matters cannot be returned to court in that time either.

Breach proceedings

3.119 As outlined in Chapter 4, the Secretary to the Department of Justice and Regulation and members of Victoria Police are able to bring proceedings for breach of supervision order charges. Sections 172 and 172A of the SSODSA outline the procedural requirements for breach of supervision order prosecutions.

3.120 The Office of Public Prosecutions prosecutes charges when they are filed and investigated by Victoria Police. If arrested outside of hours the accused is remanded by a bail justice to appear in the Magistrates' Court the next working day or otherwise taken directly before the Magistrates' Court for a remand hearing.

3.121 The accused is entitled to make an application for bail upon the remand hearing in the Magistrates' Court without notice. Corrections Victoria routinely send a member of staff to that hearing in case the accused applies for bail, to provide advice to police as to procedure, bail and risk if released. The Panel was advised that this is because police prosecutors and Magistrates do not always have familiarity with the post-sentence scheme.

3.122 It is noteworthy that many offenders charged with breach offences have been the subject of multiple breach proceedings.[88]

Detention orders

3.123 Another response to concerning behaviour, or to non-compliance that might indicate escalating risk, are interim detention orders and detention orders.[89] The threshold for the imposition of a detention order, is in practice the offender posing an unacceptable risk that cannot be managed by a supervision order alone.

3.124 It is the highest imposition on an offender's liberty to detain an offender in prison after the completion of his or her sentence and hence a successful application generally requires very clear evidence that the risk cannot be managed on a supervision order.

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86 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 170.

87 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 167.

88 For example, of the 19 accused prosecuted by the Office of Public Prosecutions (over thirty proceedings), 12 have prior/and or subsequent convictions for breaching their supervision order, some within a matter of days or months (data provided to the Panel by the Office of Public Prosecutions).

89 The SSODSA empowers the Supreme Court to make a detention order of up to three years duration, or an interim detention order of up to four months duration, in respect of an eligible offender on the application of the Director of Public Prosecutions. The court must review a detention order every 12 months.

3.125 Such evidence is perhaps most compelling after the commission of further relevant offending committed by an offender while subject to a supervision order. In such cases, the unacceptable risk of harm underpinning the supervision order has been realised.

3.126 Prior to the introduction of the SSODSA, the *Serious Sex Offenders Monitoring Act 2005* (Vic) did not include provision for detention. Since the introduction of the SSODSA in 2009, there have only been five applications in relation to three offenders brought and determined by the court, of which two offenders are now subject to detention orders. The first detention order was made in 2014.

3.127 Whilst the Act envisions that interim detention order applications may be determined on the face of the supporting documentation[90] and that they can proceed with urgency before a judge of the Supreme Court, the Panel was informed in consultations that previous interim applications have taken as much time to determine as an application for a substantive order. There appear to have been few situations in which an interim detention order or short term detention order has been used to attempt to manage an 'imminent risk'.

The Panel's view: more legislative options to manage and respond to an escalating risk of serious interpersonal harm

Expanding the conditions that can be imposed to manage a risk of violent reoffending

3.128 The Panel considers that, as part of the reform of the existing post-sentence detention and supervision scheme, the legislation should provide more options to manage the behaviour of those who present the greatest likelihood of causing serious interpersonal harm.

3.129 Irrespective of whether the government accepts its recommendation in relation to the inclusion of serious violent offenders in the scheme or the precise scope of eligible offences, the Panel considers that the existing legislative provisions should be amended to:

- clarify the legislation so that there is clear power for conditions, instructions and directions to be made that are directed at reducing an offender's risk of committing violent offences,[91] and
- concomitant with this change, include a requirement that a core condition of every supervision order should be a requirement that the offender not commit a violent offence, that is an indictable offence punishable by imprisonment, so that if such an offence is committed whilst an offender is subject to a supervision order, this will constitute a breach of that order.

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[90] Section 54 (1)(b) of the SSODSA provides that, amongst other things, that it the Court may make an interim supervision order if it appears to the court that the documentation supporting the application for the detention order would, if proved, justify the making of a detention order.

[91] The Panel is of the view that such conditions, instructions and directions must continue to 'constitute the minimum interference with the offender's liberty, privacy or freedom of movement that is necessary to ensure the purpose of the conditions' and be 'reasonably related to the gravity of the risk of the offender reoffending'.

3.130 As noted earlier in this report, under the current legislative regime, the list of relevant offences in Schedule 1 of the SSODSA underpins both an offender's eligibility for post-sentence detention or supervision as well as the risk that can be managed under a detention or supervision order. The Panel notes that under the reformed scheme, it may be appropriate to differentiate between: a relevant offence for the purpose of an offender qualifying for the scheme; a relevant offence for the purpose of managing an offender; and a relevant offence for the purpose of defining when a violent offence should constitute a breach of supervision order. For example, the Panel notes that the SSODSA was recently amended to include an offence against section 41DA of the *Summary Offences Act 1966* (Vic) (distribution of an intimate image) as a relevant offence. Whilst this may be relevant to the management of an offender already subject to a supervision order, the Panel is opposed to offences of this kind becoming the sole qualifying criterion for eligibility for a post-sentence order. Similarly, if government determines that only homicide offences are to be qualifying violent offences for the reformed scheme, it is important that the legislation provides a power to manage the risk of a range of violent offences less serious than homicide being perpetrated by such an offender.

3.131 The Panel's recommendations seek to achieve a scheme which allows for a broader range of seriousness in the violent offences that can be included in the risk of offending that can be managed by conditions, instructions and directions, while allowing for only more serious offences to be included in the offences that can constitute a breach of a supervision order. The Panel's view is that the scheme should operate to allow intervention when there is an escalation of the risk of violence, before it escalates to the commission of a serious violent offence that could constitute a breach of a supervision order.

Recommendation 7

The reformed post-sentence detention and supervision scheme should:

- include a clear statutory power for conditions, instructions and directions to be made that are aimed at reducing an offender's risk of committing either violent or sexual offences or both, and
- continue to provide that a core condition of every supervision order be not to commit a 'relevant' sexual offence and provide that a core condition of every supervision order be not to commit a serious violent offence (defined as an indictable offence punishable by a sentence of imprisonment), such that the commission of such an offence whilst an offender is subject to a supervision order will constitute a breach of that order.

Responding to escalated risk

3.132 As has been noted above, the Panel is of the view that the existing post-sentence detention and supervision scheme does not provide sufficient flexibility to manage situations in which an offender's behaviour indicates that he or she may be at elevated risk of causing serious interpersonal harm. This not a criticism of those involved with the administration of the scheme: the Panel recognises the significant efforts made by the judiciary, court staff, the Adult Parole Board and Corrections Victoria to manage such situations in a timely and responsive way, despite the limitations of the legislation.

3.133 The Adult Parole Board and Victoria Police already have some statutory powers to deal with emergency situations. These powers have a number of shortcomings:[92]

- The holding power may only be exercised by police where there are reasonable grounds to suspect that there is an imminent risk that the offender will breach a condition of the supervision order. Similarly, the emergency power of direction may only be exercised where there is an imminent risk of harm to the offender or the community (or their court-specified accommodation has become unavailable). This threshold may be insufficient where the risk of serious interpersonal harm is less than imminent.
- The holding power only allows police to detain an offender for a period of 10 hours and an emergency direction issued by the Adult Parole Board ceases to have effect 72 hours after it is given. This period may be sufficient to allow for an assessment of the offender to occur, but is of insufficient duration to consider the results of any assessment, let alone for the matter to be brought before a court for a review of conditions.
- The holding power requires the offender to be detained in a police station or, in certain circumstances, a police gaol;[93] neither of which is the most appropriate location for intervention or assessment.
- The limit of 10 hours for the holding power does not allow sufficient time for matters to be returned to court.

3.134 Further, in practice, it is most unlikely that a detention order or interim detention order application could be prepared, filed and dealt with by the Supreme Court quickly enough to be a useful tool to deal with an offender who is posing an imminent risk to community safety.

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92 Some of these shortcomings were identified in consultations and some of these have been identified by the Panel in its review of material relating to offenders in the complex adult victim sex offender cohort subject to the SSODSA.

93 Section 11 of the *Corrections Act 1986* (Vic) provides for the appointment of premises as 'police gaols' by the Governor in Council.

3.135 In the Panel's view, there is a need for reforms to achieve the objective of responding to escalated risk. There should be an increased emphasis on training of 'frontline staff'[94] to recognise and respond to situations of escalating risk, including training in formal threat assessments. This should be coupled with reforms to provide more flexibility in the legislative options available as a response when such concerns are raised. The Panel envisages that this can be achieved by:

- ensuring the emergency direction power currently held by the Adult Parole Board is transferred to the Public Protection Authority
- extending the period of time for Victoria Police's holding power from 10 to 72 hours, and
- providing an additional option of an 'emergency detention order.

3.136 The Panel anticipates that the recommendations made earlier in this chapter which will allow the risk of violence to be addressed by the scheme (for example, through conditions of a supervision order, or in extreme cases, the making of a detention order or the exercise of the holding power), will mean that the strengthened emergency powers will continue to be exercised only in the most exceptional of circumstances.

3.137 It is also important that the existing safeguards surrounding the exercise of emergency powers remain in place. This will ensure that the personal liberties of offenders are not infringed in an unreasonable way.

Threat Assessment

3.138 Risk assessments, by way of both actuarial tools and structural clinical judgement, form part of long-term planning and require time as well as multiple sources of information if they are to be performed properly. Risk assessments in the criminal justice context act potentially as both a guide to the long term probability of reoffending and to the factors which, if managed effectively, will reduce the chances of reoffending.[95] Risk assessment tools were initially introduced to assist decision makers like parole boards who were concerned with assessing the chances of reoffending in a wide range of potential crimes. Later, risk assessment approaches were developed to assist in managing, not merely recognising, risk and were aimed at more specific categories of offending, for example stalking or violent offending.

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[94] This includes Department of Justice and Regulation staff who case manage offenders on SSODSA orders (such as Specialist Case Workers, Specialist Case Managers, Principal Practitioners) and staff tasked with decision making and service provision in relation to complex offenders under the SSODSA, including the judiciary, police, and mental health and disability workers. The need for more training specifically targeted around risk was generally identified in many of the Panel's consultations.

[95] The Panel notes that a key finding made by Judge Gray, the State Coroner of Victoria in his recent *Findings into the Death of Luke Geoffrey Batty* (28 September 2015) 4 related to risk assessments in the family violence context. His Honour found that there should be a judicial power that can be activated where there are safety concerns, particularly in relation to children, to mandate that a perpetrator of family violence be assessed by a forensic psychiatrist.

3.139 Threat assessments, on the other hand, are performed in situations which raise concerns that 'something bad' will happen in the near future. They have to be performed on the basis of limited information and within the constraints on time created by the urgent need to come to a decision in the 'here and now'. Threat assessment approaches developed initially as a way of directing responses to concerns created in specific situations, such as apprehended workplace violence, the protection of public figures and incidents of domestic disturbance. Threat assessment tools often borrowed items from existing risk assessment instruments.

3.140 Risk assessment instruments, with the exception of some such as the Static 99, are designed to be used by trained risk assessment professionals. Threat assessment tools are designed for use primarily by front line staff such as police officers and human resource managers. Threat assessment tools are an aid to those who must make a quick decision. They are intended to augment the decision-maker's experience and common sense, not to replace those essential qualities.

3.141 Threat assessments are usually triggered by a change (for example, suddenly refusing to cooperate with previously agreed activities) or a new event (for example, an event like making a threat to kill). Other examples are emerging suspiciousness where none existed before, new levels of irritability and truculence and stopping medication. In those who are familiar with the person they are supervising, an unease, which may be difficult to describe, or an emerging apprehension for their own safety may appropriately trigger a threat assessment. Much will depend on the experience and good judgement of the supervisor.

3.142 Training in threat assessment is, though not essential, desirable. Threat assessment training focuses on how to respond to different types of threat situations and how the threat assessment tool may inform such responses.

3.143 Threat assessment tools can act to support the subjective judgements of those conducting the assessment, and provide an authority to the evaluation which can assist in ensuring that the right services and support are made available.[96] It is for this reason that the Panel recommends that consideration be given to providing frontline Corrections Victoria staff with training in formal threat assessment.

Emergency direction powers, holding powers and an emergency detention order

3.144 The Panel recognises that in addition to improving the ability of frontline staff to recognise and respond to escalating risk, it is important to also ensure that the legislation provides a means to act upon those concerns, particularly where an urgent response is required.

3.145 In Chapter 5 of the Report, the Panel sets out in detail its recommendation that there be more flexible accommodation options available to cater to the complex needs of offenders and provide a step-up/step-down approach that is responsive to an offender's progress on the order, or lack thereof, for example when there is escalating risk or concerning behaviour.

[96] This change may also support the recent changes made to the Deputy Commissioner's Instructions to encourage staff to exercise their professional judgement.

3.146 The existing emergency powers currently provide that the Adult Parole Board can, for example, direct offenders to reside at Corella Place if it considers that they pose an imminent risk of harm to the community. Those offenders can then be directed by the Secretary to the Department of Justice and Regulation to attend for an examination by a medical expert for the purpose of a personal examination to inform an assessment or progress report.[97] The existing emergency powers would also allow the Public Protection Authority to direct an offender to reside in a 'step-up' facility, for example, in cases of imminent risk. Any assessment undertaken would then be used to provide the Authority with information upon which decisions about the management of the offender could be made. The Panel considers it is important to ensure the existing powers of the Adult Parole Board are replicated in those powers that are transferred to the Public Protection Authority.

3.147 The Panel also notes the deficiency in the maximum time of 10 hours that renders Victoria Police's holding power to be of little use. The Panel is of the view that the maximum period for such a holding power should be increased to 72 hours (it may be necessary to adjust this to account for the impact of public holidays upon the availability of accessing the courts in such a period). This could ensure for example, that if the holding power was exercised in respect of an offender on a Friday, the offender could be held over the weekend, and attend the Public Protection Authority (or the Adult Parole Board until the Public Protection Authority is established) on a Monday for consideration.

3.148 In addition, in the view of the Panel, it would be desirable to strengthen the existing emergency powers available under the SSODSA. The Panel also considers it necessary for a clear power for an emergency detention order to be made by a court, similar to that in existence under the New South Wales scheme.[98] Such a power would allow the court to make an order for an offender to be detained at a particular place. The emergency detention order should last for a period of sufficient duration to provide time to contain an offender's imminent risk, allow for a threat or risk assessment with a view to obtaining a report and to reviewing the existing management plan, reconsider the offender's ongoing residential placement options, apply to the court for a review of the conditions of the order, or, in extreme cases, apply to the court for a detention order. The Panel is of the view that a period of five days may be an appropriate duration for this purpose.

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97 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 107. It is important to note that s 107(5) of this section specifically notes 'nothing in this section empowers the giving of a direction that would require an offender to submit to a physical examination or in any way actively to cooperate in the carrying of a personal examination'.

98 *Crimes (High Risk Offenders) Act 2006* (NSW) pt 3 div 3A. The Attorney-General may apply to the Supreme Court for an emergency detention order for the detention of an offender who is the subject of an extended supervision order or an interim supervision order and who, because of altered circumstances, cannot be provided with adequate supervision under the extended supervision order or interim supervision order.

Recommendation 8

Staff who are involved in the day-to-day management and supervision of offenders should be provided with training in the conduct of formal threat assessments.

Recommendation 9

The reformed post-sentence detention and supervision scheme should:

- empower the Public Protection Authority to make an emergency direction that an offender be present at a particular place for up to a period of 72 hours for the purpose of a threat assessment
- extend the limit of the holding powers of Victoria Police from 10 hours to 72 hours, and
- provide for an emergency detention order to be made by a court that an offender be detained for up to a period of five days.

4. Independent and rigorous oversight

Introduction

4.1 The third of the Panel's terms of reference asks it to provide advice on governance models for improved decision making in relation to complex adult victim sex offenders.

4.2 The SSODSA provides that any proceeding on an application for a supervision order, a detention order, an interim order, and any related appeals, are civil in nature. When introducing the Serious Sex Offenders (Detention and Supervision) Bill, the then Minister for Corrections, Bob Cameron MP, in his statement of compatibility, remarked:

> It is important to highlight that the detention and supervision scheme is civil rather than criminal. Its purposes and effects are geared toward prevention, protection and rehabilitation rather than the punishment of the offender. Further, the scheme is based on the risk of reoffending, rather than the fact of a person having been convicted, or on any particular event that may have taken place in the past.[1]

4.3 Ensuring that any legislation is properly characterised as 'protective rather than … punitive'[2] and that proceedings taken under that legislation, are civil rather than criminal is important in order to comply with the majority of the High Court's approach in *Fardon v Attorney-General (Qld).* The enactment of a civil rather than a criminal scheme is also important in relation to the standard of proof and the rules of evidence that apply.[3]

4.4 However, there is a question about whether proceedings under the SSODSA are truly 'civil' in nature because the rules relating to the practice and procedure of a court in civil proceedings do not apply.[4] In addition, a failure to comply with a condition of a supervision order or an interim order is an offence punishable by a term of imprisonment. The fact that the Director of Public Prosecutions and Victoria Police have a role to play in the scheme, as detailed below, also signals that there is a criminal justice aspect to it. Further, the governance models for decision making and management of offenders under supervision invoke the involvement of criminal justice agencies, in particular Corrections Victoria and the Adult Parole Board.

4.5 The most pertinent question, however, remains that which the High Court articulated in *Fardon*: is the legislation protective or punitive? If it is protective in nature, then proceedings taken pursuant to, and in conformity with, that legislation will probably, except to the extent that the proceedings are for breach of an order, made pursuant to the legislation, be characterised as civil.

4.6 In the opinion of the Panel, the SSODSA is a protective rather than a punitive enactment, and applications made under it for post-sentence orders for detention or supervision are civil proceedings.

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1 Victoria, 'Serious Sex Offenders (Detention and Supervision) Bill', Statement of Compatibility, Legislative Assembly, 12 November 2009, 4033 (Bob Cameron MP, Minister for Corrections).

2 *Fardon v Attorney-General (Qld) (2004) 223 CLR 575* at 654 per Callinan and Heydon JJ.

3 Bernadette McSherry, *Managing Fear: The Law and Ethics of Preventive Detention and Risk Assessment* (2014), 148-149.

4 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 79(2).

4.7 This chapter examines issues identified by the Panel under the current complex governance arrangements for the management of sex offenders in the community under the SSDOSA. It also sets out the Panel's view on how the governance framework should be reformed to improve decision making and management of those offenders who represent the greatest likelihood of causing serious interpersonal harm.

4.8 Having considered a number of alternatives, the preferred approach of the Panel is the creation of a new authority with responsibility for the independent, rigorous and continuous oversight of offenders subject to post-sentence supervision and detention, with that oversight commencing whilst an offender is still in prison. This forms the basis of the Panel's third pillar of reform – 'Independent and rigorous oversight'.

4.9 Decisions made relating to the administration of orders and management of offenders under the new scheme proposed by the Panel ought to be made by a body that has the independence and expertise necessary to ensure that they are rigorous and fully informed. If the recommendations of the Panel are accepted, the new authority would exhibit those qualities.

4.10 Processes must ensure that this new body can review eligible offenders and identify for inclusion in a cohort under its oversight those who present the greatest likelihood of causing serious interpersonal harm. Processes must ensure that this new body can critically engage with the complexities of the offender, the various agencies involved in his or her management, and identify any concerning behaviour or escalating risk, to provide timely guidance and informed directives to those charged with the day-to-day management of these offenders.

4.11 At present, the responsibility for that management rests with the Adult Parole Board. It is a responsibility which the Board has discharged admirably. The Panel nevertheless believes that the Board's resources would be better employed if devoted to its core function which, of course, is to manage Victoria's parole system. This is of itself very demanding, and calls upon different levels of expertise and experience than those employed in the monitoring and supervision of sex offenders. The two do not, therefore, sit together in perfect comfort. For this reason, their separation makes sense, provided that (as the Panel recommends) the management of offenders under supervision orders is transferred to an agency which is charged with oversight of the treatment and management of offenders, who are identified during their sentence of imprisonment, as presenting the greatest likelihood of committing further offences of serious interpersonal harm. Both the Board and the agency would then have responsibility for that which each is best fitted to discharge.

Complexity of roles and responsibilities under the current system

4.12 The disparate range of responsibilities that, for pragmatic reasons at the time of the SSODSA's initial development, were placed upon the Adult Parole Board, reflect the complex mix of roles and responsibilities given to different bodies under the SSODSA.

Applications for supervision and detention orders

4.13 The Secretary to the Department of Justice and Regulation has the power to determine (i) whether an application for a supervision order will be made in respect of an eligible offender, and (ii) whether a recommendation should be made to the DPP for a detention order application. If the Secretary is of the view that a detention order is possibly appropriate, the matter will be referred to the Director of Public Prosecutions who will then decide whether or not to seek that order.[5]

4.14 If, upon a review of a supervision order the court or the Director considers that a detention order should be made, the Director may apply to the Supreme Court for such an order.[6]

4.15 Once an application is made, the Secretary or the Director, as the case requires, has the burden of proving that the offender poses an unacceptable risk of committing a relevant offence if the order applied for is not made.[7]

4.16 Despite the distinction between who makes an application, the Secretary has the overall responsibility for the management of any offender subject to a detention or supervision order.

4.17 The Director therefore relies heavily upon the evidence given on behalf of the Secretary in detention order proceedings.

4.18 As set out in Chapter 2, the Supreme Court hears applications for detention orders, while applications for supervision orders are heard by the County Court or the Supreme Court.

4.19 The Secretary currently instructs the Victorian Government Solicitor's Office as well as two private law firms (Minter Ellison and Russell Kennedy) to undertake the legal work in relation to the scheme. This is a costly scheme, especially in relation to legal fees, due to the frequency with which these matters return to court and the complexity of proceedings. Also contributing to the high legal costs, is that breach matters are determined in the County or Supreme Court, not the Magistrates' Court.

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5 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 104.

6 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 73(3).

7 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) ss 9(6), 35(5).

4.20 In the 2014–15 financial year, the legal costs to the State for the entire scheme totalled approximately $3.7 million.[8] In order to get a general sense of the expenditure on legal costs per annum for each offender, this figure was divided by the total number of offenders subject to orders[9] to get a rough figure of approximately $31,000. These fees relate to general advice work,[10] applications to the courts for new orders and reviews of existing orders and conditions, and the prosecution of breaches.

4.21 The Panel was also provided figures by Victoria Legal Aid with its expenditure on grants of legal assistance in SSODSA matters for the 2014–15 financial year. This data excluded costs of proceedings for breaches of a supervision order and are not directly comparable to the figures provided by the Department (as Victoria Legal Aid does not provide funding for every offender subject to an application for a post-sentence order). The amount involved was approximately $300,000.[11] The Panel notes concerns were raised during consultations about the 'inequality of arms' in these proceedings, particularly the routine use of senior counsel by the Secretary. The Panel shares these concerns.[12]

Determining orders and conditions

4.22 The court to which an application is made must determine whether, in the case of a particular offender/respondent, the threshold test[13] is satisfied. The court is always assisted by the evidence of an expert risk assessor on behalf of the Secretary or the Director, and often assisted by other reports and materials filed in the proceedings, whether by the Secretary, the Director or the respondent.

4.23 If the threshold test is satisfied, the court may then make the order which is the subject of the application. Alternatively, it may make no order or, in the case of an application for a detention order, it may make a supervision order.[14]

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8 This represents the legal expenditure relating to the post-sentence scheme by the Sex Offender Management Branch with the Victorian Government Solicitor's Office and private law firms as well as the legal costs relating to the scheme of the Office of Public Prosecutions (required to discharge the Director's responsibilities relating to detention orders applications and breaches of supervision orders), rounded to the nearest $100,000. It is noted by the Panel that the Victorian Government Solicitor's Office is an administrative office of the Department of Justice and Regulation. It operates on a cost recovery basis with any profit returned to the department. This means that the actual outgoing cost to the department may be less than is noted at [4.20].

9 As at 30 June 2015, there were 116 offenders subject to a supervision order and two offenders subject to a detention order.

10 General advice includes advice relating to the operation and complexities of the scheme as well as advice relating to individual offenders.

11 This figure has been rounded to the nearest $100,000 and includes in-house and private practitioner matters, but does not include duty lawyer appearances and grants of aid for breach of supervision order hearings. Further, due to the lag in fees being claimed and billed, the figure does not directly reflect the total cost of the 61 matters for the financial year.

12 The Panel acknowledges that the Secretary wishes to to ensure that a well prepared and presented case is placed before the courts, but considers that this can still be done without necessarily engaging senior counsel on a routine basis. For example, during its review, the Panel became aware of instances where the Secretary was represented in prosecutions of very minor breaches of supervision orders by senior counsel. While it will take time and effort to establish a pool of suitably experienced junior counsel to undertake this work for the Secretary in the future, the Panel considers this is an exercise worth undertaking.

13 See 'unacceptable risk' test: *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) ss 9(1), 35(1), 36(1).

14 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) ss 9(7), 36(3), 36(4), 36(5).

4.24 A court that makes a supervision order must impose core conditions on that order[15] and any other conditions it considers appropriate, bearing in mind the requirements under Part 2 of the Act, such as the need for conditions to be reasonably related to the gravity of the risk of the offender reoffending.[16]

4.25 The court may also determine whether to authorise the Adult Parole Board to give directions to an offender in relation to the operation of any condition.[17] With few exceptions, this power is generally granted.

4.26 In order to discharge this responsibility, the court will generally hear evidence from a representative of the Sex Offender Management Branch in Corrections Victoria about the appropriateness of the conditions sought by the Secretary.

4.27 The Sex Offender Management Branch is responsible for the delivery of a coordinated and integrated approach to the management of sex offenders across both prison services and community corrections, including post-sentence supervision. Those responsibilities cover a number of functional areas including policy and project management, assessment, applications, operations and treatment through the Specialised Offender Assessment and Treatment Service. The General Manager of Corella Place, the residential facility for sex offenders at Ararat, also reports to the Branch.

4.28 The Branch relies upon staff at Corella Place or a particular community correctional services office[18] to recommend the appropriate conditions for a specific offender. However, given their familiarity with broad policy and legal developments relevant to the scheme, and subsequent involvement in court proceedings, the management team in the Sex Offender Management Branch are, in effect, responsible for determining the final conditions that will be sought in any proceedings before the court.

Administration and oversight of orders – the Adult Parole Board

4.29 The specific division of the Adult Parole Board which is responsible for administering orders under the SSODSA is the Detention and Supervision Order Division (the 'Division').[19]

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15 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 16.

16 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 15(6)(b).

17 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 20. Section 118(b) goes further, and provides that the functions of the Adult Parole Board include giving 'directions and instructions to an offender in accordance with any authorisation given to the … Board under a supervision order'. There is no explanation for the inclusion of 'instructions' in section 118, or for the omission of that word in section 20. Nor is the difference between them clear.

18 This is dependent on where the offender is likely to reside.

19 The Division is established under the *Corrections Act 1986* (Vic) s 64A.

4.30 The functions and powers of the Division are set out in Parts 9, 10 and 11 of the SSODSA. Amongst a host of other duties, the Division is responsible for administering the conditions of a supervision order and issuing 'instructions' and 'directions' to an offender in accordance with the terms of the order.

4.31 There is no requirement for the court which made the order, and which therefore set the conditions, to be given information about the instructions and directions issued by the Division to an offender.

4.32 However, the Adult Parole Board can only act in a manner that is inconsistent with the orders of the court when it is exercising its emergency powers under the SSODSA.[20] If such action is taken, the Secretary must report it to the court within five working days.[21]

4.33 In practice, the Division relies almost entirely upon the information provided to it by Corrections Victoria, the agency primarily responsible for the management of offenders in the community.

Procedure for prosecuting breaches of supervision order

4.34 If an offender fails to comply with a condition of his or her supervision order, or an instruction or direction issued pursuant to the order, breach proceedings may be instituted in the Magistrates' Court and then transferred for hearing to the court that made the order.[22]

4.35 Both the Secretary and the Director of Public Prosecutions are empowered to prosecute an offender for failing to comply with a supervision order. As a general rule, the Director prosecutes the more serious breaches. There are instances where both the Director and the Secretary have, at the same time and before the same judge, prosecuted an offender for different breaches.

4.36 This dual prosecution is not an efficient use of the State's resources. However, the Director of Public Prosecutions is not an investigative body and will not compile a brief of evidence where charges have been filed by the Secretary. The Director only prosecutes charges when they are filed and investigated by Victoria Police. Therefore, before or after a prosecution has been commenced by the Director, the Secretary may determine to file charges in respect of other breaches of the offender's supervision order that are not, or will not be, pursued by Victoria Police.

4.37 Police often consult with the Sex Offender Management Branch during the initial stages of an investigation, with the Branch likely to provide notification of an alleged breach and, based on their experience with previous similar cases, advice on procedural issues.

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[20] *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 120.

[21] *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 132.

[22] *See Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) ss 172, 172A.

4.38 Victoria Police have typically been involved in the more serious failures to comply with a supervision order (such as an offender absconding from Corella Place) and it is usual practice that the offender is arrested, rather than charged on summons. The accused will then be charged and bailed, or remanded to appear before the court that made the supervision order. In practice, this often occurs over a very short time period.

4.39 Once notified of the breach, the Office of Public Prosecutions will take carriage of the matter, continuing to liaise with Corrections Victoria, including the Sex Offender Management Branch, until the charges are determined. Matters are often resolved before a full brief of evidence is compiled.

4.40 Alleged breaches are also brought to the attention of the Secretary via the Sex Offender Management Branch and/or the Adult Parole Board. It has been general practice, once a determination is made to proceed with a full investigation and charge an offender, to give him 14 days' notice of the intention to file a charge-sheet.[23]

4.41 The Secretary will then instruct the Victorian Government Solicitor's Office or a private law firm to investigate the charges, compile a brief of evidence and prosecute the offender. In such circumstances, the one body is responsible for both the investigation and prosecution of the offence.

4.42 It is usual practice that, if the judge who imposed the supervision order is available, he or she will determine the charge(s) for failing to comply with the order. This provides a level of continuity of judicial oversight of the offender. It can, however result in delays in circumstances where a particular judge is unavailable or on circuit.

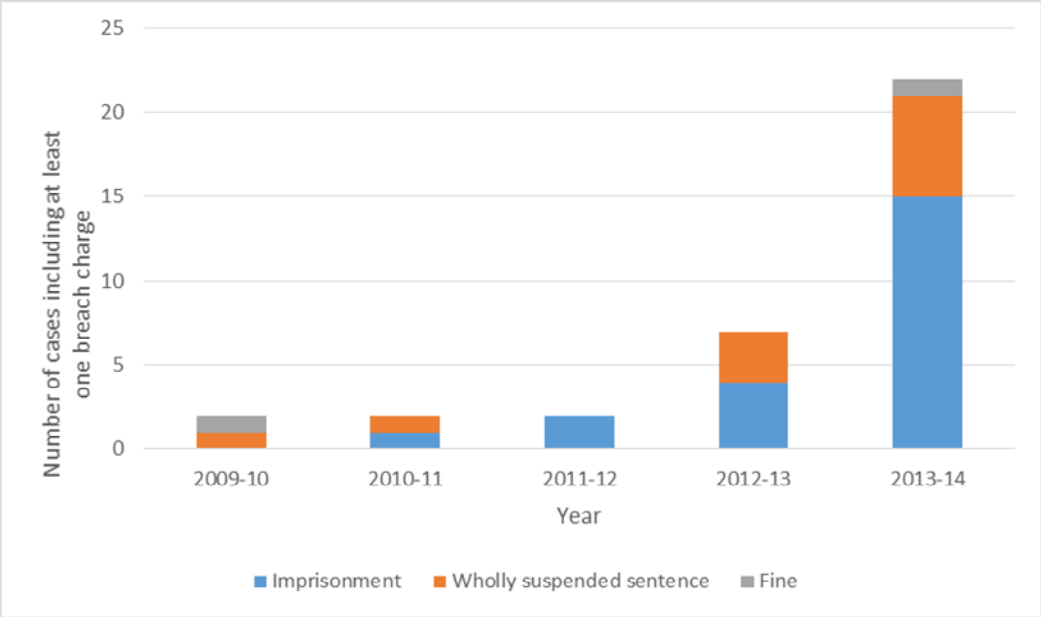
4.43 A breach of a supervision order is an indictable offence which carries a maximum penalty of five years' imprisonment.[24]

4.44 The County Court (together with the Sentencing Advisory Council) provided data regarding the number of breaches that have proceeded through the courts since the SSODSA came into operation. This indicates an upward trend in the number of breaches that the court is being asked to determine. This trend is demonstrated in Figure 7 below, and is consistent with an increase in the number of offenders subject to supervision orders.

[23] *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 172(2). This section was recently repealed by the *Serious Sex Offenders (Detention and Supervision) and other Acts Amendment Act 2015* (Vic).

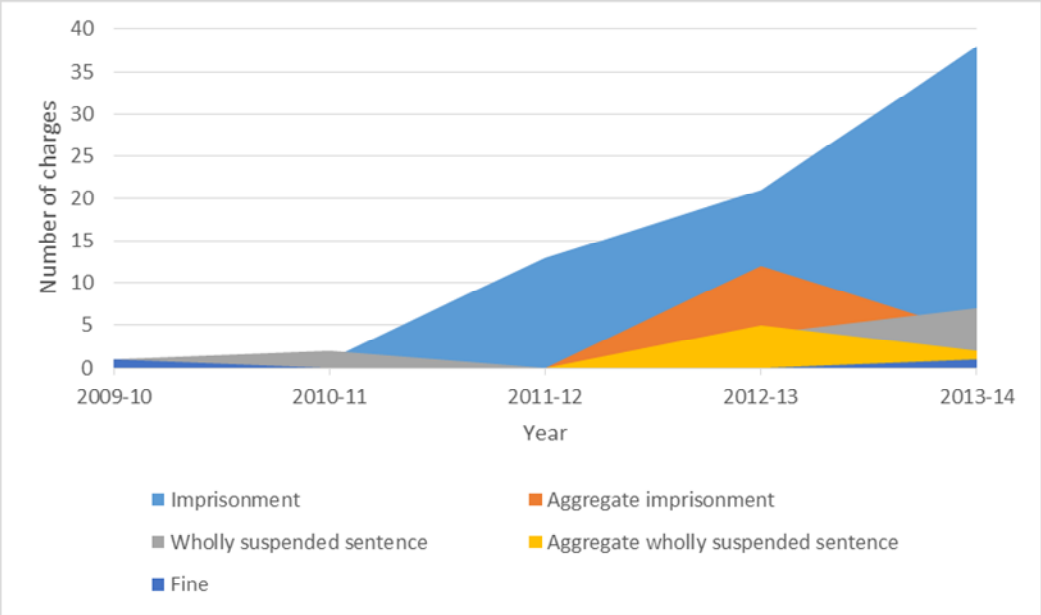
[24] *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 160.

Figure 7: Number of cases before the County Court where offender was sentenced in respect of one or more breach charges, 2009–10 to 2013–14[25]



4.45 Figure 8 indicates that the most commonly imposed sentence in the County Court in relation to a charge for breaching a supervision order is a term of imprisonment.

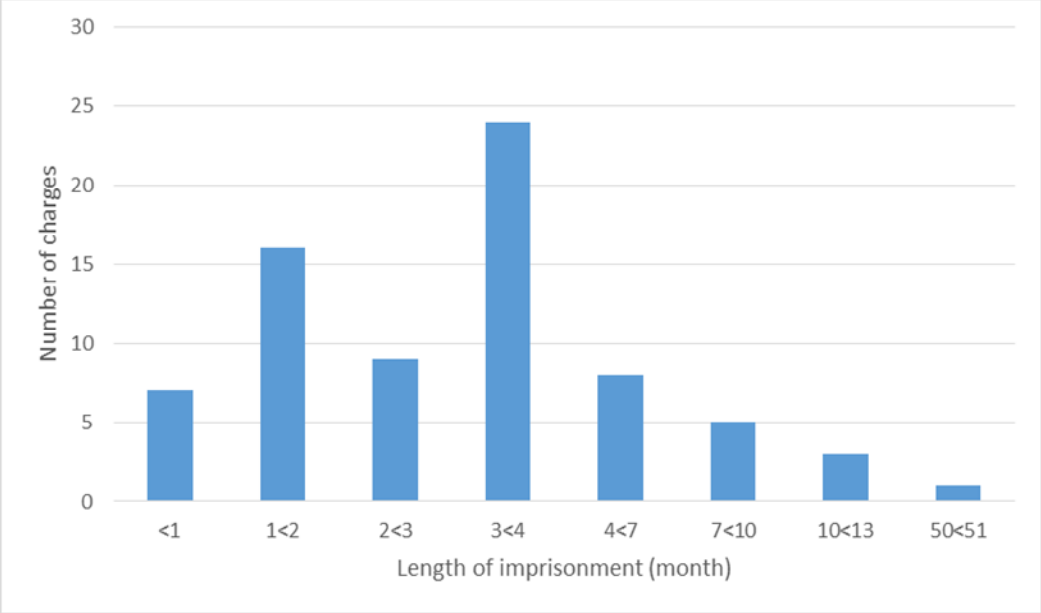
Figure 8: Type of sentence imposed on individual breach charges, 2009–10 to 2013–14



[25] Figure 1 shows the number of cases involving at least one charge for breach of a supervision order and types of sentence imposed by the County Court over a five year period. It must be noted that the table does not indicate which cases involved additional charges that might have warranted the imposition of a more serious disposition. There is also no data available for the 2014–15 financial year.

4.46 In addition to the number of cases, involving a charge of breach of supervision order, before the courts increasing, there has been an increase in the imposition of sentences of imprisonment – the most severe type of disposition available to a sentencing court.[26] As such, the Panel was interested in the most common length of imprisonment imposed. Figure 9 sets out the length of imprisonment terms, calculated in months.

Figure 9: Length of imprisonment term imposed on individual breach charges, 2009–10 to 2013–14



4.47 Figure 9 shows that the most common term of imprisonment imposed in respect of an individual charge of breaching a supervision order lies somewhere between three and four months, with the most serious of breaches having resulted in a term of imprisonment of between 50 and 51 months (just over four years).

4.48 While the increase in the number of cases before the courts can be partly attributed to the increase in the number of offenders subject to post-sentence supervision, it is also apparent from the material provided to the Panel that many offenders who have been charged with breaching their supervision order have been the subject of multiple breach proceedings. With the exception of one breach that was prosecuted in the Supreme Court, the County Court has determined every charge for breach of a supervision order.

[26] It is noted that the abolition of suspended sentences for sentencing of offences committed on or after 1 September 2013 may explain part of this increase.

4.49 Data provided by the Office of Public Prosecutions indicates that, of the 19 offenders prosecuted by it to date (in over thirty proceedings), 12 offenders had prior and/or subsequent convictions for breaching their supervision order. Some breaches occurred within a very short time after an earlier conviction.

4.50 These issues serve to highlight some of the problems with the current scheme. Take, for example, the case of Tom Smith.[27] Mr Smith has longstanding behavioural issues as a result of an acquired brain injury, as well as a number of mental health issues and substance addictions. He has also been diagnosed with an Impulse Control Disorder. Mr Smith has been sentenced on nine separate occasions since 2011 for multiple breaches of his supervision order. On at least two of those occasions, both the Secretary and the Director of Public Prosecutions were prosecuting breaches of supervision orders in joint proceedings against Mr Smith.

4.51 These dual proceedings are invariably run to the highest standard by the Secretary and the Director. However, a case such as that of Mr Smith indicates that there can be a duplication of effort in the prosecution of each matter, and it highlights the need for streamlined processes to reduce such duplication.

Management—the Sex Offender Management Branch and the Regional Services Network

4.52 With the exception of those Specialist Case Managers and Principal Practitioners who work at Corella Place, Specialist Case Managers and Principal Practitioners manage and supervise supervision order offenders from the regional community corrections offices, generally located in Justice Service Centres.

4.53 These staff report through the regional structure to the General Manager, Community Correctional Services and the Regional Director. The General Manager of Corella Place reports directly to the General Manager of the Sex Offender Management Branch.[28]

4.54 The Sex Offender Management Branch 'provides the standards and quality assurance of Specialist Case Managers through daily interaction and communication'. [29] It represents a centralised repository for expertise in the management of sex offenders.

4.55 This is consistent with the regional matrix model of service delivery used by the Department of Justice and Regulation, whereby head office business units set the standards for service delivery. The regions then deliver the relevant service.

4.56 In recognition of the offenders with complex needs being managed under the SSODSA, the Sex Offender Management Branch is heavily involved in operational management as well as setting the standards for delivery at an operational level.

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[27] Illustrative case study using a pseudonym.

[28] Commissioner's Requirements, SOMB – Corella Place – Management under the *Serious Sex Offenders (Detention and Supervision) Act 2009* (March 2015) no. 6.1.1, 3 [5.7].

[29] Department of Justice, *Post-Sentence Supervision and Detention Scheme for Serious Sex Offenders: Correctional Management Standards (2012)* 8.

4.57 Regions may make recommendations to the Adult Parole Board for action. However, the Sex Offender Management Branch and Corrections Victoria executives must ultimately endorse these recommendations before they are provided to the Adult Parole Board. In circumstances where the Branch disagrees with any recommendations initially put forward, the Board and the regions will work together to finalise such recommendations before they are put to the Adult Parole Board.

4.58 During consultations, the Panel was told about a not infrequent occurrence in which a regional office was reluctant to endorse accommodation as suitable for an offender within its region. In such circumstances, the Sex Offender Management Branch may work with the regional office to identify risk mitigation strategies that will, where appropriate, make the accommodation acceptable.

4.59 The Correctional Management Standards refer to a 'complex management regime'[30] and the Panel agrees with this description. It notes that the demarcation of roles and responsibilities between those required to manage offenders under supervision orders should be as clear as the circumstances permit.

The Adult Parole Board's current responsibilities for oversight and how they operate in practice

Background to the Adult Parole Board's role

4.60 Responsibilities for the post-sentence management of sex offenders were first conferred upon the Adult Parole Board under the *Serious Sex Offenders Monitoring Act 2005* (Vic).

4.61 Pursuant to this Act, the Adult Parole Board was empowered to issue instructions and directions to an offender[31] and failure to comply with an instruction or direction could result in a breach of a core condition.[32]

4.62 In the 2005–06 fiscal year, the first year of the operation of the *Serious Sex Offenders Monitoring Act*, the courts made nine offenders subject to extended supervision orders.[33]

4.63 The following year, in 2007, the Sentencing Advisory Council released its report on the post-sentence supervision of high risk offenders. If a continuing detention scheme were to be implemented, the Council recommended the establishment of an independent agency – the High-Risk Offenders Board – to discharge a number of functions that the Adult Parole Board then managed in relation to offenders subject to post-sentence orders.[34]

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30 Ibid.

31 *Serious Sex Offenders Monitoring Act 2005* (Vic) s 16(2).

32 *Serious Sex Offenders Monitoring Act 2005* (Vic) s 15(3)(h).

33 Adult Parole Board of Victoria, *2005–06 Annual Report* (2006) 29.

34 Sentencing Advisory Council, *High-Risk Offenders: Post-Sentence Supervision and Detention: Final Report* (May 2007) p xxiii, recommendation 11.

4.64 The Adult Parole Board welcomed this recommendation in its 2007–08 Annual Report[35] and, the following year, the Chairperson of the Board, the Honourable Justice Whelan, confirmed the need for an additional body to manage offenders subject to post-sentence supervision. His Honour wrote:

> While the number of persons subject to extended supervision orders is small, the Board's experience has been that they occupy a greatly disproportionate amount of the Board's time and resources. The need for a specialist body to deal with these offenders has become apparent over time.[36]

4.65 By this stage, the scheme had been expanded to include additional eligible offenders (adult sex offenders), and the SSODSA came into operation the following year on 1 January 2010.

4.66 It is understood that funding constraints were the reason why the High-Risk Offenders Board was not established.[37] The Adult Parole Board, somewhat reluctantly, accepted and acknowledged its ongoing responsibilities in its 2009–10 annual report:

> The Board had anticipated, as was indicated in previous annual reports, that the task of supervising sex offenders who were subject to supervision orders after their imprisonment would be handed over to a newly created body specifically constituted to address the issues which arise in that context. The Government's decision was, however, that the Adult Parole Board should continue to carry out this responsibility but that a dedicated division, with its own administrative support, should be created for that purpose. The Board and the community are very fortunate that Judge David Jones AM was prepared to take on the burden of being chairperson of the newly created Detention and Supervision Order Division … .[38]

4.67 The required composition of the Division is detailed in section 64A of the *Corrections Act 1986* (Vic).

4.68 By 30 June 2010, there were 56 offenders subject to supervision who were being managed by the Division.[39]

4.69 Over the following years, the Division continued to draw attention to the growing numbers of offenders subject to post-sentence orders and the increasing amount of work involved in their management, noting, in 2011:

> The Division will continue to perform its functions pursuant to the relevant legislation. However, it remains the responsibility of respective departmental agencies to ensure that the resources necessary to administer these functions are commensurate with the breadth of the scheme.[40]

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35 Adult Parole Board of Victoria, *2007–08: Annual Report* (2008) 9.

36 Adult Parole Board of Victoria, *2008–09: Annual Report* (2009) 7.

37 Ian Callinan AC, *Review of the Parole System in Victoria: Report* (2013) 97.

38 Adult Parole Board of Victoria*, 2009–10: Annual Report* (2010) 10.

39 Ibid 44.

40 Adult Parole Board of Victoria: *2010–11: Annual Report* (2011) 38.

4.70 Then again, in 2012:

> The orders made by courts are becoming clearer in their conditions and the discretion they confer upon the Division indicates that they regard the Division's role as important. The significance that courts attach to the Division's independence is also clearer. As already discussed, this inevitably means that the Division is drawn into operational and process matters regarding the administration of orders. The administrative burden of the Division's responsibilities is a significant one for both members and secretariat.[41]

4.71 In order to address these concerns, the Division in 2012 stated that, consistent with the Chairperson's approach, and as a means by which significant burdens on the Division could be relieved, the Secretariat of the Adult Parole Board would be assessing the ways in which the Division could continue to discharge its function of overseeing orders, while not becoming involved in the related operational issues.[42]

4.72 As at 30 June 2012, and as detailed in Chapter 2, the number of post-sentence orders under the jurisdiction of the Division had increased to 85.[43]

4.73 The Adult Parole Board has continued to be transparent in outlining its concerns regarding the limited extent to which it could engage in operational matters relating to post sentence offenders. Indeed, the Panel understands that, as recently as 2013, the then Chairperson of the Board, the Honourable Justice Curtain, requested that detention and supervision orders be removed from the jurisdiction of the Board, in keeping with the recommendations of the Sentencing Advisory Council in 2007.[44]

4.74 Acknowledging the position of the Division, and following his detailed review of the parole system in Victoria, former High Court Justice Ian Callinan AC, provided additional commentary and recommendations in his report. Mr Callinan said:

> I would endorse the recommendation of the Sentencing Advisory Council that there be a suitably resourced separate body to perform the supervisory functions to which I have referred, or better that a DSO Division of the Board be provided with staff, resources and funding to enable it to do so adequately.[45]

4.75 Following this recommendation, a resourcing review of the Division was undertaken by Corrections Victoria in May 2014.[46]

4.76 At the time of the Callinan review, the Division was newly responsible for hearing applications for parole from sex offenders serving a custodial sentence. It was noted that 'while the inclusion of sex offender parolees under [the Division's] jurisdiction provides a number of practical benefits, it appears that Mr Callinan believed that the Adult Parole Board has not internally reallocated funds to support the significant workload and the financial burden for [the Division] attributed to the management of conditions of sex offender parolees'.[47]

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41 Adult Parole Board of Victoria: *2011–12: Annual Report* (2012) 40.

42 Ibid 43.

43 Ibid 36.

44 Information provided by Corrections Victoria to the Panel on 5 October 2015.

45 Callinan (2013), above n 37, 97.

46 Information provided by Corrections Victoria to the Panel on 5 October 2015.

47 Ibid

4.77 It is understood that the Division continues to have a role in the granting of parole for sex offenders. However, new amendments, outlined below, mean that such decisions must be reviewed by a differently constituted Division of the Board, which will then make the final decision.

4.78 Taking these changes into account, together with the additional funding which had been allocated to the Division, the Acting Chief Executive Officer of the Adult Parole Board concluded that the Division was adequately resourced. Having made its own assessment in the light of these circumstances, Corrections Victoria ultimately came to the same conclusion.[48]

4.79 It was recommended that a review of the Division's resources, together with an evaluation of the 2014 parole reforms, take place at a future date.[49]

Constraints on the Adult Parole Board's ability to discharge its responsibilities in practice

4.80 The SSODSA sets out a number of powers and functions of the Adult Parole Board in the management of offenders on supervision orders under Part 10 of the Act, including:

- to monitor compliance with and administer the conditions of a supervision order
- to give directions and instructions to an offender in accordance with any authorisation given to the Adult Parole Board under a supervision order
- to make decisions to ensure the carrying into effect of the conditions of supervision orders
- to make recommendations to the Secretary in relation to applying to a court to review the conditions of supervision orders
- to review and monitor the progress of offenders on supervision orders,[50] and
- to give, under an emergency power of direction, a direction that an offender be managed in a way that is inconsistent with, or not provided for, by the conditions of the supervision order.[51]

4.81 The Division is also empowered to inquire into possible breaches[52] and, if satisfied that a breach has occurred, to:

- give a formal warning to the offender
- vary a direction it has given to an offender under a condition of that offender's supervision order, or
- make a recommendation that the Secretary either apply for a review of conditions, refer the matter to the Director of Public Prosecutions (for consideration of as to whether an application for a detention order should be made), or commence breach proceedings.[53]

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48 Ibid.

49 Ibid.

50 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 118.

51 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 120.

52 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 161.

53 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 163.

4.82 While the SSODSA only provides that the Adult Parole Board be furnished with a copy of a supervision or detention order once made,[54] additional material is provided to the Division on a regular basis to inform its decision making, including:

- copies of transcript and judgments from court hearings (when available)
- Quarterly reports on the progress of individuals subject to orders[55]
- reports about incidents that have occurred in respect of a particular offender, and
- Special reports relating to a particular management issue in relation to which the assistance of the Division is sought.

4.83 Quarterly, Incident and Special reports are all compiled by Corrections Victoria.

4.84 In a recent media release, the Adult Parole Board confirmed the way in which it discharges its duties in practice, remarking:

> The Adult Parole Board has a limited role with respect to the management of supervised offenders and discharges those functions through its Detention and Supervision Order Division (the Division). The Division's primary function is to consider reports and recommendations from Corrections Victoria for the setting of directions to assist their management of the conditions of a supervision order.[56]

4.85 While this is a significantly pared back role from that envisaged by the legislation, the Division has been vocal about the constraints on its ability to engage in operational matters and the need to ease its significant administrative burdens while continuing to discharge its functions under the Act. It appears that this is the balance which, in conjunction with Corrections Victoria, has ultimately been struck between performing the Division's duties under the legislation and doing so within its allocated resources. This was borne out during discussions between the Panel and the Board. It was also apparent to the Panel in its observations.

4.86 While Corrections Victoria provides a vast amount of information to the Division, the Division's capacity to engage with that information in performing its task of risk management is limited by its distance from operational matters.

4.87 Furthermore, rather than providing a proactive approach to decision making and the management of risk, as envisaged in its monitoring functions under the SSODSA, in consultations it was noted that the Division's role in practice has been limited to making reactive decisions when requested by Corrections Victoria (usually in response to incidents). Sometimes it is required to make such decisions in the absence of contextual information from other parties or agencies.

4.88 These limitations are a by-product of the Division's distance from the complex offenders over whom it has oversight. The capacity of the Division to make fully informed decisions independently of Corrections Victoria is to an extent compromised by this fact.

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[54] *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) ss 14, 32, 43, 49, 60.

[55] The Adult Parole Board has informed the Panel that, in circumstances where it receives a quarterly report in relation to an offender, it often receives the report a considerable time after it has been prepared.

[56] Adult Parole Board of Victoria, *Media Statement from the Adult Parole Board* (8 September 2015).

4.89 The case of Sean Price is an example of this point. [redacted] It is an issue considered in the Panel's first report.

4.90 [redacted]

4.91 The Adult Parole Board informed the Panel that it is working with Corrections Victoria to identify potential improvements to the content and context of information provided, with a view to bringing a more proactive approach to decision making. This was echoed in its most recent annual report for 2014–15, where the Board indicated that it had commenced a review of its own processes under the SSODSA.[57]

Pathways from prison to the community

4.92 Following the recommendations made by the Callinan Review, section 74AAB was inserted into the *Corrections Act*.

4.93 This section established a division of the Adult Parole Board which it called the 'Serious Violent Offender or Sexual Offender' parole division ('SVOSO division'). The SVOSO division is responsible for making the final determination as to whether such offenders should be released on parole.

4.94 The section further established a two-tier system for the granting of parole for serious violent offenders and sex offenders. Before a serious violent offender can be released on parole, another division of the Adult Parole Board must consider and recommend that parole be granted. That recommendation is then considered by the SVOSO Division, which decides whether or not to accept it.

4.95 For sex offenders, the Detention and Supervision Order Division of the Adult Parole Board will consider them for parole before the SVOSO Division makes a final determination.

4.96 In making its decision whether to grant parole, the Adult Parole Board will take into account whether the offender has used his or her time in prison productively. In particular, the Board expects prisoners to make use of the range of programs that are available to them in Victoria'.[58]

4.97 Following reforms that came into operation earlier this year, the Adult Parole Board will also now only consider granting parole if a prisoner applies for parole.[59]

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57 Adult Parole Board of Victoria, *2014–2015: Annual Report* (2015) 32.

58 Adult Parole Board, *Parole Manual (Fifth edition)* (2015) 11.

59 Ibid 15.

4.98 A Case Management Review Committee ('the Committee') in each prison ensures that prisoners who are serving a non-parole period are given information about the application process well in advance of their earliest eligibility date.[60] The Committee (and not the Adult Parole Board) is responsible for encouraging prisoners to address their rehabilitation needs and for ensuring they are assisted to complete their parole application, particularly if the prisoner has language or literacy difficulties.[61]

4.99 Offenders now only come within the purview of the Adult Parole Board when they have made an application for parole. Of course, while this application makes them eligible for parole, there is no guarantee that it will be granted.

4.100 Some research studies indicate that poor release planning is associated with sexual recidivism.[62] Yet prisoners are sometimes released from prison to homelessness on the expiration of their custodial sentence.

4.101 In a recent report by the Victorian Ombudsman, it was noted that the Adult Parole Board requires prisoners to have suitable accommodation arrangements in place before a parole date can be set. However, this puts some offenders into a 'catch 22' situation. Unless they have a release date, they may find it impossible to secure such accommodation. [63] The Adult Parole Board may, in such circumstances, determine to grant parole subject to suitable accommodation being found and presented to it. If suitable accommodation is not presented to the Board before the parole release date, the Board may delay release on parole or revoke the decision to grant parole.

4.102 A failure to have suitable accommodation arrangements in place does have an impact on eligibility for parole and may be another reason why some serious sexual and violent offenders are bypassing parole altogether, and the benefit of a period in the community, during which they have the opportunity to demonstrate their ability to remain offence-free, is lost:

> A consequence of the parole reforms and the need to provide additional programs, is that prisoners who have been either unable or unwilling to participate in programs are being released at the end of their full sentence. Prisoners who are not released on parole leave custody without the reporting requirements and controls that apply to parolees. There are legitimate concerns that some prisoners are being released without having addressed their offending behaviour.[64]

4.103 In its most recent annual report, the Adult Parole Board recorded a significant drop in the number of parole orders granted between 2012–13 and 2013–14, despite the numbers of prisoners being eligible for parole remaining relatively consistent.[65]

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60 Each Victorian prison is required to establish one or more Case Management Review Committees to oversight cast management, prisoner welfare, access to programs and prisoner classifications under the Corrections Regulations 2009 (Vic) reg 24.

61 Ibid.

62 Gwenda Willis and Randolph Grace 'The Quality of Community Reintegration Planning for Child Molesters, Effects on Sexual Recidivism' (2008) 20(2*) Sexual Abuse: A Journal of Research and Treatment* 218–240.

63 Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria: Report* (September 2015) 105.

64 Ibid 19.

65 Adult Parole Board of Victoria (2015) above n 58, 25.

4.104 The Panel has concerns that where offenders have either been refused parole or have elected not to make an application for parole, the fact that they remain 'untested' in the community may have a negative impact upon their assessed risk of future reoffending, and therefore will make them more likely to be the subject of applications for future post-sentence orders.

4.105 In the opinion of the Panel, a post-sentence order should be a last resort, used in exceptional circumstances to protect the community from unacceptable risk. In making an order that is a serious encroachment on offenders' rights after they have already been punished, the court should be satisfied that every reasonable effort has been made while these offenders were under the state's care and authority to ensure that, without supervision, release is appropriate.

4.106 In this context, the Panel acknowledges that there have been ongoing efforts to support an integrated correctional system to ensure prisoners and offenders are accurately assessed and appropriately case-managed to reduce their risk to the community. These efforts have included the creation in 2015 of an Offender Management Development Branch within Corrections Victoria to work with staff across prisons and Community Correctional Services to manage serious violent offenders and sex offenders.

4.107 The Panel nonetheless considers that these offenders must be provided with coordinated treatment and management within prison and, if necessary thereafter, in a seamless transition to either community release or, in the exceptional case, a post-sentence regime of detention or supervision. But only substantial reforms can achieve this. It is these reforms which are the principal subject of this chapter.

4.108 In concluding this segment of its report, the Panel wishes to make the point that the deficiencies it has identified are of the kind that are in part due to financial constraints, and in any event come to light with experience more often than with foresight. Their presence does little to detract from the professional service which Corrections Victoria and the Detention and Supervision Order Division of the Adult Parole Board gives and has given to this State.

The Panel's view: a new governance model to support early intervention and continuity of inter-agency care to reduce the risk of serious interpersonal harm

The establishment of a Public Protection Authority

4.109 The Panel is of the view that a new statutory authority must be established to provide independent and rigorous oversight of the civil scheme which the Panel recommends: a scheme for the post-sentence supervision or detention of offenders who pose an unacceptable risk of serious interpersonal harm.

4.110 The Panel suggests that such a statutory body be called the Public Protection Authority ('the Authority'). This, the Panel believes, will assist to (i) clearly signify that the Authority is about protection and not punishment and (ii) reinforce the civil nature of the scheme. The new body would, as one of its primary functions, assume the responsibility – at present allocated to the Detention and Supervision Division of the Adult Parole Board – of supervising offenders who are under supervision orders. The Board will then be in a position to focus solely on the discharge of its very important core duties – its administration of the Victorian parole system.

4.111 In survey responses from offenders who are subject to SSOSDA orders, numerous comments indicated that offenders did not feel the Adult Parole Board should manage supervision or detention orders. Representative of these sentiments were the following examples:

> To have independent people not parole board as we are not criminals.[66]
>
> Fix the way it is run by the APB things take too long to get approved. Like house change of conditions. Get us onto programs before we reoffend.[67]

4.112 If the Panel's recommendation to expand the scheme to serious violent offenders who also pose a risk of serious interpersonal harm were to be adopted, additional managerial and treatment expertise would be necessary. The benefits of creating a new body with that and other appropriate expertise have previously been identified in Victoria and other jurisdictions.

[66] De-identified offender survey 'E'.

[67] De-identified offender survey 'AE'.

4.113 In 2007, the Victorian Sentencing Advisory Council recommended that 'there should be independent oversight and coordination of agencies managing high-risk offenders and improved mechanisms to provide courts with the information they require'.[68] It suggested there be established an independent Risk Management Monitor with powers similar to that of the Scottish Risk Management Authority and a High-Risk Offenders Board to manage service delivery.[69] The Council also recommended that the High Risk Offenders Board supervise offenders on indefinite sentences.[70] In explaining the rationale for this Board, the Council said:

> Establishment of a new body to manage high-risk offenders would ensure better continuity and consistency of management of these offenders, minimise risks of 'double handling' of cases, and allow for the more active management of offenders both during and after sentence.[71]

4.114 As already outlined in this Report, the government did not adopt this recommendation. It preferred to provide a legislative platform, in Part 10 of the SSODSA, for the oversight by the Adult Parole Board of offenders on supervision orders.

4.115 In Scotland, the Risk Management Authority is an independent statutory body which was established under the *Criminal Justice (Scotland) Act 2003* (Scot). It administers and oversees risk assessment and management processes relating to offenders who have been given orders for lifelong restriction. The Authority is responsible for accrediting risk assessors and publishes guidelines and standards as to how risk assessors should conduct risk assessment.

4.116 The Authority also provides guidance on the preparation and implementation of risk management plans, which are discussed further below. It receives annual reports on the implementation of the plans, and has options available to it if there has been a failure in such implementation.[72]

4.117 The New South Wales Sentencing Council also recommended in 2012 that an independent risk management authority be set up in that state to 'undertake the exercise of risk-management and risk-assessment' for those considered to be high risk violent offenders.[73]

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68 Sentencing Advisory Council (May 2007), above n 34, xviii, Recommendation 4.

69 Ibid xviii, Recommendation 3.

70 Ibid xlii, Recommendation 35.

71 Ibid 126.

72 *Criminal Justice (Scotland) Act 2003* (Scot) s 9.

73 Sentencing Council of New South Wales, *High-Risk Violent Offenders Sentencing and Post-Custody Management Options: Report* (2012) 130.

4.118 In response to these recommendations the High Risk Offenders Assessment Committee was established in New South Wales. Section 24AC of the *Crimes (High Risk Offenders) Act 2006* (NSW) provides for its functions. Together with 'such other functions in connection with the operation of this Act as the Minister may determine', they are to:

- review the risk assessments of sex offenders and violent offenders, and make recommendations to the Commissioner of Corrective Services NSW for the taking of action by the State under the Act in respect of those offenders
- facilitate cooperation between and the coordination of relevant agencies in the exercise of their functions in connection with risk assessment and management of high risk offenders (the "high risk offender functions" of relevant agencies)
- monitor and provide expert oversight of the exercise of the high risk offender functions of relevant agencies for the purposes of (i) identifying opportunities for improved outcomes in individual cases and (ii) opportunities for systemic improvement and removal of inter-agency barriers to the effective exercise of high risk offender functions
- facilitate information sharing between relevant agencies in connection with the exercise of their high risk offender functions
- develop best practice standards and guidelines for the exercise by relevant agencies of their high risk offender functions
- identify gaps in resourcing, service provision and training that may impact on the proper and effective exercise of high risk offender functions, and
- conduct research into the effectiveness of the Act in ensuring the safety and protection of the community and to disseminate the results of that research.

4.119 These alternative approaches provide some examples of the functions which the Public Protection Authority, as conceived by the Panel, might discharge. Fundamental to that conception, however, is an Authority, which has the following key responsibilities:

- to oversee the rigorous and careful identification of those sex offenders and violent offenders who are eligible for inclusion in its cohort and who present the greatest likelihood of causing serious interpersonal harm
- during the balance of the sentences of those prisoners, to oversee their treatment and management, and to be the repository of the relevant information about their behaviour and progress
- to continue to oversee that treatment and management, and to be the repository of relevant information about, those offenders in the cohort who, on completion of their sentences, become subject to post-sentence orders for their detention or supervision
- to shape a plan of interventions that reduce the likelihood that offenders in the cohort will reach the end of their sentence and be considered to be an unacceptable risk of further offending which causes serious interpersonal harm.
- to facilitate cooperation, and the flow of information, between those multiple agencies which are charged with the coordinated delivery of treatment and management of the cohort

- to make decisions regarding the administration and management of offenders on post-sentence orders, including the management of concerning behaviours or escalating risk, and to be rigorous, proactive and responsive in that decision making, and
- to provide timely and informed guidance to those charged with the day-to-day management, and delivery of treatment to, the cohort (subject to the legal responsibilities and powers of Corrections Victoria to manage prisoners).

4.120 The Public Protection Authority will require sufficient resources to ensure that it has the attributes necessary if these responsibilities are to be effectively discharged and the community provided with the highest possible level of protection against the risk which the cohort presents.

4.121 The Panel foresees that, appropriately empowered and resourced, such a body could not only oversee the delivery of interventions, treatment and management, but also the continuous and seamless transition from such in-prison interventions to like engagement with those members of the cohort who are placed under post-sentence detention or supervision.

4.122 There will of course be costs associated with establishing the Public Protection Authority. The Panel has been conscious of this ineluctable truth. The presently complex system for which the SSODSA provides the legislative base is itself one that makes many calls upon the public purse. It is the Panel's belief that the investment in establishing the Authority will be justified. This will be so if the Authority is successful in achieving earlier intervention in prison, than is currently the case (particularly for offenders who are both sex and violent offenders) and continuous care from prison to the community across the requisite range of agencies. By this means the risk of serious reoffending will be reduced and the protection of the community maximised.

Recommendation 10

A new statutory agency should be created – the Public Protection Authority – to provide independent and rigorous oversight of offenders who present with the greatest likelihood of causing serious interpersonal harm.

Commencement of the Public Protection Authority's oversight

4.123 Currently, the question of whether offenders who are eligible under the SSODSA (and who are therefore, by definition, sex offenders) should be the subject of an application for a supervision or detention order is examined towards the end of their prison sentence. Detention and supervision order assessments, whether internal or external, are conducted in the last 12 months of an offender's sentence, to allow time for an application to be made should this be deemed appropriate.

4.124 Such offenders may or may not have been offered or participated in in-prison treatment programs or interventions during their sentence. Some of the factors that can influence whether this occurs include:

- the length of imprisonment
- the categorisation of offenders based on initial screening upon reception in prison
- the results of any clinical assessments of their level of risk, treatment needs and suitability for treatment, and
- the availability of treatment programs and whether the offender engages in the treatment offered.

4.125 The timing of treatment delivery depends on the categorisation of offenders. The approach for 'serious violent' offenders is for interventions to be delivered as early as possible after the imposition of sentence. In contrast, the approach for those categorised as 'sex offenders', is to deliver treatment closer to the end of their sentence (with the aim of commencing treatment 30 months before the earliest date on which the offender is eligible for parole).[74]

4.126 The timing of the current processes for assessing offenders to determine in-prison treatment needs and the need for supervision or detention under the SSODSA has implications for how eligible offenders are selected as coming within the cohort who require supervision or detention following the completion of their sentence. The implications are:

- The identification of those eligible sex offenders who are considered to pose the greatest risk of committing further sexual offences does not occur under the legislation until very late in their sentence.
- Sex offenders may have not completed in-prison treatment designed to reduce their risk of reoffending, even as they are being assessed with a view to determine whether their risk is 'unacceptable' and would therefore bring them into the cohort of being the possible subject of an application for a detention or supervision order under the SSODSA. This may particularly be the case for offenders within the complex adult victim sex offender cohort – the focus of this review – who may have treatment needs for sexual and violent risk which cannot be met in the 30 month period currently allocated for the provision of treatment programs for sex offenders.

[74] Information provided to the Panel by the Specialised Offender Assessment and Treatment Service and the Offending Behaviour Programs Branch, Corrections Victoria.

4.127 When considering options for a post-sentence scheme in Victoria, the Sentencing Advisory Council noted the limitations of assessing an offender's risk of future reoffending at the time of sentencing, before the offender has had any opportunity to engage in programs of management and interventions. The Sentencing Advisory Council also noted the limitations of assessing risk at the end of sentence, given that prison can be a difficult environment in which to demonstrate change that may reduce risk. Early assessment of an offender's risk followed by subsequent assessments that continue throughout the offender's sentence was posited as necessary for evaluating how the offender was responding to the interventions offered and to ensure tailored interventions aimed at reducing the risk posed.[75]

4.128 The Panel is of the view that assessment of treatment needs and delivery of interventions for both sex offenders and serious violent offenders should occur at a time of maximum advantage for the success of the scheme which the Panel contemplates. The Panel's recommendations to give effect to this are contained in Chapter 5. They aim to ensure that, no later than three years before their earliest eligible parole date, specialised and intensive interventions can be delivered to eligible offenders, so as to maximise the reduction in the risk which they pose and minimise the likelihood that they will be considered as an unacceptable risk and, accordingly, a subject for an application by the Secretary to the Department of Justice and Regulation or the Director of Public Prosecutions for post-sentence supervision or detention.

4.129 It is therefore the Panel's view that the Public Protection Authority should become involved at that point in the sentence which it deems to present the greatest likelihood of the offender being provided with opportunities and incentives to engage in successful interventions from an inter-agency perspective.

4.130 The Panel initially considered whether it might be beneficial for the Public Protection Authority to become involved at the outset of an eligible offender's sentence, to ensure that programs which were better tailored to an offender's individual needs would commence soon after that. This approach would ensure continuous independent and rigorous oversight of offenders from commencement of incarceration to (where necessary) post-sentence supervision.

4.131 However, the Panel understands that there is a real risk that those who become subject to the Public Protection Authority's ongoing involvement at such an early stage in their sentence would become stigmatised as high risk offenders with little chance for rehabilitation. This could have negative effects upon their progress through the prison system, in particular their potential movement from high to medium to low security placements. Involvement by the Authority just after sentence could also reduce the chances of parole for those who might otherwise have qualified for that all-important element in reducing reoffending.

4.132 Taking these matters into account, the Panel considers that existing clinical assessment processes employed by Corrections Victoria at the outset of an offender's sentence (as amended by the Panel's recommendations in Chapter 5) should function to identify 'sex offenders' or 'serious violent offenders' and determine their initial treatment and intervention needs.

[75] Sentencing Advisory Council (May 2007), above n 34, 16.

4.133 In the majority of cases referred to the Public Protection Authority for assessment, the Panel hopes that the suggested timing will allow for data to have been generated on a prisoner, which will be critical to the Authority's own assessments. It is also hoped that the recommended point at which the Authority may commence oversight of an offender will reduce the possibility that a stigma will be attached to the offender, while still allowing time for any further interventions that are required.

4.134 If an eligible offender does not come within the purview of the Public Protection Authority in prison, as noted in Chapter 3, the Secretary or the Director may nevertheless retain the discretion to make an application for a post-sentence orders in respect of that offender. If such an application is successful, Public Protection Authority oversight will commence at that point.

Recommendation 11

Oversight by the Public Protection Authority should commence no later than three years before an eligible offender's earliest eligibility date for release while an offender is serving a custodial sentence, with the aim of reducing the risk posed, and such oversight should continue for those offenders who are ultimately made subject to post-sentence orders.

Flexible criteria for inclusion in the Public Protection Authority's cohort of offenders in prison who present the greatest likelihood of causing serious interpersonal harm

4.135 Chapter 3 outlined the criteria by which offenders would become eligible, under the proposed broadened eligibility criteria, for inclusion in the cohort of offenders who should be brought under the purview of the Public Protection Authority. It may be helpful to reiterate here that only in exceptional circumstances would any offender be included in the Authority's cohort. The offender must have:

(i) been convicted of an eligible offence

(ii) been sentenced to imprisonment for a specified minimum period (the Panel recommends consideration be given to fixing this to at least three, or if thought more appropriate, four years),[76] and

(iii) been assessed on reception into the prison system as being of at least moderate risk.

4.136 The final selection of those who would, and those who would not, be included in that cohort, is discussed at [4.138] and the following paragraphs.

[76] It is further recommended by the Panel that to inform the determination of the approach in selecting eligible offences and fixing the length of the minimum period, the Department of Justice and Regulation conduct an audit of sex offenders and serious violent offenders and the sentences imposed on such offenders: see Recommendation 4.

4.137 As noted above, the Panel considers that existing clinical processes employed by Corrections Victoria at the outset of an offender's sentence should remain, to identify 'sex offenders' or 'serious violent offenders' who present as posing a moderate to high risk, and to determine, along with all offenders, their initial treatment and intervention needs.

4.138 The Panel considers that eligible offenders who are assessed as being a moderate to high risk in these assessments should be referred to the Public Protection Authority for review no later than three years before their earliest eligibility date for release on parole.

4.139 The Public Protection Authority should be allowed sufficient flexibility in the review of referred eligible offenders to decide which of them should be included in the cohort under its purview. The principal constraint must be the injunction to restrict the cohort to those who present the greatest likelihood of causing serious interpersonal harm. The Authority should identify which of the eligible offenders so referred come into this category using flexible criteria, including, but not limited to:

- the offender's risk of causing serious interpersonal harm as indicated by clinical assessments
- the likelihood of a relevant offence occurring and the gravity of the harm should the risk eventuate, and
- any other considerations such as those set out in section 18B of the *Sentencing Act 1991* (Vic) (including whether the existing offence reflects a course of conduct evidenced by the offending history).

4.140 Section 18B of the *Sentencing Act* sets out the requirements for a court to impose an indefinite sentence in respect of an offender convicted of a serious offence. They could serve as a template for the Public Protection Authority in its task of finally identifying (from the wider pool of those possibly eligible) those who should come within its purview. The provisions allow the court to make a finding that the offender is a 'serious danger' to the community because of:

- his or her character, past history, age, health or mental condition
- the nature and gravity of the serious offence, and
- any special circumstances.

4.141 The provisions further provide that, in determining whether the offender is a serious danger to the community, the court must have regard to:

- whether the nature of the serious offence is exceptional
- transcripts of any proceedings against the offender in relation to a serious offence (for example sentencing remarks)
- any medical, psychiatric or other relevant report received by the court, or
- the risk of serious danger to members of the community if an indefinite sentence were not imposed, and the need to protect members of the community from that risk.

4.142 It is also important that there be flexibility in the way that the Public Protection Authority applies, and the timing of the application of, the considerations relevant to the 'greatest likelihood of causing serious interpersonal harm' test. An eligible offender originally considered by the Authority as not to be presenting the greatest likelihood of causing serious interpersonal harm might during the course of serving his or her sentence give Corrections Victoria or the Authority (or both) such cause for concern that a further review of the offender by it would be warranted. Behaviour that could warrant such concern might include the commission of serious offences in prison, or on parole. If the Authority thereafter assessed the offender as suitable for inclusion in the cohort, it could make such a decision and the offender would be brought under its purview. If the assessment was too late in the sentence for there to be utility in the offender's inclusion in the Authority cohort whilst a sentenced prisoner, the Secretary could make an application for a post-sentence order. If the application was successful, the Authority would assume responsibility for the treatment and management of the offender whilst he remained subject to the court-imposed post-sentence regime.

4.143 The application of the considerations described above has a number of advantages:

- It uses and builds on existing clinical assessment processes followed by Corrections Victoria for sentenced prisoners.
- It enables even those offenders who have been sentenced to imprisonment for the specified minimum length (whether that be fixed at three or four years, or some other period) and who might subsequently be selected for inclusion in the cohort of offenders under the purview of the Public Protection Authority, to be warned of that possibility, and to adjust their behaviour accordingly. At the same time, it enables Corrections Victoria initially to manage those offenders as Corrections Victoria determines, without necessarily having any regard to the possibility of their later inclusion in the cohort. The offenders' conduct in this initial period of imprisonment would be taken into account when selection for the cohort was under consideration.
- It brings the consideration of the 'greatest likelihood of causing serious interpersonal harm' test to an appropriate point in the offender's imprisonment. It thereby ensures the timely selection of those who should be included in the cohort of offenders under the purview of the Public Protection Authority, and hence the timely commencement of treatment and management designed to maximise the likelihood of the offender being either released unconditionally at the conclusion of his or her sentence, or being seamlessly transitioned to a post-sentence order for detention or supervision.
- It brings flexibility to the Public Protection Authority's consideration of whether or not the offender presents the greatest likelihood of causing serious interpersonal harm, and ought therefore to be included within its cohort. This would allow the Authority to develop a high level of expertise around the application of such considerations. The Authority should be appropriately constituted to allow this.

4.144 The Panel is aware of the danger that so much time and resources will be consumed in assessing risk that little or nothing will be left for the actions which could reduce any such risk. As explored in Chapter 6, an imbalance already exists between the resources devoted to managing the SSODSA scheme as compared to activities directed at managing the offenders subject to the scheme. The Panel's hope is to ameliorate, not aggravate, this problem whilst recognising the inherent legal and administrative complexities.

4.145 To support this process of review, the Panel considers that the Public Protection Authority should have the power to seek such independent assistance in assessing each offender as is necessary. The necessity would not arise if an Authority member with the experience to evaluate the existing documents and risk assessments were available. Were this the case, that expertise should be utilised as the most cost effective approach. Additional expert opinion on risk would only be sought when indicated by deficiencies in existing documentation. In any event, the power which in the opinion of the Panel should be invested in the Authority should be exercised with restraint, and only where necessary to provide the Authority with information that is not readily available from its own resources or from that which is held by the Department of Justice and Regulation. Any such assistance could include:

- review of the offender's files, including prison and treatment files
- assessment, or analysis, of the offending behaviour
- recommendations for outstanding treatment and intervention needs, and
- any other relevant recommendations.

Recommendation 12

Eligible offenders assessed as a moderate to high risk of reoffending under existing clinical assessments applicable to all prisoners categorised as sex offenders and/or serious violent offenders by the Department of Justice and Regulation should be referred to the Public Protection Authority for review.

Recommendation 13

The Public Protection Authority should review all eligible offenders (assessed as moderate to high risk of reoffending) referred to it to determine whether the offenders meet the threshold for inclusion in the cohort of offenders under its purview. In determining whether eligible offenders meet the threshold, the Public Protection Authority should use flexible criteria (in addition to the statutory eligibility criteria) to identify those offenders who present the greatest likelihood of causing serious interpersonal harm, whether sexual or otherwise, and who should be under its purview.

Recommendation 14

In determining which eligible offenders should come under its purview in custody, the Public Protection Authority or the relevant Public Protection Panel/s should have the power to seek such independent assistance as is necessary, and should be resourced accordingly.

The Public Protection Authority's role when an offender is serving a custodial sentence

4.146 The Public Protection Authority should be empowered to discharge key functions while the offender is in custody. However, there should be no changes to the duties and/or powers of the Department of Justice and Regulation, as provided by relevant legislation, in relation to offenders who are in prison. The Department of Justice and Regulation must retain the authority to make necessary decisions relating to the classification and management of prisoners, the safety and security of staff and other prisoners, and the good order of the prison.

4.147 The primary mechanism through which the Public Protection Authority will have the oversight of and influence rehabilitative interventions for those under its purview is through an offender's Intervention and Management Plan. Such a plan could be informed by any independent assistance procured by the Authority if necessary.

Intervention and Management Plans

4.148 If the Panel's recommendations are accepted, a strictly confined cohort of offenders in custody – those who present the greatest likelihood of serious interpersonal harm – will come within the Public Protection Authority's purview. An Intervention and Management Plan will be developed by a multidisciplinary Public Protection Panel, for all members of the cohort while they remain in prison. Each Plan should be updated throughout the offender's sentence to reflect progress (or lack of it), outstanding treatment needs, behavioural or compliance issues, specific risks to be managed and strategies to do so.

4.149 In all other respects, the cohort will remain subject to the authority of Corrections Victoria in the same way as all prisoners are subject to that authority. Corrections Victoria will also have a role as the lead agency on the Public Protection Panel/s to coordinate the development and implementation of each Intervention and Management Plan. The role of the Public Protection Authority will be directed to approval and oversight of each plan, such oversight being acknowledged by, and conducted in cooperation with, Corrections Victoria. The Panel envisages that any differences between Corrections Victoria and the Public Protection Authority will be resolved by goodwill and common sense. The Authority should always acknowledge that Corrections Victoria has the ultimate responsibility for the overall management of the Victorian correctional system. The only difference between the members of the cohort and other prisoners will be that the former, unlike other prisoners, will be managed in accordance with their individual Intervention and Management Plans as developed and adjusted from time to time by the relevant multidisciplinary Public Protection Panel.

4.150 It will be for Corrections Victoria to develop its role in relation to implementing each Intervention and Management Plan whilst offenders are within the prison system. Corrections Victoria may wish to continue to involve the Sex Offender Management Branch in the management and treatment of offenders in the Public Protection Authority's cohort whilst they are in prison, or it may make other arrangements. The Sex Offender Management Branch may or may not continue in its present role in the management and treatment of offenders who are not members of the cohort in prison. It may or may not expand its role to encompass violent as well as sex offenders. Those decisions should be made by Corrections Victoria, with such input from the Authority, limited to the management of the Authority's cohort, as may be appropriate.

4.151 If the interventions provided through the auspices of the Public Protection Authority do not reduce the risk sufficiently, the Plan would continue from a custodial environment onto a post-sentence order.

4.152 In considering the key components of the Intervention and Management Plan, the Panel had regard to successful examples both here and abroad of similar tools to coordinate the necessary interventions for offenders with complex needs, including both the Victorian Multiple and Complex Needs Initiative's 'Care Plan', and the Scottish Risk Management Authority's Risk Management Plan.

4.153 The 'Care Plan'[77] used by the Multiple and Complex Needs Panel as it operated between 2003–09, was viewed as a key element in the overall success of the initiative, as it set out the range of services and interventions appropriate for the needs of the individual.[78]

4.154 Having an independent body in place to oversee Care Plans and the coordination of services can ensure that services communicate more effectively; but research suggests that strong leadership is also integral to the success of initiatives aimed at promoting interaction between services.[79]

4.155 The Panel benefited from information provided by a representative of the Risk Management Authority in Scotland and by reviewing a training exemplar of a Risk Management Plan. The Risk Management Authority's role is:

> … to provide a centre of excellence in risk assessment and risk management, enabling and promoting best practice and regulating the delivery of services to help manage and minimise the risk of serious harm caused by sexual and violent offending.[80]

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77 *Human Services (Complex Needs) Act 2003* (Vic) s 21. Note that the *Human Services (Complex Needs) Act 2009* (Vic) includes a similar requirement as section 12.

78 M Hamilton and K Elford, *Report on the Five Years of the Multiple and Complex Needs Panel* 2004-2009: *Report* (2009).

79 Steadman, H. J. 'Boundary Spanners: A Key Component for the Effective Interactions of the Justice and Mental Health Systems', (1992) 16(1) *Law and Human Behavior*, 75-87; Dennis Rosenbaum, Evaluating Multi-Agency Anti-Crime Partnerships: Theory, Design and Measurement Issues'(2002) 14 *Crime Prevention Studies* 171–225.

80 Risk Management Authority, *Standards and Guidelines for Risk Assessment: Report* (April 2006) 1.

4.156 The Risk Management Authority has the capacity to approve or reject Risk Management Plans and to monitor implementation of the Plans.

4.157 A template for a Risk Management Plan, available in the Risk Management Authority's 2013 *Standards and Guidelines for Risk Management*, indicates that Plans generally contain:

- the materials upon which the assessment was based, and any limitations of the assessment
- a concise case summary
- an analysis of offending and risk formulations
- details of the particular risks which are to be managed under the plan, including relevant factors and measures of change
- an account of monitoring and contingency activities (including notes on how to respond to incidents such as a weakening of protective factors), and
- key contacts.

4.158 Taken together, these components set out an assessment of risk, the measures to be taken to minimise this risk, and how such measures will be coordinated.

4.159 The Scottish legislation uses terms such as 'must' and 'comply' in describing agencies' responsibilities in the preparation, implementation, and review of the Risk Management Plans to establish minimum acceptable levels of practice.[81] Furthermore, each Plan must be in such a form as specified by the Risk Management Authority.

4.160 Each Plan is also subject to ongoing review and monitoring as part of an active approach to risk management, and it serves as the primary means of communication for the various agencies involved in managing the offender's risk of serious harm.[82]

4.161 The Risk Management Authority has graduated powers to ensure that a Plan is being put into effect. These powers are exercised through the Authority's ability to issue 'guidance' to an agency involved in the Plan's implementation. Where the Risk Management Authority considers that the lead authority, or a specific individual, is without reasonable excuse failing to implement the Plan in accordance with their responsibility for that implementation, the Authority can also issue 'directions' to an agency. The agency is obliged to comply with any such directions, but can appeal to the Sherriff if it considers that the direction is unreasonable.[83]

4.162 The measures in the Plan are specific, and progress against them can be monitored:

> The measures should be delivered through a range of activities which should be assigned to a named individual or agency to ensure that there is clear accountability for the implementation of the plan. To aid the effective coordination and delivery of measures, each activity should be assigned a priority rating. In addition, time-scales should be set for the completion or review of each activity to ensure that progress is monitored and outcomes are considered.[84]

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81 Risk Management Authority Scotland, *Standards and Guidelines for Risk Management*: *Report* (2013) 7.

82 Ibid 16, 24.

83 Ibid 56.

84 Ibid 22.

4.163 In the Victorian context, an Intervention and Management Plan for those who represent the greatest likelihood of causing serious interpersonal harm, prepared at an appropriate point after entry into prison, and well before being potentially considered for a post-sentence order, has the potential to provide a useful framework for the Public Protection Authority against which new incidents, service issues and treatment progress can be considered and addressed appropriately.

4.164 That is where the Public Protection Authority will have a vastly different role to the Adult Parole Board. The Authority will be in a position to manage the offenders' progress (and their risk) through a significant period of their sentence. It will thus have the opportunity, during this period, for continuous oversight of its cohort of offenders, and would by this means be fully cognisant of the risk the offender poses. It could shape its interventions accordingly, and also be in a position to provide authoritative advice.

4.165 The Public Protection Authority would oversee each Intervention and Management Plan, each having been developed by the relevant multidisciplinary Public Protection Panel, as outlined in Chapter 5, and then implemented by the relevant lead agency.

4.166 The lead agency on the Public Protection Panel would also be responsible for coordinating the implementation of the plan. In a correctional setting, this will be Corrections Victoria and, in a community setting, it could vary depending on the needs of the particular offender. As with the Scottish system, the central point of contact for the implementation of the Intervention and Management Plan should be the offender's case manager, who should be appropriately experienced.

4.167 As noted already, Corrections Victoria will continue to have overarching responsibility for offenders during their time in prison. Despite this, the Panel is of the view that the Public Protection Authority should be afforded powers to ensure that the relevant Intervention and Management Plan is being implemented both in a custodial setting and in the community.

4.168 The Panel considers that a graduated approach to intervention by the Public Protection Authority should be provided for those in custody, similar to the powers afforded to the Risk Management Authority in Scotland. Such powers would assist the Authority to discharge its role in approving Intervention and Management Plans, and ensuring that the plan is being implemented.[85]

4.169 In a custodial setting these powers should include authority which, where appropriate, is conferred by legislation (see dot points three and four below):

- to approve or reject a Plan (including approval of any amendments sought)
- to provide informal feedback regarding a Plan (carries no legislative weight)
- to issue guidance to a lead agency and/or any agency with a role under the Plan (carries legislative weight), and
- to issue directions to any agency with a role under the Plan who is failing, without reasonable excuse, to put into effect the matters recommended by the Public Protection Authority (carries legislative weight).

[85] The power for the High Risk Offenders Board to issue formal directions to the lead agency and other agencies in relation to both the development and implementation of their Offender Management Plan, was a recommendation that was made by the Sentencing Advisory Council in 2007.

4.170 The Panel is conscious of the implications which its recommendations have for Corrections Victoria and the latter's responsibility for the efficient and lawful management of Victoria's prisons. The Panel envisages the continuation of that responsibility, unimpaired by the activities and responsibilities of the Public Protection Authority. The Panel anticipates that, with both the Authority and Corrections Victoria having due respect for the roles of each other, those roles will be complementary, not inconsistent. If both the Authority and Corrections Victoria approach their relationship on that basis, any possible sources of friction should be either eliminated or satisfactorily resolved. To take as an example a problem which might well be solved by cooperative endeavour, but which might not in the particular circumstances be resolvable in that way. Corrections Victoria, as the lead agency while an offender is in custody, is unable to comply with a direction of the Public Protection Authority, the Authority should be required to report to the Minister. Corrections Victoria should then be required to provide the Minister with the reasons for such a failure to comply. (The Panel adds that, in putting this example forwards, it is not suggesting that Corrections Victoria is not presently acquitting its responsibilities as it should).

4.171 While the above scenario is modelled on the powers given to the Scottish Risk Management Authority, the Panel acknowledges there will be instances where Corrections Victoria will be required to make certain decisions which may have an impact upon the implementation of the Intervention and Management Plan when an offender is in prison. For example, an offender may not have access to treatment if they are detained in a management unit in prison.

4.172 The Panel considers this reporting function may assist, should it ever be required to be used, in recognising and addressing any systemic issues relevant to the cohort.

Interaction with the Adult Parole Board

4.173 The Panel does not consider that the Public Protection Authority should have oversight and responsibility for decision-making in relation to parole. This power should remain with the Adult Parole Board. The reasons for this are as follows:

- The Adult Parole Board is an independent statutory body which has been established to grant parole. It has acquired considerable expertise and experience in the proper discharge of its responsibilities. Giving the Public Protection Authority power to grant parole would, in effect, create two parole boards.
- Protection of the community is the paramount consideration of the Adult Parole Board and this should inform all decisions regarding parole of offenders under sentence.
- There is already a rigorous process for the determination of grants of parole for offenders in the Public Protection Authority's cohort – with the two-tiered process that now applies for the grant of parole.
- As an objective and independent authority, separate from the case-management of offenders, the Adult Parole Board remains the appropriate sole repository of the power to grant parole.
- Giving the Public Protection Authority the power to make decisions regarding parole could have an impact on its resources. This would reduce its capacity to regulate the delivery of services, and the capacity of agencies (though coordinated Intervention and Management Plans) to reduce the risk of serious interpersonal harm.

4.174 Giving the Public Protection Authority the power to make decisions regarding parole would also create fragmentation of management in circumstances where the offender is serving a sentence for a commonwealth offence (some sexual commonwealth offences are relevant offences). In those circumstances, the Commonwealth Attorney-General will have jurisdiction, not the Adult Parole Board.

4.175 The Panel therefore prefers to be guided by the system in Scotland, where the Risk Management Authority, which has oversight of offenders on orders for lifelong restriction, does not have jurisdiction over an offender's release on license. The parole body retains the power to make an independent decision for such a release, informed by the risk management plan for the offender.

4.176 The Panel notes that the Intervention and Management Plans will be of great assistance to the Adult Parole Board in considering the progress of offenders and the outstanding risks they may pose.

The Public Protection Authority's role when an offender is subject to a post-sentence order

4.177 As the body responsible for the oversight of offenders under post-sentence detention and supervision, the Public Protection Authority should inherit the existing functions and duties of the Adult Parole Board, such as the issuing of instructions and directions under discretionary conditions of supervision orders, but with new powers to accommodate its expanded role. This should include authority in relation to the approval and oversight of Intervention and Management Plans, developed either when the offender has come under the Authority's purview while subject to sentence, or following the offender having being made subject to a post-sentence supervision or detention order by the court.

4.178 The Public Protection Authority should also be subject to the same arrangements that govern the operation of the Adult Parole Board, for example, there should be no avenue for an appeal from a decision of the Authority.[86]

4.179 With regard to Intervention and Management Plans overseen by the Public Protection Authority once an offender is subject to post-sentence supervision, the Authority's powers should be expanded to include:

- the ability to approve or reject a Plan (including approval of any amendments sought)
- the ability to provide informal feedback regarding a Plan (carries no legislative weight)
- the ability to issue guidance to a lead agency and/or any agency with a role under the Plan (carries legislative weight), and
- the ability to issue directions to any agency with a role under the Plan who is failing, without reasonable excuse, to put into effect the recommendations of the Public Protection Authority (carries legislative weight).

[86] As recommended by the Sentencing Advisory Council in 2007 for the High Risk Offenders Board.

4.180 If an offender is in the community and an agency on the Public Protection Panel is unable to comply with a direction of the Public Protection Authority, the agency must, within a specific time, report to the court that made the order.

Recommendation 15

Offenders who come under the purview of the Public Protection Authority should be subject to an Intervention and Management Plan, which will be overseen by the Authority and developed by the relevant Public Protection Panel/s. The lead agency of the Panel/s should be responsible for coordinating the implementation of the Intervention and Management Plan, whereas the Public Protection Authority should be responsible for the approval and oversight of the Intervention and Management Plan. The Plan should commence while an offender is in prison and continue, with any necessary modifications, in circumstances where an offender is made subject to a post-sentence order.

Recommendation 16

The Public Protection Authority should be granted the existing functions and duties of the Adult Parole Board under the *Serious Sex Offenders (Supervision and Detention) Act 2009* (Vic), in addition to new powers to ensure the Intervention and Management Plan is being implemented while an offender is in prison or in the community. The following powers should exist regardless of where an offender is located:

- the ability to approve or reject a plan (including approval of any amendments sought)
- the ability to provide informal feedback regarding a plan (carries no legislative weight)
- the ability, to be conferred by legislation, to issue guidance to a lead agency and/or any agency with a role under the plan, and
- the ability, to be conferred by legislation, to issue directions to any agency with a role under the plan which is failing, without reasonable excuse, to put into effect the matters recommended by the Public Protection Authority.

Recommendation 17

There should be no changes to the duties and/or powers of the Department of Justice and Regulation, as provided by relevant legislation, in relation to offenders who are in prison. However, a failure to comply with a direction issued by the Public Protection Authority should have distinct consequences, which depend upon where an offender is located:

- If the offender is in prison and the Department of Justice and Regulation, as the lead agency, is unable to comply with a direction of the Public Protection Authority, the Authority should be required to report this to the Minister for Corrections.
- If the offender is in the community and an agency on the Public Protection Panel/s is unable to comply with a direction of the Public Protection Authority, the agency must within a specified time report to the court that made the order.

The Panel's view: streamlining and simplifying conditions and breach proceedings

4.181 In this section, the Panel identifies two further areas where it considers that reforms can be made to reduce complexity and streamline processes for decision making under the current governance model. These relate to the:

- imposition of discretionary conditions, and
- prosecution of breaches of supervision orders.

Imposition of discretionary conditions

4.182 Since the introduction of the scheme in Victoria, the Court of Appeal has handed down a number of key judgments which have provided guidance in relation to the manner in which conditions should be drafted and in what circumstances they should be imposed.[87] The Panel agrees that conditions of supervision orders should be as unambiguous as possible to ensure fairness to those whose duty it is to obey and enforce them.

[87] See, for example, *Nigro & Ors v Secretary to the Department of Justice* 304 ALR 535; *IK v Secretary to the Department of Justice* [2012] VSCA 12 (18 December 2008); *AS v Secretary to the Department of Justice* [2014] VSCA 83 (7 May 2014); *Owen Daniel (A Pseudonym) v Secretary to the Department of Justice* [2015] VSCA 10 (11 February 2015).

4.183 Throughout this review, the Panel considered a number of current Victorian supervision orders and the conditions contained therein. The Panel were also provided with examples of conditions that were commonly sought in applications to the court for extended supervision orders in New South Wales and the simplified version of conditions that were provided to offenders when this was necessary.

4.184 Having reviewed these materials, the Panel is of the view that the discretionary conditions attached to supervision orders in Victoria should be streamlined and simplified to assist offenders to understand the conditions of their orders, where it is possible and in accordance with the established case law. The Panel acknowledges that Corrections Victoria and the legal representatives for both the Secretary and offenders have devoted much effort to this end, and commends all for doing so. It is of the opinion that the endeavour should continue.

4.185 The Panel also notes that the common practice is for conditions to be explained to the offender by the judge and the offender's legal representative. Following the imposition of an order, the offender attends an induction with the allocated Specialist Case Manager, in which the latter explains how the conditions operate in practice and any instructions and directions made by the Adult Parole Board which affect their operation.

4.186 An observation made by the Panel from its review of offenders in the complex adult victim sex offender cohort and consultation discussions is that there can be a lack of a clarity around the distinction between instructions and directions in relation to order conditions. The Panel also became aware of instructions and directions that did not have a proper basis with regard to the discretionary conditions on the order. The Panel therefore recommends that concomitant with any changes in the approach to drafting discretionary conditions, a similar approach be applied to the drafting of instructions and directions, to ensure that they are as streamlined and simplified as possible, and are consistent with the powers conferred on the Adult Parole Board (and by the new Public Protection Authority).

Recommendation 18

Discretionary conditions attached to supervision orders, as well as instructions and directions, should wherever possible and in accordance with the established case law be streamlined and simplified.

Prosecution of breaches of supervision orders

4.187 As outlined earlier, the current framework for the prosecution of breaches of supervision orders is complex and costly. Further, under current practices, breach proceedings can take a long period of time to be heard in the higher courts, following investigation and lodgement of proceedings, and offences typically attract short sentences of imprisonment or non-custodial dispositions. For this reason both police and Corrections Victoria staff expressed understandable frustration in consultations at the barriers they sometimes encounter in responding to non-compliance or risk as quickly as they would wish. This is reflected in the following comment made in the Panel's discussion with Victoria Police, Ararat:

> You have to wait a long time while risk builds before police get involved in what can be a breach. Prosecuting that breach can then be a slow process too. For example if charges are laid according to the Crimes Act, the supervision order breach is not instigated instantaneously, and you often wait until the offence is prosecuted before the breach is taken forward. It may take 3–4 months for a 'quick result' in the court system, and that is just on the offence. When you say there'll be 'consequences next March' it doesn't register with these offenders. Staff feel increasingly less safe while the risk builds.[88]

4.188 The Panel is of the view that the processes under the current framework for the prosecution of breaches requires improvement.

4.189 In the opinion of the Panel, the Public Protection Authority should have the functions and duties that, pursuant to Part 10 of the SSODSA, are currently within the ambit of the Adult Parole Board. This includes those powers regarding alleged breaches of a supervision order, such as:

- issuing a formal warning to the offender
- varying a direction it has given to an offender under a condition of the offender's supervision order
- making a recommendation that the Secretary either apply for a review of conditions or refer the matter to the Director of Public Prosecutions for consideration as to whether to make a detention order, or
- referring an alleged breach to Victoria Police for investigation.

4.190 As the repository of relevant information about an offender's behaviour and progress while supervised, the Panel envisages that the PPA will be able to take a proactive approach to decision making and the management of risk, thereby reducing the frequency that offenders are prosecuted for breaching a condition of their order. The Panel notes that many breaches are minor or even technical in nature and accordingly should be dealt with informally or, where that is inappropriate, with no greater formality than the seriousness warrants.

4.191 Nevertheless, the Panel considers that where breach of supervision order charges are to be prosecuted, the more immediate and proportionate the response, the better.

[88] Consultation with Victoria Police, Ararat (12 August 2015).

4.192 The Panel considers that the best way in which to achieve this, in the majority of cases, is for charges in respect of less serious breaches of a supervision order to be filed and prosecuted in the Magistrates' Court by Victoria Police.

4.193 While there is some benefit (in continuity of judicial oversight) in a breach returning before the County Court to be dealt with by the judge that imposed the order, this can also lead to delays in the resolution of cases. The Panel considers that there are benefits to any measures that can assist in reducing to an appropriate minimum, the need for higher courts to engage in the 'case management' of offenders subject to the SSODSA.

4.194 If prosecutions of less serious breaches were to proceed in the Magistrates' Court, the Panel considers:

- local courts and police prosecutors would amass relevant experience in the scheme, particularly in high traffic courts such as the Ararat Magistrates' Court, and become familiar with offenders subject to supervision orders, thereby negating any advantage in the matter returning to the County Court
- local courts would be appropriately placed to deliver swift, timely and informed judgment
- if there was no longer a requirement to return to Melbourne for all breach proceedings, there would be resource benefits for Melbourne courts and local police/witnesses and the offender, and
- it is likely that less serious breaches would be investigated, and consequential proceedings conducted, in a more cost efficient manner.

4.195 The Panel considers such an approach is also consistent with the relatively minor penalties that are generally (and appropriately) imposed for the majority of breaches of supervision orders, and the frequency with which some offenders return to court.

4.196 The Panel nevertheless acknowledges the significant role the Secretary to the Department of Justice and Regulation has played in prosecuting offenders for breaches of their supervision orders, and the benefit that such prosecutions have brought in ensuring compliance with supervision orders, the protection of the community, and the efficient and effective management of offenders.

4.197 To that end, the Panel considers that the Secretary to the Department of Justice and Regulation should retain the power to initiate and prosecute breach proceedings in the Magistrates' Court, particularly in circumstances where Victoria Police will not prosecute a charge.

4.198 Such a discretion will allow flexibility in the prosecution of offenders in circumstances where Victoria Police decline to prosecute a charge and the Secretary considers that the behaviour exhibited by the offender is sufficiently serious to warrant a prosecution.

4.199 The Panel considers that guidelines should be developed, with input from relevant stakeholders, such the Director of Public Prosecutions, as to the considerations which should be taken into account when this discretion is exercised so as to ensure that the prosecutorial discretion is exercised consistently across all agencies.

4.200 Further, consistently with the Director's role in the prosecution of indictable offences in the higher courts in Victoria, the Panel considers that charges in respect of serious breaches of a supervision order should be initiated by Victoria Police and prosecuted in the County Court or Supreme Court by the Director of Public Prosecutions.

4.201 The Panel's consultation with the Director of Public Prosecutions and members of the Office of Public Prosecutions raised a number of complex procedural issues that arise in breach proceedings, reflective of the current state of the legislation. These issues are summarised as follows:

- There is no provision for related summary charges to be uplifted/transferred from the Magistrates' Court to the County Court, to be dealt with summarily in conjunction with a breach of supervision order charge, whether that charge is proceeding on indictment or is itself to be dealt with summarily.[89] Related summary offences often are committed when offenders breach their supervision orders.
- There is no provision for related indictable offences triable summarily to be transferred to the County Court and dealt with summarily when the breach charges are prosecuted summarily in the County Court.[90]
- The inability to transfer charges in such circumstances has resulted in the fragmentation of proceedings, often requiring two sets of proceedings to be conducted in respect of the one incident. Further, in the past, breach charges have proceeded by way of indictment at the request of the accused, where an accused has been committed on lesser indictable offences triable summarily, so that all charges can be determined by the same court.
- The lack of provision for a committal proceeding where the Director of Public Prosecutions seeks to prosecute a breach of a supervision order in the indictable stream has resulted in the Director being required to file a direct indictment. The Director should be relieved of this obligation by the removal of any requirement for a committal proceeding in such instances. If necessary to ensure fairness, a *Basha* inquiry[91] could, if the court so orders, be conducted.

4.202 The Panel considers these issues should be addressed in any future amendments to the legislation to assist the Director of Public Prosecutions in discharging his or her duties in an efficient and effective manner.

4.203 The Panel notes that Victoria Police and the Director of Public Prosecutions indicated to the Panel that they may require additional funding to undertake this expanded role.

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89 The *Criminal Procedure Act 2009* (Vic) only provides for the transfer of related summary charges when an accused is committed for trial on a related indictable offence, as per section 145 and 242 of the Act. There is no provision for committal proceedings in respect of breach of supervision order charge.

90 An accused is required to be committed on an indictable offence triable summarily in order for such a charge to proceed in the County Court, and they must there be determined in the indictable stream.

91 A pre-trial hearing where the accused can cross-examine any new witness produced by the prosecution after the committal, if they would otherwise be prejudiced. The purpose of a *Basha* Inquiry is to provide a fair trial for an accused who, in the circumstances of the case, has not been adequately informed of the evidence the witness shall give (*R v Basha* (1989) 39 A Crim R 337).

Recommendation 19

The Public Protection Authority should be granted the powers that are currently vested in the Adult Parole Board to respond to alleged breaches of a supervision order.

Recommendation 20

In the majority of cases, charges in respect of less serious breaches of a supervision order should be filed and prosecuted in the Magistrates' Court by Victoria Police. The Secretary to the Department of Justice and Regulation should also retain a power to initiate and prosecute breach proceedings in the Magistrates' Court. However, guidelines should be developed with input from relevant stakeholders, such as the Director of Public Prosecutions, as to the considerations which should be taken into account when this discretion is exercised to ensure that the prosecutorial discretion is exercised consistently across all agencies.

Recommendation 21

Charges in respect of serious breaches of a supervision order should be initiated by Victoria Police and prosecuted in the County Court or Supreme Court by the Director of Public Prosecutions. To facilitate this, there should be legislative amendment to the *Criminal Procedure Act 2009* (Vic) to:

- remove the requirement for a committal proceeding in such instances, and
- allow related summary offences to be uplifted to the County or Supreme Court to be dealt with summarily in conjunction with a breach of supervision order charge.

Recommendation 22

The Director of Public Prosecutions and Victoria Police should be appropriately resourced to undertake these duties.

5. Responsive inter-agency service delivery and intensive case management

Introduction

5.1 Complex adult victim sex offenders who have caused, or who pose the greatest likelihood of causing, serious interpersonal harm, generally fall within a group of individuals with multiple and complex needs; a group which Hamilton defines as including those 'who experience various combinations of mental illness, intellectual disability, acquired brain injury, physical disability, behavioural difficulties, homelessness, social isolation, family dysfunction and drug and/or alcohol misuse'.[1] In most cases, to this must be added attitudes, desires, and personality traits conducive to offending.

5.2 The third of the Panel's terms of reference asks the Panel to provide advice on governance models for improved case management between the criminal justice and mental health service systems in relation to these offenders. Accordingly, this chapter examines the key interventions underpinning their case management, including assessment, treatment, and supervision. It also examines the capacity for different accommodation settings to deliver these interventions, and support community protection.

5.3 Effective assessment, treatment, and supervision of complex offenders requires effective coordination between the multiplicity of agencies involved in their management. The Panel is satisfied that at present that coordination is not as good as it should be.

5.4 In the current model, Corrections Victoria bears the primary responsibility for the management of offenders under the SSODSA. It must deal with numerous issues, such as locating suitable accommodation, assessing risk, and providing treatment and referrals to programs in the community. It discharges these duties with commendable professionalism.

5.5 But it can only do so much. When its duties intersect with the responsibilities of other agencies and service providers in other areas of government, the result may be less than optimal. The causes are various, but not generally linked to lack of professionalism in those charged with the different aspects of service delivery. The problem may arise from the offender's distance from mental health and disability services, or – if the offender is not subject to an order directing compulsory treatment – the inability of service providers to provide that treatment. Another relevant problem is an actual or perceived lack of authority to share relevant information.

[1] Margaret Hamilton, 'People with Complex Needs and the Criminal Justice System' (2010) 22(2) *Current Issues in Criminal Justice* 307–324, 307.

5.6 Given the multiple needs of offenders in the complex adult victim sex offender cohort, it is clear that effective interventions can only be delivered through intensive inter-agency case management, coordinated service delivery and rigorous governance arrangements to target criminogenic and therapeutic needs, as well as maximise opportunities to reduce risk through sustained engagement.

5.7 The Panel is of the view that the responsibility for providing the services that will reduce reoffending and protect potential victims lies as much with mental health, intellectual disability, and various social services, as it does with any part of the criminal justice system. Accordingly, the Panel's recommendations in this chapter seek to achieve its fourth pillar of reform – 'Responsive inter-agency service delivery and intensive case management'. The recommendations centre on:

- improvements to the assessment and treatment of offenders who come within the offender cohort with whom the Panel is concerned
- reforms to achieve coordination and collaboration through multidisciplinary Public Protection Panel/s, and
- identifying the need for tailored accommodation options with a view to supporting interventions based on the needs of each offender.

Different models for assessment and treatment of the relevant offender cohort

5.8 In Victoria a new assessment model has been in use since January 2015.[2]

5.9 There are two stages of assessment upon reception to prison for sentenced prisoners. An initial assessment is conducted to determine a general risk of reoffending (low, medium, or high). For those who are medium or above, and have a sentence of six months or more, a second more comprehensive assessment is done to identify the offender's risks and needs and how to address these.

5.10 There are two types of plans developed for each prisoner:

- A sentence plan is developed by the Sentence Management Branch in Corrections Victoria. This provides a broad guide as to how the offender should be managed.
- A local is developed by the prisoner with assistance from the case manager (usually a prison officer). This outlines goals for reintegration and general wellbeing. It is approved by the Case Management Review Committee.

[2] The new assessment model is based on the use of the suite of general risk of reoffending tools known as the Level of Service (LS) Suite. This suite is administered to all adult Victorian prisoners, and used to determine an offenders' general risk of reoffending. The LS is also used to identify needs that have contributed to an individual's offending behaviour. There are two assessments types available under the LS risk assessment model, they are LSI-R-V (Level of Service Inventory-Revised) screening version and the LS/RNR (Level of Service/Risk, Need, Responsivity). The LS suite replaces the Victorian Intervention Screening Assessment Tool (VISAT) previously used by Corrections Victoria, following recommendations from a report on parolee reoffending by Professor Ogloff and the Office of the Correctional Services Review.

5.11 Prisoners' risk is periodically assessed throughout their sentence using a range of methods.

5.12 Additional specialist tools are utilised in the clinical assessment of 'serious violent offenders'[3] and 'sex offenders'[4].

5.13 The Panel commends these reforms, and Corrections Victoria's implementation of them. They form an appropriate base upon which to build the further reforms recommended by the Panel.

Sex offender assessment and treatment

Assessment

5.14 In Victoria sex offenders are assessed by Corrections Victoria's Specialised Offender Assessment and Treatment Service, using the Static-99,[5] an actuarial tool for predicting the risk of sexual and violent recidivism in convicted adult male sexual offenders.[6] This Service is responsible for providing specialised assessment and therapeutic interventions to sexual offenders, as well as violent offenders with a registered intellectual disability, confirmed acquired brain injury, or who have low cognitive functioning. The Static-99 is not designed to inform or guide management strategies, nor is it able to quantify progress; it is as its name suggests – static.

5.15 Once a sex offender has been sentenced, following clinical interview, an Assessment and Recommendations Report is prepared.[7] Both Corrections Victoria and the Adult Parole Board, have access to this report, when relevant. The aim is that assessments be conducted, and recommendations for treatment be made, within 30 months of a prisoner's earliest eligibility date for parole.

5.16 The report is designed to 'inform the most appropriate type of intervention that will assist in risk manageability. The recommended intervention pathway is matched to the offender's level of risk, need, and relevant responsivity issues'.[8]

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3 A serious violent offender is an offender who has been convicted on a serious violent offence defined in section 77(9) of the *Corrections Act 1986* (Vic).

4 A sex offender is an offender who has been convicted of an offence defined in Schedule 1 of the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic).

5 Karl Hanson and David Thornton, *Static-99: Improving Actuarial Risk Assessments for Sex Offenders* (1999–02).

6 This tool cannot be used to predict the risk of further sexual or violent offending in adult females or adult males convicted of certain offences such as internet child pornography and stalking so alternative risk assessments may be used, including the Risk Matrix 2000/S – Revised and/or clinical assessment using the Risk for Sexual Violence Protocol (RSVP). The relevance of these risk assessments to Indigenous populations is uncertain.

7 Specialised Offender Assessment and Treatment Service, Intervention Pathways & Planning: Fact Sheet (May 2015) Version 5.

8 Ibid.

5.17 A further assessment of sex offenders occurs at a later stage. This assessment is designed to support decision-making around whether the Secretary to the Department of Justice and Regulation should apply to the court for a detention or supervision order. This assessment is referred to as a detention and supervision order assessment and Part 8 of the SSODSA outlines who can make these assessments and what must be addressed in them.

5.18 Detention and supervision order assessments are conducted within the last 12 months before an offender's earliest discharge date. Once a sentence (including any parole period) expires, there is no power to apply for a detention or supervision order. The timing of these assessments allows for:

- any treatment gains to be considered as part of the risk assessment
- progress on parole and the capacity to self-manage in the community to inform the risk assessment, and
- current information to be provided to the Detention and Supervision Order Review Board, the Secretary, and the Court, should an application be made.

5.19 Assessments are triaged according to risk, with the assessment of higher risk offenders completed by independent external assessors contracted by the department, and lower risk offenders assessed by clinicians from the Specialised Offender Assessment and Treatment Service. The latter is less expensive and results in less detailed reports than the former.

Treatment

5.20 The effectiveness of treatment interventions for sex offenders has been the subject of several studies and much debate. As the knowledge base grows, treatment programs continue to be refined.

5.21 Some studies have found positive correlations between treatment and 'desistance', that is, the cessation of offending or other antisocial behaviour:[9]

- A study by Lovins and colleagues found that high risk sex offenders who completed intensive residential treatment were more than two times less likely to reoffend than high risk sex offenders who were not provided with intensive treatment.[10]
- A meta-analysis by Hanson and colleagues found sexual recidivism rates of 19.2 per cent, which rose to 48.3 per cent when property, drug and violent offences were added. Programs of treatment and case management reduced sexual reoffending to 10.9 per cent and other forms of reoffending to 31.8 per cent, based on an average follow-up period of 4.7 years.[11]

[9] See also Chapter 1 at [1.24] and Chapter 2 at [2.29]–[2.36] for a discussion on the reoffending rates of sex offenders.

[10] Brian Lovins, et al., 'Applying the Risk Principle to Sex Offenders: Can Treatment Make Some Sex Offenders Worse?' (2009) 89 *The Prison Journal*, 344–357.

[11] Karl Hanson et al., *A Meta-Analysis of the Effectiveness of Treatment for Sex Offenders: Risk, Need, and Responsivity* (2009).

- A Colorado study by Lowden and colleagues found that participation in treatment was significantly related to success on parole, with revocation rates for sex offenders who completed treatment and participated in aftercare being three times lower than for untreated sex offenders, leading the researchers to conclude that each additional month in treatment in prison increased the likelihood of success upon release by 1 per cent, or 12 per cent per year.[12]
- A recent international meta-analysis of sound quality evaluations on the effects of sexual offender treatment on recidivism by Schmucker and Losel identified 29 eligible comparisons containing a total of 4,939 treated and 5,448 untreated sexual offenders. The study found a difference in recidivism of 3.6 percentage points (10.1 per cent treated versus 13.7 percent in untreated offenders) and a relative reduction in recidivism of 26.3 per cent.[13]

5.22 Interventions delivered by the Specialised Offender Assessment and Treatment Service include both group and individual treatment and range from intensive to maintenance. Treatment readiness programs are also delivered to support entry into offence specific treatment. Programs are delivered across both prison and Community Correctional Services, with a view to reducing the risk of sexual and violent recidivism.

5.23 For those subject to post-sentence orders, whose risk tends to be higher, treatment can be a vital component of interventions aimed at reducing their risk to the community.

5.24 Factors that can underpin treatment effectiveness include program delivery and the therapeutic relationship, the treatment environment, and how the offender responds to the program. For this reason:

> … rather than following a one-size-fits-all approach, treatment is apt to be most effective when it is tailored to the risks, needs, and offense dynamics of individual sex offenders.[14]

5.25 Risk Needs Responsivity (RNR)[15] principles underpin the design and delivery of sex offender programs in Victoria and the Good Lives Model is utilised in both treatment and case management by Corrections Victoria. It is noted that while studies of the Good Lives Model have focused on validating the model for use in the rehabilitation of sex offenders, little is currently known about its efficacy for reducing the recidivism of sex offenders.[16]

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[12] Kerry Lowden et al., *Evaluation of Colorado's Prison Therapeutic Community for Sex Offenders: A Report of Findings* (2003).

[13] Martin Schmucker and Losel Friedrich, 'The Effects of Sexual Offender Treatment on Recidivism: An International Meta-Analysis of Sound Quality Evaluations' (2015) *Journal of Experimental Criminology* 1.

[14] Roger Przybylski for Sex Offender Management Assessment and Planning Initiative, *The Effectiveness of Treatment for Adult Sexual Offenders: Research Brief* (July 2015) 4.

[15] The RNR model was first formalised in Canada in 1990: Don A Andrews et al., 'Classification for Effective Rehabilitation: Rediscovering Psychology' (1990) 17 *Criminal Justice and Behaviour* 19–52.

[16] Przybylski (2015), above n 14, 3.

5.26 The duration and extent of interventions are based on practice standards, and correspond to the offender's intervention 'pathway', which is based on the offender's level of risk and treatment needs.

5.27 Group treatment is the prioritised method of delivery by Offending Behaviour Programs, because it is considered to have the largest evidence base and to be effective in reducing reoffending. Group based interventions are also regarded as being cost effective.[17] While Offending Behaviour Programs do not deliver sex offender programs, Corrections Victoria advised the Panel that group treatment is also favoured for the delivery of sex offender programs.

5.28 Table 10 outlines the costs of delivering offence specific group programs for sex offenders, based on all groups running at full capacity and all participants receiving the full treatment without withdrawal or non-completion of the program.[18]

Table 10: Cost and duration of sex offender group programs[19]

Program	Intensity	Location	Duration	Dosage (hours)	2 Clinicians	1 Senior Clinician
Better Lives Program (BLP)	Mod-Low	Prison	3 months	72	$1,348.56	$1,119.58
	Mod-Low	Community	6 months	72	$1,184.66	$ 930.56
	Mod-High	Prison	5 months	120	$1,903.10	N/A
	Mod-High	Community	7 months	90	$1,525.00	N/A
	High	Prison	6 months	150	$2,281.20	N/A
	High	Community	9 months	105	$1,714.05	N/A
Disability Pathways Sexual Offending Program	Mod-Low to High	Prison/ Community	10–12 months	200–240	$3,062.61	N/A

5.29 Individual treatment is much more expensive than group treatment. The average cost per session for individual treatment starts at around $236 for a clinician, rises to $272 for a senior clinician, and if an external contractor is needed, the cost rises to $700.

[17] Department of Justice and Regulation *Offending Behaviour Programs: Service Delivery Model* (April 2015).

[18] Data provided by Corrections Victoria to the Panel on 25 August 2015.

[19] Corrections Victoria advised the Panel that these costs capture all aspects associated with delivering the treatment programs including review of clinical files, delivering intervention sessions, preparing case notes, post-session activities, travel and preparing completion and non-completion reports.

5.30 Although group treatment is less expensive than individual treatment, there can be challenges with using group treatment for offenders who are likely to be considered for post sentence orders. These challenges can stem from two factors:

- this is a group likely to have a wide range of complex needs and dual disabilities compared to most offenders assigned to current programs, and
- its members are also more likely to have histories of offending which involve extreme forms of violence and/or sexual predation than other offenders.

5.31 The placement of high risk sex offenders in group treatment can disrupt both their management and that of other group members. Recidivist child sexual offenders in particular may become the target of hostility and rejection. Offenders with significantly violent histories may conversely induce fear and loathing from other group members. Even the most experienced group therapists may have problems managing such tensions.

5.32 The diverse and extensive nature of the needs of offenders who may potentially become subject to post sentence detention or supervision will also stretch the capacity of most therapists, particularly as they must also focus on the needs of other group members. Placing those with cognitive impairments with mainstream offenders in group treatment is problematic as delivery of the content needs to be appropriately tailored. This is why specific disability pathway streams exist.

5.33 The combination of group and individual interventions has long been the norm in mental health services, at least where resources allow. It should remain so. Schmucker and Losel's 2015 meta-analysis findings suggest the inclusion of individual sessions reveals much better results.[20] However, properly conducted outcome studies are lacking for individual psychosocial interventions. Some of the problem behaviour programs based on individual therapy delivered at the Forensicare are under evaluation and are showing promising results. The group and individual approaches to treatment should be complementary and build upon each other.

5.34 While individual treatment is usually delivered in exceptional circumstances for those in prison, the Specialised Offender Assessment and Treatment Service has tailored its service delivery to address the complexity of offenders subject to post-sentence orders through the creation of dedicated High Risk and Complex Needs Senior Clinician roles. These senior clinicians provide therapeutic interventions that range from dialectical behavioural therapy group programs to individual treatment and maintenance sessions. They also provide consultation and support to correctional staff supervising offenders on post-sentence orders, and support referral to, and liaison with, external providers, including private psychologists, mental health services and drug and alcohol services.

[20] Schmucker and Losel (2015) above n 13, 25.

5.35 The Service has also created a 'Support and Awareness Group' (SAAG) program designed to engage offenders' existing support networks in treatment. It has been described as follows:

> On its own, the necessary step of reducing dynamic risk factors through effective treatment programs will be unable to bridge the gap between the scaffolded environment of a treatment program to the reality of the outside world. Initiatives such as SAAG are intended to create transitions to better lives by building protective social bonds around offenders; ones that will help them to gradually reintegrate into the community … .[21]

5.36 The program aims to identify those persons who are prepared as members of the offender's support networks to assist them with the development and implementation of a healthy lifestyle and offence free future. It has similar aims to that of the better known and highly regarded Circles of Support and Accountability, which began in Canada and was subsequently adopted by the United States, Scotland and England, although that program relies more on volunteers who are trained to provide relapse prevention.[22]

Violent offender assessment and treatment

Assessment

5.37 The current system for assessing and treating violent offenders has undergone widespread change and Corrections Victoria is still consolidating these following the recent parole reforms.

5.38 Offending Behaviour Programs target offence specific and offence related factors influencing offending behaviour, with a view to engaging offenders in positive behaviour change and supporting the goal of public safety by reducing crime.[23]

5.39 Services provided have undergone widespread change in response to the parole reforms. The move to 'front end' assessment and provision of programs across the state, rather than at limited locations, is more likely to support the rehabilitation and reintegration of prisoners, the subject of a recent Victorian Ombudsman's inquiry.[24] State-wide delivery also reduces the need for transfers across prison to access offending behaviour programs, which may support greater consistency in case management.

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[21] Braden et al., 'Creating Social Capital and Reducing Harm: Corrections Victoria Support and Awareness Groups' (2012) 4(2) *Sexual Abuse in Australia and New Zealand* 36–42, 40.

[22] Mechtild Hoing et al., 'Circles of Support and Accountability: How and Why They Work for Sex Offenders' (2013) 13 *Journal of Forensic Psychology Practice* 267–295.

[23] Offending Behaviour Programs Branch, *Program Suite* (April 2015).

[24] Victorian Ombudsman *Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria*: *Report* (September 2015).

5.40 Two main service pathways are available under the Offending Behaviour Programs Model utilised by Corrections Victoria:

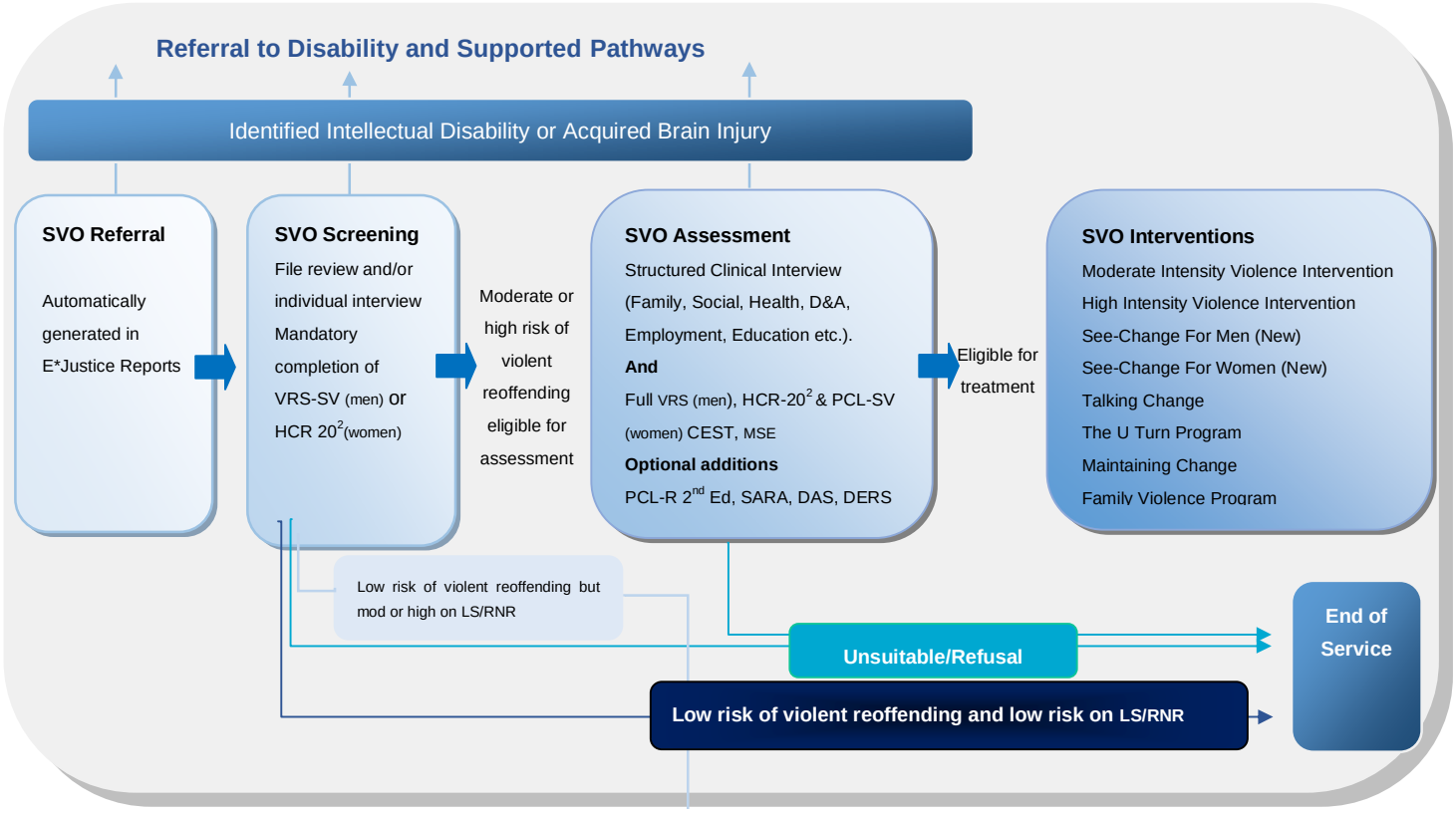
- the general offender pathway, and
- the serious violent offender pathway.

5.41 The latter is of interest as a number of the Panel's recommendations in chapter 3 and 4 tap into the existing definition and assessment process for serious violent offenders. For example, the broadened eligibility criteria for the post-sentence scheme envisage the use of serious violent offences as part of the statutory eligibility criteria (recommendations 1–3). Another example is the recommended process for the referral of eligible offenders, assessed as moderate to high risk, to the Public Protection Authority for consideration for inclusion in the cohort subject to its oversight.

5.42 Section 77(9) of the *Corrections Act 1986* (Vic) contains the definition of a serious violent offender. Under current procedures, all offenders meeting this definition must be referred to Offending Behaviour Program Branch.

5.43 The pathway for assessment and treatment of serious violent offenders is displayed in Figure 10.

Figure 10: Serious violent offender pathway



5.44 At the screening stage, every serious violent offender receives a short form assessment of the Violence Risk Scale (VRS).[25] Like other risk assessment tools it has its limitations. However it has been validated in correctional samples and total scores on the instrument have been found to have a moderate-to-high relationship with subsequent violence.[26]

5.45 The Violence Risk Scale is an actuarial instrument that covers the majority of the best-established predictors of violence. It includes both static (historical) and dynamic (changeable) risk factors.

5.46 In broad terms, approximately one third of serious violent offenders return a 'low' score on the Violence Risk Scale short form assessment, triggering their reassignment to the general offender pathway. This reflects well-established treatment principles suggesting resources should be targeted to higher risk thresholds.

5.47 The remaining serious violent offenders are assessed using the full form of the Violence Risk Scale. Of those, approximately one third may return a high risk of violence. Intervention and management goals, including treatment, are informed by this full assessment.

Treatment

5.48 Corrections Victoria provided data to the Panel on Offending Behaviour Programs interventions commencing in 2014–15 designed to meet the needs of violent offenders. Of the 18 programs commenced, 15 were offence specific and three were offence related.[27] These are set out in Table 11.

[25] This scale was developed in Canada and uses ratings of static and dynamic risk predictors to assess the risk of violence, identify treatment needs and assess changes in risk following treatment: Stephen S, C Wong and Audrey Gordon, 'The Validity and Reliability of the Violence Risk Scale: A Treatment-Friendly Violence Risk Assessment Tool' (2006) 12(3) *Psychology, Public Policy and Law* 279–309.

[26] Correspondence from Offending Behaviour Programs Branch, Corrections Victoria to the Panel on 15 October 2015. Figure 10 has been recreated from: Offending Behaviour Programs, Department of Justice and Regulation, *Service Delivery Model* (April 2005) 10.

[27] General offenders can participate in serious violent offender groups despite their index offence not satisfying the serious violent offender category, if they have a history of two or more offences involving violent behaviour.

Table 11: Interventions commenced in 2014–15 for violent offenders

Intervention name	Groups commenced	Participants	
		Serious violent offenders	General offenders
OBP - Group - Alcohol Dependant Aggression Psycho-educational Training (ADAPT)	2	7	0
OBP - Group - Domestic Abuse Program (DAP)	1	7	2
OBP - Group - High Intensity Violence Intervention Program	5	41	1
OBP - Group - Moderate Intensity Violence Intervention Program (M-VIP)	10	78	8
Total	**18**	**133**	**11**

5.49 The violence intervention program targets a range of risk factors related to violent offending, such as emotional regulation and thoughts and beliefs. By examining why participants use violence, and assisting them to develop skills to manage their violent behaviour, the program aims to support offenders to reduce their chances of reoffending. Prisoners may complete up to 300 hours of group sessions over six months at the high intensity level.[28]

5.50 It appears there is more flexibility in delivering individual interventions for violent offenders, than sexual offenders. The number of individual sessions and reported participants in prisons for violent offenders in 2014–15 (provided to the Panel by Corrections Victoria) is outlined in Table 12.

Table 12: Volume of prisoners participating in individual interventions

Total sessions	Serious violent offenders	General offenders	Total participants	Average number sessions
1,436	131	20	151	9.5

[28] Department of Justice and Regulation (April 2015), above n 17.

Assessment and treatment when the offender is a sex offender and a violent offender

Assessment and treatment for the cohort in prison

5.51 The cohort that is the focus of this review include sex offenders who present a risk of violent offending. Where an offender is both a serious violent offender and a sexual offender, the prison service pathway is different. Offenders fall within the category of 'serious violent and sex offender' when they have a current conviction of:

- any sexual offence or a combination of any sex offences, and
- serious violent offences.

5.52 These cohorts must be referred to the Specialised Offender Assessment and Treatment Service in the first instance and are not eligible for Offending Behaviour Programs.

5.53 However, offenders assessed by this service may subsequently be referred to the Offending Behaviour Programs Branch for violence programs depending on the nature of the offence, for example where the motivation for the offender's sexual offences may indicate a desire to inflict physical pain as much as, or more than, a desire to gain sexual gratification. A referral may also be made where there is an unmet treatment need relating to violence upon sex offender program completion.

5.54 As discussed in relation to the assessment and treatment for sex offenders at [5.15], intervention and pathways planning does not occur until within 30 months of a prisoner's earliest eligibility date.

5.55 The combination of these two requirements under the current service delivery model for offenders categorised as serious violent and sex offenders, in the Panel's view has the potential to limit:

- opportunities to sequence both offence specific and offence related interventions
- opportunities for prisoners to reduce their risk earlier in their sentence and move to a lower security prison, and
- opportunities for the successful reintegration of prisoners into the community under parole, given the emphasis on completion of programs to qualify for parole following the Callinan review of the adult parole system in 2013.[29]

5.56 Data collated by Corrections Victoria on the categorisation of offenders indicates the number of offenders who may be affected by the potential implications of this model of service delivery. [30] Table 13 shows that as at 15 October 2015, there were 167 serious violent and sex offenders in prison and 16 such offenders on parole.

[29] Ian Callinan AC, *Review of the Parole System in Victoria*: *Report* (2013).

[30] Data provided by Corrections Victoria to the Panel on 15 October 2015

Table 13: Number of serious violent offenders, sex offenders, or both serious violent and sex offenders in prison or on parole as at 15 October 2015

Status	Prisoners	Parolees	Cohort as percentage of total
Serious violent offender	1939	399	72% (n = 2344)
Sex offender	587	141	22% (n = 720)
Both serious violent offender and sex offender	167	16	6% (n = 185)

Treatment for the cohort under the SSODSA

5.57 Another limitation in the delivery of treatment for offenders who are identified as both sex and violent offenders is in relation to the service pathways for treatment of offenders under the SSODSA.

5.58 Offending Behaviour Programs are focused on servicing the needs of prisoners and those subject to community correctional orders. For offenders on post-sentence orders, Offending Behaviour Programs provide support by exception, for example when a treatment need is identified by the Specialised Offender Assessment and Treatment Service.

5.59 In a system managing thousands of prisoners, it can be difficult to treat offenders on an individualised basis. However, for the much lower numbers of offenders subject to SSODSA orders, it is not uncommon for them to have diverse offending histories[31] that can be difficult to manage. Offenders who pose the greatest likelihood of causing serious interpersonal harm should, by virtue of their high risk and multiple criminogenic needs, be seen as needing more tailored interventions than other offenders, and should be a high priority for receiving such interventions.

5.60 A number of offenders in the complex adult victim sex offender cohort considered by the Panel had been recommended for violence intervention programs. Some of them may have benefited from earlier engagement in programs of this nature. In Sean Price's case, engagement in a violence intervention program was his highest treatment need. In this case, and others, the boundaries between programs created by the categorisation of offenders as either 'sexual' or 'violent' can create problems in terms of access to such programs.

5.61 Corrections Victoria has advised the Panel that following the internal review into the management of Sean Price[32] it has made changes to improve flexibility in the delivery to sexual offenders on post-sentence orders of interventions designed to address such proclivity towards violence as they may exhibit.

[31] The Panel notes the recent roll-out of men's behaviour change programs in Victorian prisons, in response to identification of the prevalence of family violence in prisoner's offending histories.

[32] Office of the Secretary, Department of Justice and Regulation, *Review of Corrections Victoria's Management of Sean Price* (the 'Will Report') (30 April 2015).

5.62 When asked by the Panel if it would be valuable to have one program that addresses both sexual and violence risk, Corrections Victoria replied:

> There may in some cases be the need to consider the continuity and complexity of treatment needs and how these may be addressed through single or multiple services or service streams. These are often dictated by the individual case and the individual circumstances that may warrant treatment across domains. It should however be noted that often expertise is built in one or other area, which may result in some challenges in servicing both aspects through a single program. Such interventions may not necessarily be conducive to group treatment in all instances. The Forensicare Problem Behaviour Program is an individual one-on-one service which recognises these complexities.[33]

5.63 The Problem Behaviour Program provides psychiatric and psychological consultation and treatment for people with a range of 'problem' behaviours associated with offending and for whom services are not available elsewhere. The program is specifically directed at people known to have recently engaged in, or are at risk of engaging in, one or more 'problem behaviours'. In 2014–15 the Forensicare Problem Behaviour Program received 137 referrals. Of these, 115 offenders were provided treatment equating to a total of 1707 hours of service delivery.

The Panel's view: early and targeted assessment and treatment

5.64 Corrections Victoria faces the challenge of providing the most effective programs to reduce reoffending in the context of rapidly changing knowledge and diverse and sometimes conflicting advice. Changing direction in response to every shift in evidence and/or trend would be wrong. The Panel acknowledges that Corrections Victoria is currently putting in place mechanisms to formally evaluate the available options.

5.65 The current systems for assessment and treatment of offenders who are categorised as sex, violent, or sex and violent, offenders, have developed and been adapted in response to evaluations of this kind. However, having reviewed the current systems with reference to their operation for the complex adult victim sex offender cohort, the Panel is of the view that further improvements can be made. Such improvements might address the following three issues identified by the Panel:

- Offence specific assessment and treatment does not commence early enough following sentence for sex offenders or those who are both sex and violent offenders.
- Significant resources are spent on costly risk assessments of sex offenders made towards the end of their sentence, while fewer resources are spent on earlier assessment, despite the fact that planning and tailoring more targeted interventions would be enhanced if they were.
- The delivery and format of treatment is such that resources may be misdirected to offenders who should not be treated at all.

5.66 Each of these issues, together with the Panel's recommendations for reform, is addressed in turn.

[33] Correspondence from Offending Behaviour Programs Branch, Corrections Victoria to the Panel on 4 September 2015.

Early assessment and treatment

5.67 The Panel is of the view that developing a dedicated intervention plan (by way of an Intervention Planning and Pathways Report) within 30 months of a prisoner's earliest eligibility date is too late to commence interventions for sex offenders or offenders who are at the same time both serious violent offenders and sex offenders.

5.68 The Panel was advised by the Specialised Offender Assessment and Treatment Service that sex offence treatment occurs towards the end of sentence so that treatment needs can be targeted close to an offender's release date, and so that the gains then made will not be lost following the offender's release. However, the Panel does not accept that the underpinning rationale is appropriate, particularly when applied to the cohort that is the subject of this review. The Panel has identified a number of problems in this regard:

- If the process is deferred until late in their sentence, prisoners may not have time to complete offence specific and offence related treatment needs. This applies even more to those in the cohort of those with multiple and complex needs.
- Outstanding treatment needs may have a negative impact on prisoners' ability to qualify for parole. Yet parole can be an important means of demonstrating their capacity to self-manage in the community.
- Programs should begin early in prison to address any attitudes or behaviour that may be underlying repeat sexual offending, and ensure that they are not reinforced in the prison environment.
- The failure to address risk may increase the likelihood of prisoners requiring post-sentence supervision, whereas earlier investment may not only reduce this very substantial cost to the State, but also strengthen the protection of the community.[34]

5.69 Applying this service delivery framework to offenders in the complex adult victim sex offender cohort who have committed both sexual offences and violent offences, further compounds the problem. Offenders who, in addition to sexual offence treatment needs, require interventions to address their propensity for violence, arguably require more time than other offenders for sustained interventions. Yet commencement of their treatment is delayed until well after that provided to other violent offenders.

5.70 This may jeopardise the ability of offenders to complete programs that could reduce the risk of reoffending and thereby decrease the likelihood of being considered for parole, at the same time as potentially increasing the likelihood of being subject to a post-sentence supervision order application.

5.71 Community protection and the public purse both require intensive and timely efforts to reduce serious violent and sexual offenders' risk. It is safer to do this when an offender is in prison rather than waiting until he or she is released. While treatment in prison has inherent disadvantages compared to treatment in the community, it also has the advantages of greater security and, if early engagement reduces the need for post-sentence supervision, lower costs.

[34] The cost of the scheme is approximately $325,000 per offender, per annum, for those resident at Corella Place: Data provided to the Panel by Corrections Victoria on 24 September 2015.

5.72 The Panel considers that earlier assessment and treatment could result in more effective interventions under sentence and reduce the need to apply for a post-sentence order, or reduce the duration of the order required. The Panel acknowledges that there will be instances where unmet treatment needs are not due to the lack of service provision, but due to offenders refusing treatment or to the short duration of their sentence. The Panel further acknowledges that, for some offenders, treatment may not be successful. It follows that, even where there is early and continuous intervention, there may still be offenders who reach the end of their sentence and have unmet treatment needs. They may then fail the 'unacceptable risk' test when subject to a post-sentence order application. These factors do not undermine the appropriateness of earlier intervention. If anything, such an approach allows more time to plan future management strategies for SSODSA offenders.

Recommendation 23

Sex offenders in prison should be provided with offence-specific clinical assessment and treatment early in their sentence in contrast to the existing process of delivering interventions in the last 30 months (two and a half years) before an offender's earliest eligibility date.

Recommendation 24

The service delivery framework for offenders who have committed both violent and sexual offences should be reviewed to ensure that this cohort, having multiple needs, receive the benefit of front-end assessment and earlier, targeted interventions, than is currently the case.

5.73 The Panel notes a generalised problem behaviour approach was posited as a potentially appropriate intervention for this cohort, as is provided by Forensicare's Problem Behaviour Program.[35] A recent evaluation of the program found that amongst those who were referred for and who attended treatment, reoffending rates were significantly lower than in all other groups. It also found that those clients who had completed or remained in treatment reoffended at significantly lower rates compared to clients who failed to attend or dropped out of treatment.[36] The Panel suggests that this model be considered as a possible approach for providing interventions for offenders with multiple and complex needs.

[35] Consultation with Professor James Ogloff (23 July 2015).

[36] J McCarthy et al., for Forensicare and Centre for Behaviour Science, Swinburne University of Technology, *Evaluation of the Problem Behaviour Program: A Community Based Model for the Assessment and Treatment of Problem Behaviours* (2015) 32.

Need for review and guidance on the resources used for risk assessment

5.74 Risk assessment is big business – and an unregulated business at that. Structured professional judgement approaches can generate money for providing training in the use of a particular instrument. Both actuarial and structured professional judgement instruments can generate income from the sale of manuals and questionnaires. Those providing risk assessments to courts and tribunals can charge substantial fees which will only continue if faith in the predictive accuracy of their application of the assessment instruments, and the instruments themselves, is maintained.

5.75 There exist over 150 risk assessment instruments, many of which are 'actuarial' in nature; that is they assess the particular offender against a range of factors suggested in studies of specific populations as having a significant correlation with criminal behaviours.[37] These studies are almost always retrospective in that the group is divided into those who have offended and those who have not. Offenders' past records are then examined for factors associated with that offending. The populations studied include those discharged from specific psychiatric or correctional facilities (for example the Violence Risk Appraisal Guide)[38] as well as more representative and informative samples drawn from populations of offenders, from a whole state or region (for example the Static-99).[39]

5.76 Risk assessment instruments based on structured clinical judgement approaches use information derived from the current literature about factors related to offending behaviours. Such an approach allows, indeed requires, the application of clinical experience and common sense to the evaluation of risk. More importantly, for our purposes, the instruments focus on dynamic as well as static factors and on protective as well as aggravating influences. This allows their use in planning targeted intervention to reduce offending. Originally both actuarial and structured clinical judgement approaches tended to be developed for broadly defined groups of offenders (such as violent offenders or sex offenders). Increasingly, newer assessment instruments tend to focus on more clearly defined populations such as perpetrators of stalking, family violence, or child sex offenders.

5.77 The advantages of actuarial versus structured professional judgement has generated considerable argument and many studies of varying quality. The strengths of the actuarial instruments are that they are cheap and easy to apply, and can identify whether someone is at a high or low risk of reoffending. The advantages of structured professional judgement is that it produces a picture of why a person may be at higher than usual risk of reoffending and, most importantly, what could be done to lower the risk.[40]

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37 Fred Berlin et al., 'The Use of Actuarials at Civil Commitment Hearings to Predict the Likelihood of Future Sexual Violence' (2003) 15(4*) Sexual Abuse: Journal of Research and Treatment* 377–382.

38 Grant Harris et al., 'Violent Recidivism of Mentally Disordered Offenders, The Development of a Statistical Prediction Instrument' (1993) 20(4) *Justice and Behavior* 315–335.

39 Hanson and Thornton (1999–02), above n 5.

40 Michael Davis and James Ogloff, 'Risk Assessment' in K Fritzon and P Wilson (eds), *Forensic Psychology and Criminology: An Australasian Perspective* (2008) 141–150.

5.78 There is an extensive literature on the performance of different risk assessment instruments.[41] Evaluating this literature is difficult. Many studies have been conducted by those who may have both a professional and financial interest in establishing that their instrument works, and is better than competitor instruments.

5.79 Some professionals are strongly opposed to the use of predictions of future risk in determining decisions about continuing detention and supervision of both offenders and those with severe mental disorders.[42] The basis of their opposition is that risk assessments lead to far too many false attributions of future risk with consequent limitations on civil liberties without any real benefits in the form of public protection, or the improved management of offenders or patients.

5.80 In a paper on the legal aspects of the use of risk assessments, Hamilton states that imposing criminal justice penalties based on risk assessments derived from group data 'is akin to punishing someone for what other purportedly statistically matched persons have done'.[43] This would presumably be equally true for the restrictions imposed under civil schemes of preventive supervision and detention like the SSODSA, which impinge on liberty on the basis of risk assessments. To judge someone on the basis of their membership of a particular group and not on their individual characteristics is, after all, the definition of prejudice.

5.81 It is difficult to navigate between claims of the enthusiastic advocates and the sceptical nay-sayers. This is a difficulty increased by the rapid expansion in the literature, together with equally rapid changes over time in emphasis on the how, when, and why of risk assessment. Research papers can be found that appear to support almost any position on which are the best risk assessment instruments and what level of predictive precision they can produce. A few major studies exist, however, which provide reasonably rigorous evaluations of the current state of risk assessment, both in the criminal justice and mental health fields.

5.82 Fazel and colleagues carried out a meta-analysis of the nine most commonly used instruments to predict violence and sexual offending.[44] This included the Static-99, the Sex Offender Risk Appraisal Guide and the Psychopathy Checklist – Revised. They reviewed 73 studies involving over 24,000 subjects. There were no consistent differences in the reported ability of these instruments to predict violence overall.[45]

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41 Ibid.

42 George Szmukler and Nikolas Rose, 'Risk Assessment in Mental Health Care: Values and Costs' (2013) 31 *Behavioral Sciences and the Law* 125–140.

43 Melissa Hamilton, 'Back to the Future: The Influence of Criminal History on Risk Assessments' (2015) 20(1) *Berkeley Journal of Criminal Law* 75–133.

44 Seena Fazel et al., 'Use of Risk Assessment Instruments to Predict Violence and Antisocial Behaviour in 73 Samples Involving 24 827 People: Systematic Review and Meta-Analysis' (2012) 345 *British Medical Journal*.

45 The subjects predicted to be at high risk of future violence went on to commit a violent offence in 41% of cases (95% CI 27%-60%). Of those identified as low-risk 10% (95% confidence interval 5% to 20%) went on to offend violently. Looked at another way; of those who did go on to be violent 92% (95% CI 88% to 95%) were in the moderate to high grouping (sensitivity), but of those rated low-risk 36% (95%CI 28% to 44%) also offended violently (specificity). A further way of looking at these results is that if you detain those of high risk you would have to detain between two and four people who would not have reoffended violently for everyone who would have been violent.

5.83 The authors also looked at predictions of sexual reoffending. They found that of those predicted as at moderate to high risk of sexual reoffending 23 per cent (95 per cent confidence interval of 9 per cent to 41 per cent) committed a further sexual offence. This is troubling because a court cannot know whether the offender standing before them has a 9 per cent or a 41 per cent risk of reoffending, or indeed anything in between, based on being placed in a moderate to high risk category. The researchers noted that, even after 30 years of development, the view that violent sexual or criminal risk can be predicted in most cases is still not evidence based.

5.84 It would appear impractical to abandon the use of risk assessment tools and techniques and there are arguments in their favour. It is correct that estimates of the probability of any event have to derive from group based data. It is also correct that there can be no valid estimate of probability for an event in any individual case. The solution in practice is to apply experience and common sense to the elucidation of the implications of a particular offender being in the high risk group.

5.85 Furthermore, the best established use for the existing risk assessment approach is in identifying low risk groups. This is not a trivial contribution because not only can it exclude members of low-risk groups from unnecessary restrictions on their civil liberties but it can also avoid the unnecessary investment of time and resources on programs intended to lower their risk of future offending. This is discussed later in this section at [5.106].

5.86 The Department of Justice and Regulation has a Standing Panel Agreement for the Provision of Psychological, Psychiatric and Neuropsychological Assessments in place, approved by the Minister for Corrections. This procurement arrangement is intended to support the cost effective provision of such assessments, with qualifying assessors appointed via a public tender process.

5.87 In the first six months of 2015, the Detention and Supervision Order Review Board considered 233 offenders, with the risk assessments consisting of:

- 51 detention and supervision order assessment reports (for new applications or renewal applications) [46]
- 29 detention and supervision order progress reports (for those orders requiring review or renewal), and
- 153 internal Specialised Offender Assessment and Treatment Service risk summary reports, including those designed to meet the requirements of section 109 of the SSODSA.

5.88 Of the 51 detention and supervision order assessment reports for eligible offenders, the Department of Justice and Regulation initiated applications for post sentence supervision on approximately one quarter (14 offenders).

[46] It is important to note that a small percentage of the 51 assessment reports may have been obtained for the purpose of a renewal of the supervision order rather than a new application. Under section 28 of the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic), the Secretary may file either a progress or assessment report with the renewal application.

5.89 Figure 11 shows the average costs of different types of assessments for sex offenders using data provided to the Panel by Corrections Victoria. Currently, the vast majority of the Department of Justice and Regulation's investment in assessments is for the purpose of informing a decision as to whether an application for post-sentence supervision or detention should be made, or an existing order should continue. This includes, in order of average cost, the following reports (see Figure 11):

- detention and supervision order assessment reports, progress reports and addendum reports[47]
- other reports, for example psychiatric and neuropsychological reports,[48] and
- Specialised Offender Assessment and Treatment Service (SOATS) risk summary reports.[49]

5.90 Assessment reports are typically procured towards the end of an offender's sentence.

5.91 In contrast, assessments for the purpose of determining suitable intervention pathways (known as Intervention Planning and Pathways Reports) are obtained within 30 months of an offender's earliest parole eligibility date and account for around 5 per cent of the department's total assessment expenditure.[50]

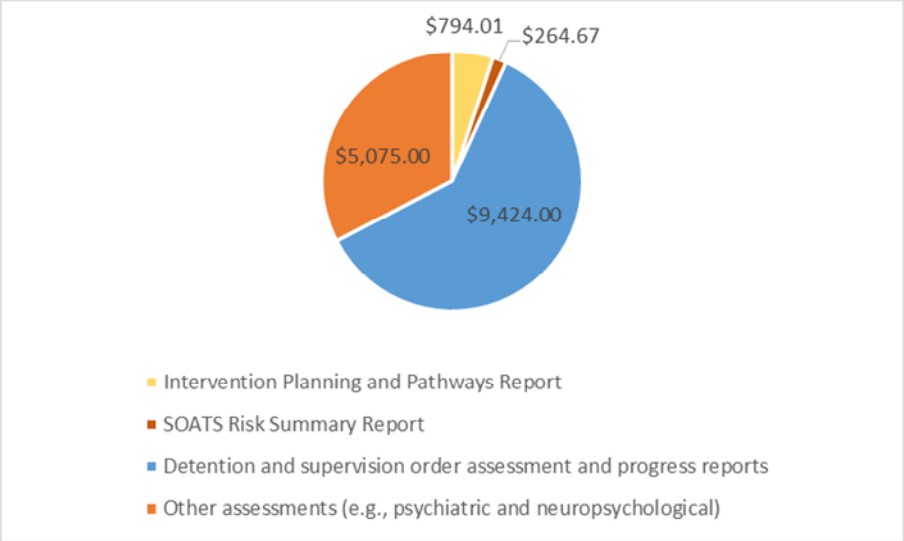
[47] Data provided by the Sex Offender Management Branch, Corrections Victoria to the Panel on 15 July 2015. The total spend on detention and supervision order assessment, progress and addendum reports in 2014–15 was $1,425,031.

[48] Data provided by the Sex Offender Management Branch, Corrections Victoria to the Panel on 15 July 2015. The total spend on other reports, for example psychiatric and neuropsychological reports for 2014–15 was $87,409.

[49] Data provided by the Specialised Offender Assessment and Treatment Service, Corrections Victoria on 25 August 2015.

[50] Data provided by Specialised Offender Assessment and Treatment Service, Corrections Victoria to the Panel on 26 October 2015. This has been costed on an average 21-hour process, which includes a review of the offender's file material, a clinical interview that may last for three hours, and preparation of the report. It excludes the cost of review or quality assurance processes undertaken by Senior Clinicians. The time allocated to write the report may vary depending on the volume of documentation to be reviewed per offender & the clinician's experience.

Figure 11: Assessment costs for sex offenders



5.92 This demonstrates, in the Panel's opinion, a skewing in the investment of resources for assessment. While significant resources are spent in the assessment of offenders in the final months of their sentence to inform a decision as to whether an application for post-sentence supervision should be made, only a small portion of resources is spent on early assessment to tailor service delivery and case management. This is problematic, given the evidence that suggests a more individualised approach underpins better results from treatment programs.[51]

5.93 The analysis at [5.88] indicates there were some offenders in the first six months of 2015 for whom applications were not sought; the money spent on assessments for such offenders may not be entirely wasted if their release is not imminent, as it may inform their management (and, of course, it allows a considered assessment to be made as to whether an offender should be progressed onto the scheme or not). However, as a closer look at the utility of risk assessment reveals, this represents a missed opportunity to identify at an early stage interventions that could help reduce the need to assess these offenders for the purposes of post-sentence orders.

[51] Schmucker and Losel (2015), above n 13.

5.94 Figure 11 also shows that the significant difference in 2014–15 between the average cost of an external detention and supervision order risk assessment ($9,424.00) and the average cost of an internal risk assessment ($264.67), being a SOATS risk summary. The former is more than 35 times more expensive than the latter. The cost to the Department of Justice and Regulation of engaging external assessors is therefore significant. This may reflect the legislative requirements of the SSODSA and the additional detail required for an assessment which may ultimately be placed before the scrutiny of a court; although, the average cost – $9,424.00 – does not include the additional fees for court appearances.[52]

5.95 The Panel also notes that the average cost of an external professional report such as a psychiatric or neuropsychological report procured by the Department of Justice and Regulation in the 2014–15 financial year was at least one and half times the average cost of expert reports, such as psychiatric reports ($3,300) and psychological reports ($2,200), procured by Victoria Legal Aid in SSODSA matters.[53]

5.96 The Panel has given consideration to approaches to assessment in other jurisdictions, with a view to identifying whether there may be more fiscally restrained approaches. In New South Wales, senior clinically trained psychologists employed by Corrections undertake initial risk assessments, and an external assessment takes place upon order by a court, only after the Attorney-General has lodged an application on the basis of the internal corrections assessment.[54] Other jurisdictions, including Canada and Scotland, use a model whereby an independent assessment is ordered by the court. It was reported to the Panel in consultations that the model used in the Canadian system reduces the frequency of both parties to proceedings ordering costly reports that do not commonly differ in the overall assessment of risk.[55]

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[52] The Panel note that the Scottish model is even more cost intensive. The Risk Management Authority have advised that based on a random sample of reports in the last few years, risk assessors have spent an average of 130 hours in the research and preparation of each report, at a cost of between £10,000 and £20,000, including travelling and other expenses. A completed report may be expected to run to some 40 or 50 pages.

[53] Correspondence from Victoria Legal Aid to the Panel, 12 August 2015. Victoria Legal Aid rates for the purchase of expert reports are set in accordance with fee schedules and guidelines. Victoria Legal Aid advised the Panel that these expert report fees have not kept pace generally with the market, particularly in matters under the SSODSA where there is increased complexity and a need for significant expertise on the part of the expert. Victoria Legal Aid further advised the Panel that it is not funded in a way that enables equity with government, which pays experts (and counsel) well above any of the legally aided fees, and flagged that this is a further illustration of 'the inequality of arms' issue. Victoria Legal Aid advised the Panel that there has been no additional funding to it around this work, despite increased demand, which can hinder access to experts and affect the quality of the reports that can be purchased.

[54] *Crimes (High Risk Offenders) Act 2006* (NSW) ss 7(4), 15(4) outlines that at the preliminary hearing stage, if satisfied the matters alleged would justify an order, the Court must appoint psychiatrists and/or psychologists to examine the offender.

[55] Consultation with Professor James Ogloff (23 July 2015).

5.97 The Panel also notes the fundamental role of the Risk Management Authority in Scotland in the accreditation of risk assessors and their methodology, and the provision of guidance on risk assessment to both independent experts and those employed in clinical roles, including in prisons, on the application of risk assessment to inform risk management plans. In the *High-Risk Offenders: Post-sentence Supervision and Detention: Final Report*, the Victorian Sentencing Advisory Council recommended the establishment of a Risk Management Monitor, on the basis that a defensible post-sentence scheme relies on the accuracy and quality of risk assessments.[56] This recommendation was not adopted by government. While the Panel does not see the need for a statutory role focussing solely on this function, it does consider this to be a vital component of the Public Protection Authority's role.[57]

Recommendation 25

The Public Protection Authority should be responsible, and adequately resourced, for the provision of guidance on risk assessment and its application to risk management in a fiscally responsible manner.

5.98 The Panel suggests that the New South Wales model is more fiscally restrained than the current Victorian model, and could therefore be helpful in identifying areas of improvement in the short term. The guidance on more fiscally restrained risk assessment that may be provided by the Public Protection Authority should also be beneficial. The Panel notes that there is nothing in the current legislation that would prevent an assessment or progress report prepared by an internal psychologist[58] being used for the purpose of litigation, provided that it addressed the statutory criteria in sections 109 and 112 of the SSODSA.

Targeting the delivery of treatment interventions according to risk

5.99 The Panel has also had opportunity to review the service delivery model used by Corrections Victoria that guides which treatment interventions are delivered to which offenders according to their assessed risk level.

5.100 Table 14 outlines the Specialised Offender Assessment and Treatment Service's treatment commencements for sex offenders by risk category of offenders for the last financial year.

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[56] Sentencing Advisory Council, *High-Risk Offenders: Post-Sentence Supervision and Detention: Final Report* (May 2007) 64.

[57] In explaining the nexus between risk assessment and risk management, Ogloff and Mullen note 'The primarily clinical purpose of risk assessment should be risk management. Risk management is about identifying those factors which mediate the increased risk and modifying them to decrease risk. Paul Mullen and James Ogloff, 'Assessing and Managing the Risks of Violence Towards Others' (2008) *Forensic Psychiatry* 1–12, 9.

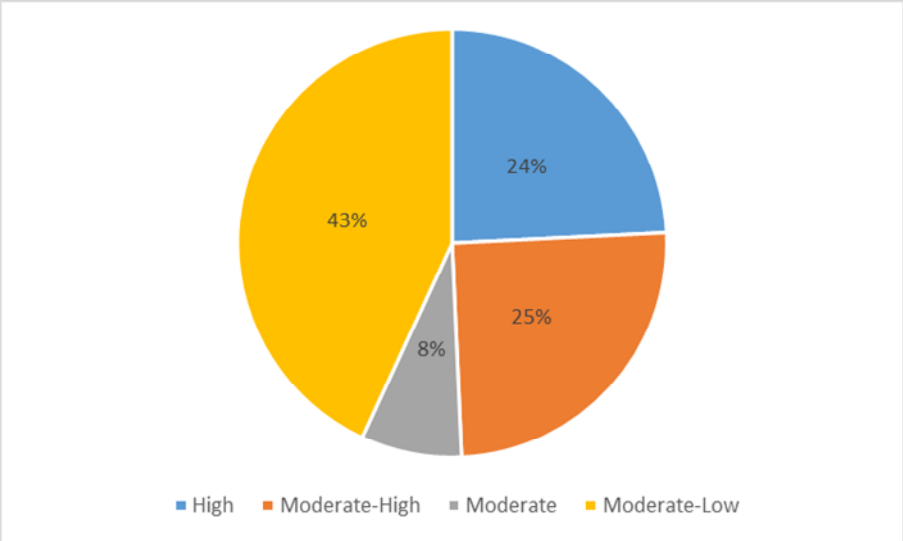
[58] A psychologist is a 'medical expert' for the purposes of the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 3. There may of course be practical reasons, such as the perceived lack of independence of a psychologist employed by Corrections Victoria, that preclude the use of such a report for litigation, though it is noted that in practice, many offenders file their own independent report in proceedings.

Table 14: Sex offender treatment commencements in 2014–2015 by risk category

Risk category	2014–15	Programs
High	86	**Includes participants for the following interventions:**
Moderate-High	89	
Moderate	27	Better Lives Program
Moderate-Low	153	Disability Pathways Sexual Offending Program
Low	0	Disability Pathways Skills Based Intervention Program
Total	**355**	Treatment Readiness Program
		Maintaining Change
		Individual Treatment

5.101 The Specialised Offender Assessment and Treatment Service has advised that 139 sexual offenders were assessed by the Service as of low risk.[59] Appropriately, none of them were treated.

Figure 12: Percentage of sex offender treatment commencements by risk level



[59] Data provided by the Specialised Offender Assessment and Treatment Service, Corrections Victoria to the Panel on 27 October 2015. Assessments relied on the following risk assessment tools: Static-99; Risk Matrix 2000/S – Revised; Risk of Sexual Violence Protocol; Sexual Violence Risk-20 (SVR-20) (administered for sexual offenders with a cognitive impairment).

5.102 However, the Panel considers that there would be value in Corrections Victoria reviewing what constitutes a 'low' risk. The Panel questions the utility of treating the sizeable group that falls within the 'moderate-low' category. Figure 12 illustrates that this group represented 43 per cent of treatment commencements over the last financial year. Arguably, funds saved on such interventions could be better directed to tailoring treatment to those who need it most, being those at moderate risk or above, particularly in light of the limited availability of individual treatment for this category in prison.

5.103 Corrections Victoria treats violent offenders who pose a low risk of violent reoffending, but a moderate or above risk of general offending, with offence specific programs. These interventions are focused on general offending, where the risk of general offending is moderate or above, and the interventions are not specific to violent or sexual offending.

5.104 Table 15 contains data provided by Corrections Victoria indicating that in the 2014–15 financial year, low and moderate-low risk offenders received offence specific interventions.

Table 15: Offending Behaviour Programs treatment completion rates for 2014–15 by risk category combination

VRS	VISAT	Completion rate (%)
Low	Low	2.6
	Moderate	6.6
	High	1.5
	Blank	1.0
Moderate	Low	4.3
	Moderate	16.3
	High	5.9
	Blank	2.6
High	Low	1.0
	Moderate	4.3
	High	5.1
	Blank	1.3
Blank	Low	1.8
	Moderate	28.3
	High	7.4
	Blank	9.9

5.105 Having regard to the data in Tables 14 and 15 and Figure 12 the Panel considers that the current distribution of treatment interventions for sex offenders and violent offenders is less than optimal.

5.106 The notion that all sex offenders should receive treatment has superficial appeal. However, treatment does not affect all sex offenders in the same way. For example, it is generally accepted that treating low risk sex offenders can actually increase their risk, which is why interventions are targeted to those whose risk is greater than low.[60]

5.107 In a significant recent meta-analysis, examining a large sample of treated and untreated sex offenders, the correlation between risk and treatment efficacy was clear:

> One of the strongest moderating effects is related to the risk of reoffending. The higher the risk for reoffending, the higher the resulting treatment effect. Treatments for low risk participants showed no effect at all.[61]

5.108 This is true not only of sex offenders. It also applies to general offenders at a higher risk of reoffending.[62]

Recommendation 26

The delivery of treatment should be reviewed by the Department of Justice and Regulation to ensure that offence-specific interventions target only sex offenders or violent offenders whose risk of reoffending is assessed as moderate or above.

Current model for service delivery and case management of offenders on post-sentence orders

Approach to case management by Corrections Victoria

5.109 In Victoria, at present, post-sentence orders are reserved for sex offenders. The examination which follows is therefore restricted to the case management of those offenders as it applies under the SSODSA. Should the Panel's recommendation to include other violent offenders in the scheme be adopted, case management practices will of course need to reflect that change.

5.110 For close to two decades, a state-wide sex offender strategy has been in place, following its endorsement by the Victorian Prison Service in 1996. Corrections Victoria advised the Panel that its specialist response to sex offenders commenced in 2005, with the introduction of the *Serious Sex Offenders Monitoring Act 2005* (Vic) and provision of funding for the development, implementation and operation of a coordinated end-to-end service system for the management of sex offenders and a post-sentence scheme for serious sex offenders. This has adapted over time, as the

[60] A 2009 study found low risk sex offenders who were given intensive treatment were 21 per cent more likely to reoffend than low risk sex offenders who were not given intensive treatment. Lovins et al., (2009) above n 10.

[61] Schmucker and Losel (2015), above n 13, 21.

[62] Mark Lipsey & Francis Cullen, 'The Effectiveness of Correctional Rehabilitation: A Review of Systematic Reviews' (2007) 3 *Annual Review of Law and Social Science* 297–320.

scheme has developed and the complexities of sex offending have been better understood.

5.111 Supervision of offenders on post-sentence orders must be in accordance with relevant Deputy Commissioner's Instructions and Commissioner's Requirements. It is conducted by Specialist Case Managers who lead case management for these offenders. The key functions and responsibilities of Specialist Case Managers include:

- risk and needs assessment and management
- offender engagement
- monitoring and reviewing, and
- internal and interagency collaboration.

5.112 Individual Management Plans are created to guide referrals and case management of the offender. The offender is involved in the creation of the Individual Management Plan by identifying goals.

5.113 Specialist Case Managers engage with offenders using a strengths based approach known as the Good Lives Model (GLM). This model has a twin focus on community protection through risk reduction and building offenders' strengths and capabilities, so that they are better equipped to live a 'pro-social' life.[63] Specialist Case Managers also utilise the principles of Motivational Interviewing, in an attempt to motivate the offender to engage in behavioural change.[64]

5.114 Principal Practitioners oversee the work of Specialist Case Managers in their region. These more senior practitioners have expertise in case management theory and process, enabling them to support staff directly supervising the members of this complex offending cohort.

5.115 Both Principal Practitioners and Specialist Case Managers receive professional development to enable them to discharge their duties. These staff also attend mandatory clinical debriefing with a forensic psychologist and forums to support good practice and collaboration.

5.116 Training is delivered in both the Good Lives Model and Motivational Interactions.[65] Additionally, a Specialist Certificate in Criminology (Sexual Offender Management) is delivered by the University of Melbourne. Corrections Victoria staff are supported to attend.

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[63] Mayumi Purvis et al., *Applying the Good Lives Model to the Case Management of Sexual Offenders* (2013) 71.

[64] R.E Mann (ed.), *Motivational Interviewing with Sex Offenders: A Practice Manual* (1996).

[65] Motivational Interactions is the name given to the training provided by Corrections Victoria, which is informed by Motivational Interviewing techniques. Consultation with Dr Mayumi Purvis, Criminologist, University of Melbourne (17 June 2015). Corrections Victoria has advised that this training is delivered by both internal and external facilitators using a recently updated training package. A new program manager position has been created to develop the new Motivational Interactions training strategy and quality assurance approach.

5.117 The percentage of the Specialist Case Managers and Principal Practitioners employed by the Department of Justice and Regulation who had completed this training is shown in Table 16. This is based on data provided by Corrections Victoria as at 30 June 2015.

Table 16: Training completion rates for Specialist Case Managers and Principal Practitioners as at 30 June 2015

	Internal Good Lives Model Training	Motivational Interactions Training	Specialist Certificate Sexual Offender Management
Principal Practitioners	92%	100%	73%
Specialist Case Managers	65%	59%	39%

5.118 Table 16 illustrates that there were low completion rates of training in the Good Lives Model for Specialist Case Managers and Motivational Interactions Training. Corrections Victoria informed the Panel that the rates of training shown in Table 16 for Specialist Case Managers in the Good Lives Model are point-in-time figures, and are unusually low. This is because in the last quarter of the 2015 financial year, training was deferred due to Specialist Case Managers being required to undertake further training in that period as a result of the parole reforms. The Good Lives Model training was rescheduled for the first quarter of 2016. This should increase rates of completion.

5.119 Staff turnover may also account for some of the gaps in the training completion rates. Remuneration for the role is low and staff may seek easier work for better pay.[66]

5.120 Notwithstanding the explanations for the low completion rates, it is of concern that one in three Specialist Case Managers may have no training in the very framework which, according to the relevant Deputy Commissioner's Instruction, they are required to utilise. The Instruction notes that:

> The supervision process is central to case management and must be delivered in accordance with the Good Lives Model of offender rehabilitation for Supervision Order offenders. [67]

[66] According to Corrections Victoria, the creation of the Principal Practitioner role has assisted with retention of Specialist Case Managers, who may progress to become Principal Practitioners. With the number of Principal Practitioner roles doubling in the last year to accommodate their role oversighting serious violent offenders, this may have impacted the turnover of Specialist Case Managers, assuming incumbents may have been drawn from this pool.

[67] Corrections Victoria, 'Deputy Commissioner's Instruction 12.3 – Case Management of Supervision Orders', 30 June 2015, [1.8].

5.121 Furthermore there are strict requirements for applying the Good Lives Model case management tools:

- Past Offending Analysis Table – to be completed within the first six weeks of order commencement.
- Good Lives Model Current Life Mapping Table – to be commenced within the first six weeks of order commencement and then reviewed and updated at every appointment.
- Primary Human Good Acquisition Analysis Tool – to be completed on a six monthly basis for Supervision Order offenders.[68]

5.122 The Good Lives Model is designed to reduce the recidivism of sexual offenders. Little is currently known, however, about its efficacy.[69] While Victoria has applied this framework to the case management of sexual offenders for the longest out of any jurisdiction applying the model, its application has not been evaluated by Corrections Victoria. Singapore, which adopted the framework at a later date, is currently implementing an evaluation project.[70]

Barriers to coordinated service delivery and the need for a new inter-agency approach

5.123 While Specialist Case Managers play a pivotal role in supervising offenders on post-sentence orders, a broad range of services may be relevant to offenders' rehabilitation and reintegration, including:

- health services
- disability services
- housing services
- employment services
- educational services
- private treatment providers
- support services, such as the Victorian Association for the Care and Resettlement of Offenders and the Australian Community Support Organisation, and
- the Adult Parole Board and legal aid services.

5.124 The agencies with which the Panel met, and the case reviews of offenders subject to post sentence orders indicated that a high degree of investment and effort has gone into managing and treating offenders under the SSODSA. However, the resources outlaid do not, in some cases, equate to the successful coordination of service delivery across multiple agencies.

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[68] Ibid.

[69] Przybylski (2015) above n 14, 3.

[70] Correspondence from Dr Mayumi Purvis, Criminologist, University of Melbourne to the Panel, 17 June 2015.

5.125 The Panel identified:

- variability in the engagement and responsiveness of individual agencies
- positive efforts by some agencies were not always coordinated to deliver an intensive case management regime and wrap around support, and
- delays in the provision of programs or services that were recommended to reduce risk.

5.126 Corrections Victoria staff, particularly those at Corella Place, often bear the primary responsibility for the delivery of services, irrespective of how well equipped they may be to respond to the complex needs or the sometimes confronting circumstances with which they are required to contend.

5.127 Staff of other departments and service providers may be constrained by their respective governance structures and organisational and legislative regimes, yet the complexity of individuals requiring intensive case management and 'wrap around' support necessitates a shared plan and coordinated delivery of interventions.

5.128 There is no question that commendable efforts to 'manage' risk abound. For example, an 'Environmental Scan' on a residential property in the community will outline each risk and associated risk mitigation strategies. Similarly, Corrections Victoria's quarterly review meetings of supervision order offenders, are another means by which changes in presentation and associated risks may be reviewed and responded to, whether by treating clinicians or correctional staff. Case management meetings involving other agencies further support this process.

5.129 Despite a range of efforts however, shared approaches to risk management, with common language, measurable objectives, and clearly defined outputs across agencies, are lacking. In these circumstances, community protection through service coordination cannot be as effective as it should.

5.130 Furthermore, it appeared to the Panel that, in some cases, the significant resources expended on assessing and discussing an offender's risks and needs were not matched by a commensurate reduction in the risk of reoffending. Frustration was evident at the roadblocks to service coordination:

> Supervision Orders should mean other services are mandated to provide any service. Corrections Victoria can be mandated to broker services but if those services are not mandated to provide the services it hits a brick wall.[71]

5.131 It is clear, in the Panel's view, that these issues must be addressed by a new approach. The Panel has looked to the United Kingdom, Victoria and New South Wales for possible solutions. These are discussed below.

[71] Consultation with Corella Place management and staff (12 August 2015).

Solution A: Multi-Agency Public Protection Arrangements

5.132 In the United Kingdom, services for certain high-risk offenders may be coordinated via Multi-Agency Public Protection Arrangements (MAPPAs). These were set up in England and Wales in 2000 under sections 67 and 68 of the *Criminal Justice and Court Services Act 2000* (UK) (and consolidated under the *Criminal Justice Act 2003* (UK)) and adopted in Scotland by the *Management of Offenders etc. (Scotland) Act 2005* (Scot).[72]

5.133 In England and Wales, the 'responsible authorities' of the MAPPA principally include justice agencies – namely, the National Probation Service, HM Prison Service and the England and Wales Police Forces. MAPPAs are coordinated by the Public Protection Unit within the National Offender Management Service. MAPPAs manage the 'critical few' who pose a high or very high risk of serious harm. These offenders will often have a media profile, and their management plan will consist of collaboration between key agencies in the delivery of an agreed plan for the community management of the offender.[73]

5.134 There is a statutory duty on the various service providers, specifically health, housing, social services, education, social security and employment services, youth offending teams and electronic monitoring providers to cooperate with the directions given by MAPPAs. Their role does not extent to participation in decision making.

5.135 Professor Lindsay Thomson, who worked for Forensicare and the Victorian prison system, summarises the four core functions of these Panels in Scotland as:

- identification of MAPPA offenders
- sharing of relevant information
- assessment of risk of serious harm, and
- management of risk of serious harm.[74]

5.136 Thomson also points out that four features of good practice are:

- defensible decisions
- rigorous risk assessment
- delivery of risk management plans that match identified public protection needs, and
- evaluation of performance to improve delivery.[75]

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[72] Caroline Logan 'Managing High-Risk Personality Disordered Offenders: Lessons Learned to Date' in Bernedette McSherry and Patrick Keyzer (eds), *Dangerous People: Policy, Prediction and Practice (2011)* 233–247; Lindsay Thomson, 'The Role of Forensic Mental Health Services in Managing High-Risk Offenders' in Bernadette McSherry and Patrick Keyzer (eds), *Dangerous People: Policy, Prediction and Practice (2011)* 165–181.

[73] Jason Wood and Hazel Kemshall, *The Operation and Experience of Multi-Agency Public Protection Arrangements (MAPPA)*: *Report* (2007) 2.

[74] Thomson, (2011), above n 72, 169.

[75] Ibid.

5.137 In Scotland, in addition to Multi-Agency Public Protection Panels, a Risk Management Team is a multi-disciplinary team which helps develop and oversee the implementation of a risk management plan for an offender subject to an order for lifelong restriction. The Team is led by a Case Manager who is the central point of contact.[76] Each year, the Risk Management Team reviews the implementation of the plan and develops an updated plan for the following year. As discussed in Chapter 4, the revised plan is then submitted to the Risk Management Authority for approval.

5.138 Many jurisdictions in the United States have similar arrangements, although not always statute-based, for those with mental health problems under forensic assertive community treatment programs.

Solution B: Multiple and Complex Needs Panel

5.139 A Victorian example of a multidisciplinary panel which was set up under legislation to manage the needs of those considered to be displaying problem behaviour was the Multiple and Complex Needs (MACNI) Panel, established in Victoria under the *Human Services (Complex Needs) Act 2003* (Vic).

5.140 When the MACNI legislation was first introduced into Parliament, an emphasis was placed on the fact that the offenders made subject to the scheme were 'sometimes dangerous' and that they presented 'significant levels of risk to the community, to staff and to themselves through challenging behaviours that include aggressive and assaultive behaviour, as well as self-harming, and risk taking'.[77] The introduction of this legislation can thus be viewed as having a dual purpose; the control of risky behaviour, as well as the coordination of care and treatment services.

5.141 The MACNI Panel consisted of a permanent part-time Chairperson and up to 12 members with expertise and experience in fields such as mental health, disability, housing and community services and alcohol and other drug dependency. Decisions were made by a quorum consisting of the Chairperson, two community members and a nominee of the Secretary to the Victorian Department of Human Services. Their responsibilities included:

- determining if a particular individual was eligible for the scheme, authorising comprehensive assessments
- determining, reviewing, varying, and extending Care Plans, and
- appointing a Care Plan Coordinator.[78]

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[76] Risk Management Authority*, Risk Management of Offenders Subject to an Order for Lifelong Restriction, Standards and Guidelines* (2007) 13–15, 5.

[77] Victoria, Parliamentary Debates, Legislative Council, 8 October 2003, 351–60 (Minister for Health, Ms B Pike).

[78] Bernadette McSherry 'From Coercion to Coordination? The Role of the Law in Service Provision for Individuals with Coexisting Disorders' in Bernadette McSherry and Ian Freckelton, eds, *Coercive Care: Rights, Law and Policy* (London: Routledge, 2013) 172–189, 182.

5.142 In 2007, the Multiple and Complex Needs Initiative was evaluated positively,[79] with 50 per cent of the individuals involved showing behavioural improvements, although the particular improvements were not specified.

5.143 While the MACNI Panel was disbanded in May 2009, the *Human Services (Complex Needs) Act 2009* (Vic) continued the initiative under the auspices of the Victorian Department of Human Services, Department of Health and the Department of Justice. No independent statutory body was involved.

5.144 It is noted that, despite the complex needs of offenders subject to post sentence orders, many do not meet the MACNI eligibility criteria. Since the SSODSA came into effect, 11 offenders have been referred to MACNI, but only three individuals were deemed eligible and received MACNI services. The remaining clients received brief MACNI consultation but did not proceed to eligibility determination.[80]

Solution C: High Risk Offenders Assessment Committee

5.145 Another Australian example is the New South Wales High Risk Offenders Assessment Committee. In 2012, the New South Wales Sentencing Council recommended that legislation be introduced to require that agencies cooperate with other agencies to provide appropriate services to high risk violent offenders and to share information to facilitate such support.[81] It was influenced by the multi-agency public protection arrangements existing in the United Kingdom and the legislation establishing them.

5.146 The Committee came into operation with the commencement in January 2015 of the *Crimes (High Risk Offenders) Amendment Act 2014* (NSW). It is beginning to produce some resources and shared management arrangements. It is a centralised committee made up of representatives from New South Wales Corrective Services, the Department of Family and Community Services, Housing New South Wales, Ageing, Disability and Home Care Justice Health and Forensic Mental Health Network, Department of Justice, New South Wales Police Force, Ministry of Health and such other members as the Minister may appoint, with relevant expertise in service delivery and/or the management of high-risk offenders in the community. [82]

5.147 The Committee has legislative functions, such as facilitating inter-agency co-operation in the assessment and management of high-risk offenders and facilitating information sharing between relevant agencies in connection with the exercise of their high risk offender functions.

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79 KPMG for the Department of Human Services, *Evaluation of Multiple and Complex Needs Initiative: Final Report* (December 2007).

80 Data provided by Department of Health and Human Services to the Panel on 2 September 2015.

81 Sentencing Council of New South Wales, *High-Risk Violent Offenders Sentencing and Post-Custody Management Options: Report* (2012) 131.

82 Note that subsequent to the commencement of the legislation, the structure of the Department of Family and Community Services was changed. Housing New South Wales and Ageing, Disability and Home Care are now represented on the Panel by the representative for the Department of Family and Community Services.

5.148 There is also a legislative duty on 'relevant agencies' to cooperate with other relevant agencies where this is necessary to realise the best possible results. The duty includes a duty to provide reasonable support and assistance to another agency, including by the sharing of information, and to cooperate in connection with the exercise of the functions of the High Risk Offenders Assessment Committee. Such co-operation can include the development of multi-agency management plans for high risk offenders and/or the provision of assistance and support to high risk offenders through joint programs.

The Panel's view: a new approach to coordinate service delivery and support intensive case management

Creation of Public Protection Panel/s

5.149 The Panel is of the opinion that multidisciplinary panels consisting of senior members of relevant agencies will provide the best means of ensuring that these agencies cooperate to provide appropriate support and management to offenders who pose the greatest likelihood of causing serious interpersonal harm, whether under sentence or on a post-sentence order. These panels should fall within the responsibility of the Public Protection Authority, recommended in Chapter 4, who would be empowered to establish them as required.

5.150 A central panel could operate in similar fashion to the High Risk Offenders Assessment Committee in New South Wales. Advantages of a central panel may include consistency and continuity in the approach to those offenders at the greatest likelihood of causing serious interpersonal harm, and the ability for the Panel's governance model to mature quickly through the complex task of coordinating service delivery for this entire cohort.

5.151 Alternatively a regional model could underpin the Panel/s. The Department of Justice and Regulation, Victoria Police and the Department of Health and Human Services operate a regional model of service delivery. Such a model provides flexibility to respond to changes in the placement of offenders, who may transition to different locations in the prison system or the community as their risk reduces, or as further accommodation options are made available.[83]

5.152 The benefits of relevant agencies exploiting the expertise of local staff was apparent in the Panel's consultations. In particular, the staff of Corella Place and the members of Ararat Police demonstrated that, with appropriate professionalism, effective partnerships can be established.

[83] On 1 October 2015 the government announced that a third campus for Corella Place would be opened at the Langi Kal Kal Prison site.

5.153 The appropriate composition of the Public Protection Panel/s may change depending on whether the offender is under sentence or on a post-sentence order. Chapter 4 outlined how Corrections Victoria would most likely be the lead agency on the Panel/s while the offender is in prison. Prison management would not necessarily seek to remain engaged in the management of those who have completed their term of imprisonment. Indeed, in the opinion of the Panel there is – given the civil nature of the scheme and the establishment of the Public Protection Authority – a case for prison management to disengage at that point.

5.154 Having duties clearly set out in legislation, and with appropriate resources, the Public Protection Panels will be in a position to move beyond basic case management and thereby deliver significantly positive outcomes for the offenders with whom they interact.

5.155 The Public Protection Authority should determine the governance model for these Panel/s. It could be that the Department of Justice and Regulation would be well placed to chair them, as one of the suggested key member agencies. Corrections Victoria executives and Regional Directors demonstrated insight into the complexities of the management of these complex offenders, and have expertise in delivering many frontline operations across Victoria, including prison management, offending behaviour programs and community correctional services.

5.156 Irrespective of who chairs the Panel/s, flexibility in the selection of the lead agency for the individual Intervention and Management Plan is desirable. This would enable the choice of the lead agency to be determined based on the offender's individual needs and characteristics. For example, Disability Client Services may be the lead agency for an offender with a registered intellectual disability.

5.157 The lead agency would be responsible for formulating and implementing the Intervention and Management Plan, in co-operation with other relevant agencies on the Panel. Further, legislation should specify, in a similar way to the arrangements in England and Wales set out in section 325 of the *Criminal Justice Act*, that there is a duty on each panel member to cooperate with the agency leading implementation of the Intervention and Management Plan, as well as to exchange information for this purpose.

5.158 The Public Protection Authority would endorse, and review implementation of, the Intervention and Management Plan, provide authoritative advice to the panel/s in relation to risk assessment and risk management, and direct services to provide specific interventions where required.[84]

5.159 There will be a need for a statutory provision enabling the sharing of information amongst members of the Public Protection Panels, as perceived difficulties sharing information under the existing information sharing provisions in the legislation was a common theme arising during the Panel's consultations.

[84] It is interesting to note that while the Risk Management Authority in Scotland has this power, to date it has not needed to issue directions, as agencies have worked collaboratively to achieve the desired outcomes.

5.160 For example, in consultations with the Panel, Victoria Police[85] expressed a concern that they may have valuable information that could assist the Adult Parole Board in its management of offenders under the SSODSA, yet did not have a formal avenue for sharing such information with it. The Panel notes that the information sharing provisions in section 189 of the SSSODSA were recently amended to expand and clarify the circumstances in which information concerning offenders may be shared between agencies. It is anticipated that these changes and the development of guidelines for the sharing of information under section 90 of the SSODSA will improve the confidence of agencies in sharing critical information regarding offenders.

5.161 It is understandable that agencies exhibit caution before and during the exchange of information with other agencies, particularly in light of the very detailed and personal information contained within detention and supervision order assessment reports. The Panel also notes that Part 13 of the SSODSA sets out strict legislative requirements for these exchanges. They are only permitted if they advance the purpose of the SSODSA or a 'relevant Act'. Otherwise, agencies must restrict access to information to the greatest extent possible, and must develop guidelines accordingly.[86]

5.162 While not their primary function, it is envisaged that Intervention and Management Plans may provide a more concise summary of key information that may be of relevance to agencies, including key risk assessment information, and support better information flow in the interests of service coordination and intensive case management.

5.163 A legislative provision enabling service providers to share personal and health information where necessary exists in other Acts, such as section 17 of the *Human Services (Complex Needs) Act 2009*. Similar provisions may need to be considered when amending the SSODSA, to ensure that the existing information sharing provisions are adapted to any new model.

5.164 The Panel considers that the Public Protection Panel/s, of which Victoria Police will be an integral member, will address the issue regarding the lack of formal channels for sharing information, by enabling information to be appropriately shared both with agencies on the Panel/s and with the Public Protection Authority.

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85 Consultation with Neil Paterson, Chief of Staff, Victoria Police (14 August 2015); Consultation with Victoria Police Intelligence and Covert Support Command (5 August 2015).

86 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 190.

Recommendation 27

Public Protection Panel/s should be established with legislative obligations to coordinate service delivery and share information under Intervention and Management Plans for offenders who pose the greatest likelihood of causing serious interpersonal harm. The composition, functions and governance model of the Public Protection Panel/s should be determined by the Public Protection Authority, to which the Panel/s should be accountable. Each agency should be appropriately resourced to undertake its expanded functions on the Public Protection Panel/s.

5.165 The Panel envisages that membership of the Public Protection Panel/s should include:

- staff with such seniority as would enable the Panel to reach appropriately firm decisions and actions where required
- key government agencies, including Victoria Police, the Department of Justice and Regulation, and the Department of Health and Human Services, and
- relevant non-government agencies that can support rehabilitation and reintegration in areas like housing, jobs, education and training.

5.166 The Public Protection Panel/s must have flexibility to include agencies specific to the offenders' needs, such as local area mental health services.

Improvements to existing case management tools

5.167 Earlier in this chapter, the Panel recommends changes regarding the timing of the assessment, planning and delivery of interventions for sex offenders and offenders categorised as both sex and violent offenders in prison.

5.168 The Panel's recommended reforms do not encompass any change to the case management model currently employed for sex offenders subject to the SSODSA. However, the Panel does make two recommendations regarding the ongoing use of this model under any changes that may be made to the post-sentence scheme following the Panel's recommendations to broaden the scheme to encompass serious violent offenders and to create a new coordinated service delivery model under Public Protection Panel/s.

5.169 First, timely completion rates in training for use of the Good Lives Model and training generally, must be improved. Secondly, and as a priority, the efficacy of that model must be evaluated. The Panel has noted elsewhere in this report that there are difficulties in assessing the efficacy of sex offender management. It has also emphasised the need for a degree of stability in the provision of such services. Nevertheless, in the absence of evidence upon which to demonstrate the utility or otherwise of the Good Lives Model for case management under the SSODSA, or the effectiveness of its application by Specialist Case Managers, Corrections Victoria leaves itself open to criticism. Further work also needs to done to consider the application of the model to violent offenders who will be under the SSODSA, or similar legislation, if the Panel's recommendations to broaden eligibility for the scheme are adopted.

Recommendation 28

The Department of Justice and Regulation should ensure that staff members working with sex offenders and serious violent offenders receive appropriate and timely training.

Recommendation 29

The Good Lives Model and its application by Department of Justice and Regulation staff in Victoria should be evaluated.

Accommodation for offenders on post-sentence orders

5.170 Accommodation is an integral part of the approach to managing offenders on post-sentence supervision and detention orders. This is so both in terms of supervision under the order and in terms of the delivery of services to address their multiple and complex needs. Finding suitable accommodation options for sex offenders requires balancing the needs of offenders subject to post-sentence orders with the expectation of public protection. The potential addition of serious violent offenders to the cohort who may be under supervision or detention requires consideration of what accommodation might be suitable for them.

5.171 Ninety-five offenders were resident in the community or at Corella Place as at 23 October 2015.[87] The remainder are in prison. Of that remainder, two are subject to detention orders and reside in individual units at the purpose-built Greenhill Detention Unit in the Hopkins Correctional Centre, a medium security prison. The Panel visited both Corella Place and the Greenhill Detention Unit.

[87] Data current as at 23 October 2015 (of the 95 offenders subject to supervision orders, 54 are resident at Corella Place and 41 in the community).

Greenhill Detention Unit

5.172 As is necessary for accommodation intended for detainees who have served their sentence, the individual units at Greenhill offer more than a prison cell. They are comfortable without being in any sense luxurious. They have fully equipped kitchens and the detainees are assisted to self-cater.[88] They cannot be compelled to work (although they may be permitted to do so if they choose), and they may wear their own (suitable) clothing. They generally opt for ordinary prison issue, so as not to stand out from the broader prison population. They may be eligible to access programs and education at Hopkins Correction Centre. Pets are allowed.

5.173 The Panel notes that these detainees are more isolated than the average prisoner and appear to have less freedom of movement within the prison grounds. The Department of Justice and Regulation was unable to provide figures for the cost of their detention, as costs for detention order offenders are not distinguished within the broader costs of the Hopkins Correctional Centre.

Corella Place

5.174 Corella Place was of particular interest to the Panel, given that it accommodates nearly 60 per cent of those who are presently both subject to supervision orders and living in the community.[89] Corella Place is intended to provide transitional accommodation, supervision and support for serious sex offenders on post-sentence orders, when appropriate accommodation cannot be found elsewhere in the community.[90]

5.175 Corella Place is inherently difficult to manage. Even with the trained and professional staff which the General Manager is fortunate enough to have in his capable charge, it was necessary in early 2014 to consider how best to meet the particular challenges with which Corella Place was required to grapple. These challenges included:

- the demand for occupancy growing at a pace faster than the transition of existing residents into accommodation elsewhere in the community
- the increasing complexity of residents, a factor which the Panel accepts has introduced an increased risk of violence to residents and staff, and
- serious incidents, such as those by instigated by Sean Price, and an increase in the rates of absconding – each a factor drawing widespread media attention and triggering investigations by the Office of Correctional Services Review.[91]

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[88] Detention order offenders are not accommodated or detained in the same area or unit of the prison as prisoners who are serving custodial sentences except where exceptional circumstances exist, such as the offender electing to be so accommodated (they have the choice).

[89] Fifty-seven of the 99 offenders in the community were resident at Corella Place as of 23 October 2015.

[90] Corella Place was first appointed a residential facility under s 133 of the *Serious Sex Offenders Detention and Supervision Act 2009* (Vic) on 22 December 2009. Prior to the establishment of Corella Place, the Extended Supervision Order Transitional Accommodation Centre (ESOTAC) was established on the grounds of the Ararat Prison (now Hopkins Correctional Centre), under the *Serious Sex Offender Management Act 2005* (Vic).

[91] Information provided by Corrections Victoria to the Panel.

5.176 It was therefore appropriate that Corrections Victoria initiated what is known as the Corella Place 'Refresh Program' which included:

- a review of the staffing model and leadership structure to address ongoing expansion of the facility
- strengthening the organisational culture, with assistance from an organisational psychologist to look at staff morale and wellbeing, and change management processes, and
- strengthening the management of residents with complex needs and problematic behaviours, supported by Dr Jeffrey Pfeifer, of Swinburne University, whose review provided cross-jurisdictional and international analysis of the management frameworks and case management models applied in similar non-custodial residential facilities for individuals with complex needs, including advice on the type of expertise required to work with Corella Place's residential cohort.

5.177 Corella Place's second campus 'Residence 228' opened in March 2015 in response to the facility reaching its capacity. Residents housed there are those who are more self-reliant and whose engagement with services and activities outside Corella Place is greater.

5.178 During the course of this Review, a third campus of Corella Place was announced, at Langi Kal Kal Prison on land to be gazetted as a residential facility. While Corella Place has continued to operate as one residential facility across two campuses with Corella Main and Residence 228, it is unclear what, if any, difficulties the commissioning of the third, physically remote, campus will present.

5.179 The pace at which changes are occurring at Corella Place may raise significant challenges at a time when Corrections Victoria are attempting to embed new practices at the facility. The Office of Correctional Services Review is currently reviewing the success of implementation of the Refresh Program. Commencing in August 2015 and scheduled to be completed in December 2015, the review focuses on the revised staffing model and initiatives to strengthen organisational culture.

5.180 The Panel has given consideration to the current accommodation options for offenders. It has identified a number of areas where it considers more work is needed to ensure that there are more options for the placement of offenders under SSODSA orders. Included in these options must be residential facilities that cater for the individual and complex needs of offenders in the complex adult victim offender cohort. In the following section, the Panel makes a number of recommendations to achieve:

- more flexible community accommodation options for supervision order offenders
- a step-up/step-down approach to the placement of offenders under supervision
- a specialised accommodation option for offenders with an intellectual disability and cognitive impairment
- specialised accommodation options for offenders with a mental illness, and
- a multiple and complex needs approach under current and proposed accommodation options.

The Panel's view: more flexible community accommodation options

5.181 The geographical location of Corella Place poses challenges across a range of domains, including:

- the recruitment of appropriately experienced staff
- the provision of access to community activities, employment or volunteer opportunities, and appointments
- the capacity to build pro-social supports, when all the residents have been convicted of sexual offending, and
- the delivery of services to residents.

5.182 In correspondence with the Panel, Victoria Legal Aid expressed frustration at these challenges, given:

> … the provision of such supports would better promote the purposes of the Act and consideration should be given to creating graduated and properly supported pathways that enable genuine re-integration back into the community; as opposed to essentially warehousing people within Corella Place, which given its current state of operation can hinder rather than promote rehabilitation and risk minimisation.[92]

5.183 Literature on 'desistance' suggests that social supports in the form of intimate relationships and friendships, work and job stability, education, and cutting criminal ties are important factors that can support offenders to reintegrate into the community. In particular, 'the need to be embedded in a social network and to be viewed as a reformed or new person by members of the community' is key.[93] This was echoed in feedback received from the SSODSA offender surveys.

5.184 The relative isolation of Corella Place detracts from its capacity to provide the support that its residents require. That isolation increases the cost of the facility to the State of Victoria.

5.185 Figure 13 below illustrates the significant difference in cost in accommodating an offender in a residence in the community ($159,316) and an offender in residence in Corella Place ($323,248). It shows the average cost for each option per offender subject to the scheme in 2013–14.

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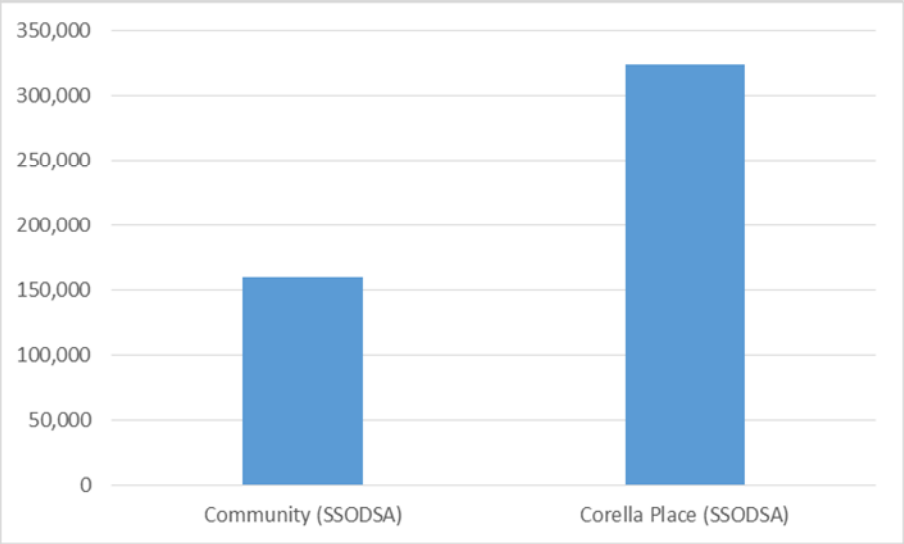
92 Correspondence from Victoria Legal Aid, Criminal Law Services to the Panel 28 August 2015.

93 Purvis et al., (2013), above n 63, 71.

Figure 13: Average costs for accommodation for offenders on supervision orders, 2013–14[94]

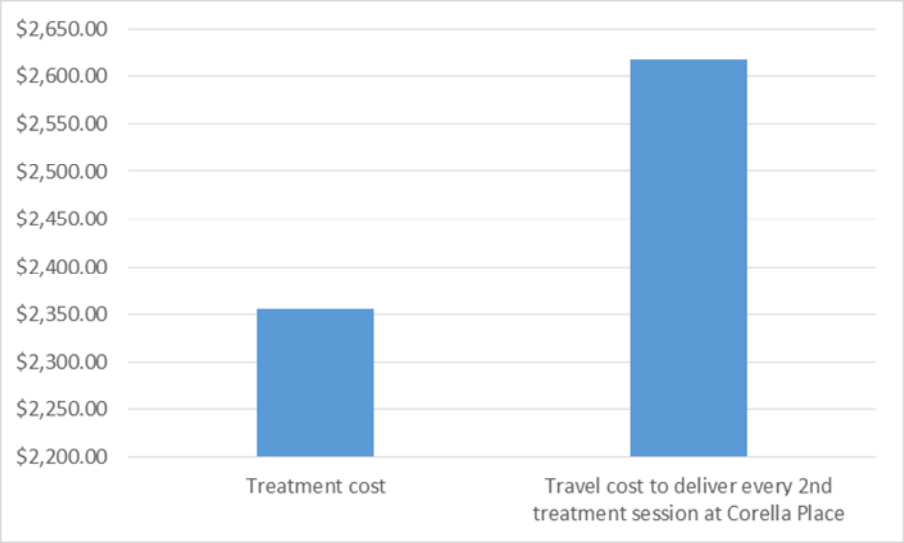


5.186 The Panel also reviewed treatment costs for offenders residing at Corella Place, provided to the Panel by Corrections Victoria. An offender recommended for 12 months of individual treatment with twice monthly sessions would generally receive one session per month delivered via video-link and one session per month delivered in person at Corella Place, requiring return travel from Carlton where the Specialised Offender Assessment and Treatment Service is located.

5.187 The total cost for 24 treatment sessions (including session planning, facilitation of the session, case note preparation following the session, and administrative tasks in the treatment database) compared to the cost of return travel to deliver half of the sessions at Corella Place is set out in Figure 14 below. The cost of travel (including the staff costs relating to the Specialist Case Workers escorting the offender) to attend the sessions ($2,617.20) is greater than the cost of delivering 12 months of individual treatment ($2,355.48).

[94] Data provided by Corrections Victoria to the Panel on 24 September 2015.

Figure 14: Example of costs for individual treatment for a resident of Corella Place for 12 months[95]



5.188 Although designed as a transitional facility, Corella Place has many long-term residents. The Panel identified several of these who have been resident at Corella Place since their release from custody and have not transitioned to accommodation outside the facility except to return to prison. When residents live at Corella Place for several years, with no knowledge of when they might leave, the facility's inherent limitations are compounded by increased social isolation, institutionalisation and resentment. Prospects of rehabilitation, and the morale of co-residents, may also be adversely affected.

5.189 Offenders who participated in the survey were asked whether they were assisted, while subject to the order, in finding a place to live. Less than half (42.8 per cent) said they had.

5.190 The majority of survey respondents were residing at Corella Place at the time of completing the survey. Of the 35 who responded to the survey, 23 said they felt safe in their place of residence. Five offenders who said they did not feel safe were living at Corella Place at the time, with three such offenders reporting that they had been assaulted whilst residing there.

5.191 In summary, the Panel acknowledges the limitations that Corrections Victoria has had to work with. These include having only one residential facility designated within the Act for residents, and the challenges of sufficiently tailoring supports to the significant and diverse cohort that reside there.

5.192 Any facility which houses those offenders who are subject to post sentence supervision orders and who cannot be accommodated elsewhere in the community should have as a principal purpose the provision of that which would most beneficially assist its residents to life outside their boundaries. This is a principal purpose of Corella Place. The staff there are dedicated to its achievement.

[95] Data provided by Corrections Victoria to the Panel on 23 October 2015.

5.193 The SSODSA has purposes which should complement those of Corella Place. The main purpose of that Act is to enhance the protection of the community. Its secondary purpose is to facilitate the treatment and rehabilitation of sex offenders. This is dependent on their active participation in relevant programs and on their gradual integration into the wider community whilst still under a degree of supervision (which should be flexible enough to adapt to the offender's increasing ability to integrate).

5.194 The SSODSA scheme has a ready measure of the success (or lack of it) in reaching these goals. That measure is the number of residents who have no prospect of relocation from Corella Place – and whose continued presence there is, at great public expense, required to remain as residents. For these offenders, and for others condemned to a much slower process of integration than would otherwise be the case, the location of Corella Place prevents it matching its purposes with its capacity to realise those goals, no matter how dedicated and professional its staff. This is a matter which in the opinion of the Panel must be addressed for fiscal as well as functional imperatives.

Recommendation 30

Flexible community accommodation options should be developed as a priority to cater to the complex needs of offenders on post-sentence orders. Placement options should continue to be predicated on the scheme being a civil one focused on community protection rather than punishment, pass the 'minimum interference test' set out in the *Serious Sex Offenders (Supervision and Detention) Act 2009* (Vic), and be compatible with the *Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic).

The Panel's view: a step-up/step-down approach to placement of offenders in accommodation under supervision

5.195 The review of Corella Place by Dr Jeffrey Pfeifer noted that:

> Facilities designed to manage and house individuals with histories of violent, oppositional, anti-social, aggressive or complex behavioural tendencies are often forced to respond to and manage a range of unexpected incidents that can impact the effective operation of the facility and sometimes the safety of staff and residents.[96]

5.196 The placement and integration of residents with complex needs requires careful deliberation, particularly those that exhibit problematic behaviour. The potential for such behaviour to have a negative impact on resident interactions, staff morale and general safety may be dormant, but their volatility is something of which staff must be constantly aware.

5.197 Corella Place, as it currently stands, has limited capacity to deliberate over placement options; while the new campus 'Residence 228' provides the 'step-down' option before individuals leave for the wider community, there is currently no 'step-up' option available, unless there are grounds (appropriately rare) for a full application to the Supreme Court for a detention order (or an offender reoffends in some way and is returned to custody).

5.198 A very real problem faced by the residential facility is the increase in occupants presenting with a range of complex issues such as intellectual disability, acquired brain injury, mental health issues, antisocial personality disorder, paranoid personality disorder, drug and alcohol issues and poor impulse control.

5.199 This has had a negative impact on the operational environment, with some residents demonstrating ongoing problematic behaviour towards staff and fellow residents. Consequently, the number of serious incidents occurring at the facility continues to rise.

5.200 There were hundreds of incidents at Corella Place in the last financial year. While those which threaten the safety of staff or other residents are far less prevalent than other non-compliance incidents, they have the potential to cause serious harm.

5.201 In the last financial year, approximately seven incidents occurred that involved offenders in the complex adult victim sex offender cohort and were classified as 'any physical assault on or serious threat to a staff member'. Two incidents were classified as 'serious injury requiring medical treatment or hospitalisation relating to any order condition'.[97]

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[96] Jeff Pfeifer et al., *Corella Place Transitional Facility*: *Review and Information Report* (2015) 16.

[97] The Office of Correctional Services Review monitors incident reports provided by Corrections Victoria to create data sets that enable them to monitor trends and provided the Panel with this information.

5.202 In response to the increasing risk of violence, Corrections Victoria in January 2014 commissioned Professor David Caple to conduct an Occupational Health and Safety Risk Assessment of Corella Place. His report identified various risk factors, including the special requirements of the cohort (limited cognitive and behavioural capacity), frustration and escalation of issues due to boredom amongst residents, design of the interview rooms, varying communication styles and skills amongst staff, and the impact of licit and illicit drug use amongst residents.[98]

5.203 Others are also adversely affected by incidents at Corella Place. Ararat Police provided the Panel with workload attribution data over a three month period for local detectives attending for investigations and associated follow-up.

5.204 The resource intensive nature of this end-to-end process was apparent: from 1 March 2015 to 31 May 2015 these detectives spent approximately 166 hours in total on work related to Corella Place.[99]

5.205 It is important to note that this data does not capture separate work that is undertaken by the general uniform police. This includes their responses to 000 calls and other information recorded in the Emergency Services Telecommunications Authority data. This data is not available to the Panel.

5.206 In an effort to manage the change of offender presentation at Corella Place, Ararat Police have worked closely with the facility. This has been of assistance to staff in planning responses to incidents and in exercising their search powers safely. While these collaborative arrangements were reported positively by police and staff at Corella Place, both parties indicated the facility had 'outgrown the legislation' in terms of the risk that needs to be managed.

5.207 Ararat Police posited suggestions to respond more systematically, including:

- a multidisciplinary approach – having police working from Corella Place, enabling them to be part of the risk management strategy and take a prevention approach, rather than attending to respond to incidents after they have occurred
- police providing input into briefings to the Adult Parole Board, to enable them to have a prevention focus too, by being appraised of intelligence or other concerns held by police that may inform decision-making, particularly in relation to residential arrangements
- a more strategic approach when it comes to having a shared management plan between Corrections Victoria and Victoria Police for offenders under the SSODSA and better aligning their systems, and
- challenging the perception that the risk can be managed locally in Ararat, given cars leave the facility on outings every day and when they depart Ararat it means police across the state must play a role in responding to incidents.

[98] David Caple and Associates, *Occupational Health and Safety Risk Assessment Corella Place, Ararat*: *Final Report* (2014).

[99] Data provided by Victoria Police, Ararat to the Panel on 30 October 2015.

5.208 Ararat Police also thought it would be beneficial for Corella Place to develop an intelligence capability on site:

> An intelligence role could identify what needs to be told to police. Things escalate to the point where police come in to save the day at the last minute but there is no intervention point when it is building up. A prevention focus rather than a response focus, translates to public confidence, safety and less harm.[100]

5.209 No formal proposal has been put to Corrections Victoria by Victoria Police. Informal discussions between the two agencies, however, have not advanced this proposal. The Panel understands that Corrections Victoria declined offers to have a permanent police presence at Corella Place, perceiving that it would have a negative impact on the atmosphere for its residents. The issue remains one for the parties to resolve. The Panel takes no position either way.

5.210 There have been developments in the announcement of a Specialist Response Unit made up of Victoria Police detectives, intelligence analysts and corrections staff to work in the Sex Offender Management Branch of Corrections Victoria.[101] The Panel notes that while this response unit will have state-wide coverage and be fully operational by the end of 2015 it will oversee offenders on supervision orders in the broader community, not at Corella Place.

5.211 If the Panel's recommendation to broaden the scheme to include those violent offenders who pose the greatest likelihood of causing serious interpersonal harm is adopted by government, the capacity of a facility such as Corella Place to manage the risk is limited. This has been demonstrated by the serious damage Sean Price was able to inflict on two occasions there.

5.212 Corella Place is well managed and enjoys the services of capable and dedicated staff. But it has its inevitable limitations. It is in the community but is not, and cannot be, of the community. There is nothing between it and prison, even for residents who are difficult or - at least at times - impossible, to manage. Likewise, there is nothing between it and life in the community proper. It is distant from many destinations to which its residents wish, and are entitled, to go, and from services upon which these residents properly rely. It requires residents with particular vulnerabilities to live with others who are pleased to take advantage of them. But there is nowhere to which some of the easily managed but vulnerable residents can go, despite the fact that age or other factors ensure that they present no risk.

5.213 The need for step-up/step-down facilities is in the opinion of the Panel, acute.

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[100] Premier of Victoria, The Hon. Daniel Andrews MP, 'New Reforms Tighten Net On Serious Sex Offenders' Media Release (1 September 2015) at < http://www.premier.vic.gov.au/new-reforms-tighten-net-on-serious-sex-offenders>.

[101] Ibid.

5.214 The Panel notes that a 'step-up' from Corella Place, may also be a 'step-down' from prison or the Greenhill Detention Unit, which may be required on occasion. Another example of the need for other accommodation options and a step up approach arises in circumstances where offenders exiting prison:

- have not engaged in programs or treatment, whether of their own volition or due to reasons beyond their control, such as the deferral of treatment due to appeals
- are released following a short sentence, but have a lengthy history of relevant offending, and their sentences have not allowed sufficient time to enable an Intervention and Management Plan to be effective, and
- are exiting prison at a time when their risk is heightened to a point beyond which it can be appropriately managed on a supervision order.

5.215 While the Panel acknowledges that capital works are expensive, the management of offenders who pose a serious risk of interpersonal harm requires 'a range of variously controlling, restrictive, intensive/intrusive treatment, supervision, and monitoring techniques'.[102]

5.216 The dearth of accommodation options, particularly for sex offenders, is a perennial problem, as commentary made by the Adult Parole Board in its 2005–06 annual report in relation to its then responsibilities under the *Serious Sex Offenders Monitoring Act* demonstrates:

> The issue of accommodation has become a matter of great concern because it is almost impossible to find any accommodation in the community for such persons. Regrettably, in the course of the year under review, some irresponsible sections of the media generated what, in effect, amounted to vigilante action against not only such persons but also entirely innocent members of the community. The experiences of the past year emphasise the necessity for the community to give careful consideration to the establishment of appropriate accommodation that could provide a continuum of correctional services to high-need parolees … and persons who are subject to extended supervision orders.[103]

5.217 Equally important to 'step-up' options are timely 'step-down' options when offenders subject to post-sentence orders demonstrate progress in their capacity to implement risk mitigation strategies in the community.

5.218 Given the multiple difficulties in sourcing suitable housing for sex offenders it is surprising that greater resources are not dedicated to this purpose, particularly in light of the significant costs of accommodating an offender at Corella Place, which, if the offender's risk would be sufficiently manageable elsewhere in the community, surely cannot be justified at approximately $325,000 per annum.

5.219 In consultations, staff at Corella Place indicated that up to one fifth of the existing residential cohort could manage in the broader community but were still there due to:

- a lack of suitable housing
- the perceived reluctance of some regions to find properties suitable, and
- the risk of vigilantism against known sex offenders.

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[102] Logan (2011), above n 72, 242.

[103] Adult Parole Board of Victoria, *2005–06 Annual Report* (2006) 9.

5.220 This requires intensive efforts and a strategic approach, in partnership with a range of agencies. The Panel anticipates that the collaborative efforts of those appointed to the Public Protection Panels, coupled with the Public Protection Authority's capacity to issue directions to agencies, may serve to improve the capacity of agencies to place offenders in suitable accommodation in the community with the intensive supports required.

5.221 Tailored accommodation options, whether a step-up, or a step-down, are not intended merely to be a place to live; if done well, they should enable intensive and structured interventions to be delivered when needed, as well as, independence and self-management when offenders demonstrate progress.

Recommendation 31

A step-up/step-down approach should be applied to facilitate the delivery of tailored and targeted interventions within existing and proposed residential facilities. The approach should be responsive to an offender's progress on the order, or lack thereof, by providing for a greater or lesser range of restrictive environmental controls, with interventions increased or reduced according to risk, needs and responsivity principles, and with treatment and reintegration being supported by coordinated inter-agency service delivery.

The Panel's view: specialised accommodation for offenders with an intellectual disability or cognitive impairment

5.222 Of the 118 offenders subject to supervision orders as 14 August 2015, 30 have an intellectual disability, eight have an acquired brain injury and a further five demonstrate indicators of an intellectual disability but are not registered disability clients of the Department of Health and Human Services. This constitutes 36 per cent of offenders on supervision orders.[104]

5.223 The Panel notes with appreciation the commitment of staff supervising offenders with complex needs, despite sometimes feeling ill-equipped:

> There are 12 people currently residing at Corella Place who have a registered intellectual disability and many more are just under the threshold. The Department of Health and Human Services don't see people with ID on supervision orders as their problem. It should be a joint responsibility. People with ID can be difficult for the Specialist Case Manager to understand as individuals and know how best to manage them. We do our best to case manage them and respond to their behaviour but we need input from professionals and guidance on how to manage them. [An estimated] [t]wo-thirds of them have never seen their DHHS case worker – whether it's because of resourcing issues or they just don't see them as their responsibility.[105]

[104] Correspondence from Sex Offender Management Branch to the Panel on 5 October 2015.

[105] Consultation with Corella Place management and staff (10 July 2015).

5.224 Barriers to engagement with Disability Client Services[106] (a service branch, which provides voluntary disability services) within the Department of Health and Human Services) identified by Corella Place staff included:

- a lack of understanding by disability case workers, who do not know what Corella Place is and think it is a prison
- individuals are assigned to their disability worker from their region of origin and managed through that location which can be far from Corella Place (local disability client services workers in the Department of Health and Human Services does not take over their case management), and
- some offenders could be better managed elsewhere in the community than at Corella Place, but they are assessed as not eligible for Individual Support Packages under the Disability Assistance Payments, so there is no funding for accommodation.

5.225 The Department of Health and Human Services Disability Forensic Program currently involves the following levels of support for people with a disability involved in, or at risk of involvement in, the criminal justice system which includes those subject to a supervision order under the SSODSA:

Residential treatment facility (Intensive Residential Treatment Program). This is the most intensive and restrictive form of intervention with Forensicare engaged by the Disability Forensic Assessment and Treatment Service to deliver the services deemed necessary, with admission mandated by section 152 of the *Disability Act 2006* (Vic).

Specialist clinical treatment (Community program and Community Forensic Dual Disability Clinic). This comprises:

- The Disability Forensic Assessment and Treatment Service, which also delivers a community program providing specialist assessment and treatment services for people with an intellectual disability, eligible to receive services under the *Disability Act*, who have a forensic history or are demonstrating behaviours that place them at risk of criminal involvement.
- The Dual Disability Clinic provides specialist psychiatric services via a weekly one hour consultation with a forensic psychiatrist at Forensicare to people with an intellectual disability, 18 years or older, who have co-morbid mental illness and display risky antisocial behaviours.[107]

[106] Disability Client Services, within the Department of Health and Human Services, provides voluntary disability services.

[107] The thresholds for compulsory treatment under the *Disability Act* operate separately to those under the *Mental Health Act.* Residents receiving services from the intensive residential treatment program or the long-term residential program are prioritised for services from the Dual Disability Clinic but limited referrals are accepted for community disability clients likely to have a condition that requires specialist psychiatric input.

Specialist accommodation (Long-Term Residential Program, Disability Interim Justice Accommodation, and transitional facilities Francis House and Perry House). This comprises:

- The Long-Term Residential Program – a five-bed Shared Supported Accommodation gazetted in the *Disability Act* as a residential institution. It is a locked facility with intensive staff support.
- The Disability Interim Justice Accommodation Service (formerly Charlton and Furlong House) – state-wide short term accommodation and support services designed to provide priority placement to people with a disability involved in the criminal justice system. These accommodation sources were designed specifically to avoid people with a disability being denied bail solely on the grounds of not having suitable accommodation. Whilst having 24-hour staffing, these properties are not secure houses and the residents are free to leave at any time. House staff will however, notify the person's key worker and/or the police if there is a known breach of bail conditions.
- Transitional facilities – (i) Francis House has capacity for four to five persons with an intellectual disability who have come into contact with the criminal justice system and residential placements can be up to twelve months in duration. It is managed by the Australian Community Support Organisation and has a 24-hour staff support, sleepover model; (ii) Perry House has capacity for up to four young people under the age of 25 with an intellectual disability who have come into contact with the criminal justice system. It is managed by Jesuit Social Services and has a 24-hour staff support, sleepover model. Residents can stay up to 12 months.

Compulsory Disability Services. The *Disability Act* also provides for compulsory treatment for people with an intellectual disability through a supervised treatment order made by the Victorian Civil and Administrative Tribunal (VCAT) or a person admitted to a residential treatment facility or residential institution. Offenders who are subject to compulsory treatment under the *Disability Act* are required to have a treatment plan and are subject to the clinical oversight of the Senior Practitioner.

5.226 The Panel notes that the transition to the National Disability Insurance Scheme will impact on access to disability services for forensic disability clients. There will be implications for how people under community based supervision or treatment orders are able to access disability supports and services during the transition. The Department of Health and Human Services is currently undertaking an internal review of the Disability Forensic Assessment and Treatment Service, with specific consideration of the alignment of the service model and implications of the National Disability Insurance Scheme. It has advised the Panel that this presents an opportunity to further strengthen and improve the department's response to forensic disability clients. The Panel welcomes this.

5.227 The Panel also views positively correspondence it received from the General Manager of the Sex Offender Management Branch, acknowledging the need for a more tailored response and proposals to address this:

> The Department of Justice and Regulation (DJR) is working with the Department of Health and Human Services (DHHS) to increase supported accommodation options for supervision order offenders with an intellectual disability …
>
> The accommodation of offenders with a disability has been subject to a high degree of scrutiny by the court. Concerns have been raised that some offenders do not require the degree of supervision delivered at Corella Place but must reside there for no reason other than a lack of supported accommodation. In turn, this reduces places available at Corella Place for other offenders who may pose higher risks and a need for more intensive supervision. The court has also expressed concern that Corella Place is not able to routinely provide specialist services specific to offenders' disability needs.
>
> DJR is working in consultation with DHHS to establish a new 8-bed residential service for offenders with intellectual disabilities who are subject to supervision orders. Subject to further consultation with DHHS, it is proposed that the service will … provide placements of up to 24 months to assist offenders transitioning from prison or Corella Place. A tender process may be undertaken to appoint a suitably experienced service provider to operate the facility. It is anticipated that the new residential facility will be ready to commence operation by the end of 2017.[108]

5.228 The Department of Justice and Regulation, through the Sex Offender Management Branch, also advised that, in the interim, it is working in consultation with the Department of Health and Human Services to provide two residential placements for offenders with an intellectual disability, with a view to establishing the placements by early 2016.

5.229 An Interdepartmental Committee, set up between these departments, was considering accommodation models for post-sentence order offenders in 2012; and in 2013 active discussions were held regarding a proposal for the development of a residential facility for offenders (including those on post-sentence orders) with a disability. While supporting these developments, the Panel notes that they did not eventuate in a facility being built. The Panel hopes the initiatives currently under consideration will receive the investment required, and draw on lessons learned from earlier attempts, such as the Supported Transitional Accommodation project, which ceased in 2012.

5.230 In the Panel's view there is a clear demand for the creation of such a forensic disability facility for offenders under the SSODSA and other offenders with an intellectual disability or cognitive impairment who are subject to court orders.

[108] Correspondence from Sex Offender Management Branch to the Panel on 30 October 2015.

5.231 The Review of the *Crimes (Mental Impairment and Unfitness to be Tried) Act* completed in 2014 by the Victorian Law Reform Commission reported on the lack of a specialised facility for forensic residents and appropriate accommodation options for people with an intellectual disability or cognitive impairment under this Act. While secure accommodation facilities for people with an intellectual disability or cognitive impairment are provided by the Department of Health and Human Services, offenders subject to the *Crimes (Mental Impairment and Unfitness to be Tried) Act* rarely meet the admission criteria because of their type of disability, level of risk, or because their need for services differs from what is provided. The same also applies at times to offenders subject to the SSODSA. This highlights the broader demand for such facilities.

5.232 The Department of Health and Human Services has a partnership agreement with the Department of Justice and Regulation in relation to offenders with a disability, and has practice guidelines on supporting offenders with a disability subject to a SSODSA order. However, the limited accommodation options remain a significant hurdle.

5.233 The Panel notes that the limited capacity of the facilities proposed for development may not fully address the demand for them.

Recommendation 32

A new forensic residential disability service should be established to cater to offenders subject to the reformed post-sentence detention and supervision scheme. While this residential service should operate under the *Disability Act 2006* (Vic), it must be appointed a residential facility for the purposes of any legislation giving effect to the reformed post-sentence detention and supervision scheme, so that courts have more options when making residence conditions. The facility, and any interim arrangements until the facility is operational, should have the capacity to respond to the significant proportion of offenders with an intellectual disability or cognitive impairment, being more than a third of those subject to post-sentence orders.

5.234 The Panel envisages that such a residential service will allow SSODSA offenders to be provided with voluntary disability services, and if so, will have an assigned disability case manager. These are necessary to assist and support their disability needs, and to enhance their ability to engage with the conditions of their SSODSA order and case management and supervision. The latter will be provided in accordance with an Intervention and Management Plan, implemented by the lead agency of the new Public Protection Panels/s.

The Panel's view: specialised accommodation options for offenders with mental health issues

5.235 The Panel's consultations revealed strong concerns about the prevalence of mental health issues amongst residents at Corella Place, including self-harm risks. As Corella Place staff acknowledged, they have neither the training nor the qualifications appropriate to the management of these issues. They sought a stronger mandate for mental health services to be involved, even if the individual did not meet the threshold for compulsory treatment.

5.236 To ascertain the extent of mental illness in the cohort of offenders under the SSODSA, the Panel was provided with de-identified information about lifetime contact with mental health services through the Department of Health and Human Services' state-wide mental health database.

5.237 Of the 118 offenders subject to post-sentence supervision at the time of data extraction, 96[109] were known to the Client Management Interface Operational Data Store (previously referred to as the RAPID database) which records all contacts with the public mental health services and in most cases information on diagnosis and management.[110]

5.238 Of those 96, 80 had a recorded diagnosis and the remaining 16, while recorded on the database did not have an identified diagnosis. Further breakdown by cohort is outlined in Table 17.

Table 17: SSODSA Offenders' contact with public mental health services based on de-identified matches in the Client Interface Operational Data Store

	Numbers on the scheme	Numbers with recorded diagnosis
Complex Adult Victim Sex Offender Management cohort	46	37 (80%)
Child Victim Sex Offender Management cohort	72	59 (82%)

[109] It is noted that while 22 of the 118 offenders on post-sentence orders did not have a match on the database, they may have had contact with public mental health services that was not identified, for example due to aliases.

[110] While it is possible to determine when these diagnosis were made, they are 'points in time' and are not removed from a client record, so it is not possible to ascertain whether an individual may currently have a mental health condition.

5.239 The most prevalent mental health diagnoses, in no particular order, were:

- schizophrenia
- bipolar affective disorder
- adjustment disorder
- antisocial personality disorder
- depression
- 'manic-depressive' psychosis (although no longer in use, this diagnostic term reflects historical diagnoses)
- disruptive behaviour disorders, and
- substance abuse/alcohol and other drug use.

5.240 The rates of recorded contacts with mental health services by offenders subject to supervision orders appear substantially higher than that found in the general prison population. A 2003 study of Victorian prisoner health, reported that 28 per cent of Victoria's male prisoners have diagnosed mental health conditions, with the prevalence of schizophrenia and bipolar disorder almost 10 times greater than the community.[111] It would appear that among those subject to supervision orders and residing in the community, the rates are at least as high, if not higher. Many of these offenders (including Sean Price) appear for one reason or another to be currently out of contact with mental health services. This is of concern to the Panel.

5.241 The number of diagnoses per offender is outlined in Table 18. Close to half of the 96 offenders with recorded diagnoses had three or more diagnoses.

Table 18: Number of diagnoses for SSODSA offenders based on de-identified matches in the Client Interface Operational Data Store

Frequency table – Number of diagnoses	
Number of diagnoses	**Number of people**
0	16
1	17
2	17
3	7
4	9
5	4
6 or more	26
Total	**96**

[111] Deloitte Consulting for Department of Justice, *Victorian Prisoner Health Study* (2003) 26. See also Victorian Ombudsman, *Investigation into prisoner access to health care: Report* (2011) 13.

5.242 The Department of Health and Human Services advised that it is not possible from this data to determine primary and or secondary/tertiary diagnosis for those experiencing multiple mental health conditions. There is also no capacity to determine whether these conditions were prevalent at the time of offending, or whether these conditions were relevant to the offending behaviour. Such conditions are, however, certainly relevant to the effective management of these offenders.

Public mental health services in Victoria

5.243 The Department of Health and Human Services advised the Panel that successive Victorian Governments have driven and invested in expansion and reform of the mental health system. Investment in the mental health system over the past 20 years has been predominantly directed towards delivering a system in which acute inpatient services can be accessed when clinically indicated, but one in which less secure and acute alternatives are also available. The Panel understands that these reforms have been undertaken following extensive consultation with patients/consumers,[112] carers and service providers who advise that a person's best chances for recovery include community based and home based treatment options.

5.244 As there is always pressure on health services, public mental health services frequently review the needs of each patient and use clinical risk assessment processes to determine which mental health option meets the patient's clinical needs. The possibilities range from high dependency acute inpatient care and sub-acute bed-based options through to intensive and less intensive community support post discharge. Access to and discharge from acute inpatient services is based on the assessed clinical need. Clinicians use their expertise and the best tools available to make assessments of that need. Thereafter, the level of care that is considered most appropriate is sought within a system that experiences consistently high levels of demand and steadily increasing acuity thresholds for admission.

5.245 Victoria has embedded in its legislation and policies a requirement that the least restrictive care that is consistent with appropriate treatment be provided for someone accessing public mental health services. Rather than rely solely on acute inpatient care, an investment has been made in the provision of a wide range of less acute options with targeted models of care, of which there are a wide range to cater to different needs and populations. Table 19 sets out the operational beds currently in Victoria as at 10 November 2015.

[112] The Panel has referred to people who access mental health services as mental health 'patients' rather than 'consumers' in this report. It does acknowledge however that many people obtaining treatment or support for a mental disorder prefer the term consumer.

5.246 Table 19 shows that there are also a range of non-acute and sub-acute options with targeted models of care, including:

- Prevention and Recovery Care (PARC) services (223 in total)[113] – provide sub-acute care and cater for both voluntary and involuntary patients of mental health services.[114] They operate predominantly as step down care to assist people to re-establish themselves after a period of mental illness but can also provide early intervention care and reduce the likelihood than an inpatient stay will be required.
- Community Care Units (CCU) (357) – provide 24-hour clinical care and residential rehabilitation support to people with severe mental illness who are unable to be supported in less intensive community options.
- Secure Care Extended Units (132) – provide secure inpatient treatment and care for people with severe symptomology and behavioural disturbance who require an extended period of sustained treatment and rehabilitation in a secure environment. There are currently 132 secure extended care beds in Victoria, including 30 beds which opened in 2013–14 in Dandenong. A further 12 beds are being built as part of the Bendigo Hospital redevelopment to be opened in early 2017.

[113] These have increased from 90 in 2009–10.

[114] However, under the Mental Health Act it is not possible to compel a person who is subject to a Community Treatment Order to receive treatment in such facilities. In cases where admission is necessary for compulsory patients, this occurs to an appropriate level of care within an acute inpatient service, whether that is in a high dependency acute care context or a less intensive level of care within the inpatient unit.

Table 19: Operational public mental health beds in Victoria[115]

Care type	Unit Name	Beds
Acute	CAMHS Adolescent Acute	58
	CAMHS Child Acute	12
	Adult Acute	662
	PAPU	8
	Neuropsychiatry	8
	Psychiatric Intensive Care Unit	4
	Eating Disorders	17
	MBS	23
	Aged Acute	227
	Veterans Acute	20
	Brain Disorders Short-Term	10
	Forensic Acute	40
Non-Acute	SECU	132
	Brain Disorders-Transitioning	3
	Forensic Continuing Care	56
	Forensic Sub Acute Care	20
Sub-Acute	CCU	357
	PARC Adult	183
	PARC Extended	10
	PARC Youth	30
Residential	Hostel	61
	Nursing Home	441
	Brain Disorders Long-Term	20
	Personality Disorder Service (BPD Spectrum)	4

Glossary

CAMHS: Child and Adolescent Health Service

PAPU: Psychiatric Assessment and Planning Unit

MBS: Mother Baby Service

SECU: Secure Extended Care

CCU: Community Care Unit

PARC: Preventions and Recovery Care services.

BPD Spectrum: Personality Disorder Service

[115] Data provided by the Department of Health and Human Services to the Panel on 18 November 2015.

5.247 The Department of Health and Human Services advised the Panel that there are also a range of Transition Support Services. These are state-wide 10-bed facilities for the benefit of people with complex mental illness combined with an intellectual disability or an acquired brain injury. The Services will focus on the cohort of people that need a long term (average length of stay estimated to be three to five years) therapeutic and recovery focused residential environment but a lower level of clinical care which is provided in Secure Extended Care Units and mental health inpatient units.

5.248 The Department of Health and Human Services advises there are currently two facilities under development:

- The first is to be managed under the auspices of Austin Health and will be located on at the Heidelberg Repatriation Hospital site. It is expected to be operational at the beginning of 2016.
- The second facility will be managed under the auspices of Monash Health and will be located in the Monash catchment. It is expected that this facility will be operational in the second half of 2016.

5.249 In the service continuum, these Transition Support Services will be a 'step-down' of clinical care from Secure Extended Care Units and mental health acute inpatient units, with the environment being low stimulus and recovery focussed. It will also provide an alternative service option for people with dual disability in Community Care Units who may not be meeting their recovery, behaviour or other individual goals in their current environment and may require long term care in a low stimulus and recovery focussed environment.

5.250 The Department of Health and Human Services has informed the Panel that it envisages the 20 new beds will alleviate the pressure of patients staying for inappropriately long periods in mental health acute inpatient units or Secure Extended Care Units. This will allow people who require treatment and care in an inpatient unit or Secure Extended Care Units, including civil clients from Thomas Embling Hospital, to receive appropriate care.

The forensic capacity of mental health services and their intersection with the SSODSA

5.251 The mental health services consulted by the Panel are concerned that some offenders who are on supervision orders pose a risk to the safety of other patients and staff. There is also concern that some services lack the relevant specialist skills. For example, the following point was made by senior clinical staff from the Ballarat Area Mental Health Service:

> If area mental health services are to be involved [in the provision of mental health services to residents at Corella Place] we need forensic specialist health services to do it – we don't have anyone here now that can provide the service.[116]

[116] Consultation with Ballarat Area Mental Health Service (13 August 2015).

5.252 Given the number of supervision order offenders who are residents at Corella Place, with Ballarat as the nearest major provincial city, this evidences a gap in the provision of forensic mental health services for such offenders under the SSODSA.

5.253 Ballarat Area Mental Health Services acknowledged that residents do not get the specialist forensic mental health services at Corella Place that they would get in prison, even though they may need them. Nonetheless they did not consider Corella Place to be in the 'community' and thought their needs would be better served by Justice Health (a business unit of the Department of Justice and Regulation responsible for the delivery of health services in Victoria's prisons), or Forensicare. This response was not uncommon.

5.254 Other area mental health services in metropolitan locations also raised concerns about the lack of specialist forensic expertise (those that did not have a forensic clinical specialist) and the need for more training around capacity and skills in addressing the vulnerabilities of, and risks posed by, complex offenders under the SSODSA. As with Ballarat Area Mental Health Service, other area mental health services also flagged the importance of protecting the safety of other patients with high needs and high vulnerabilities, as well as the safety of staff, when determining placement of offenders under the SSODSA.[117]

5.255 The difficulties arise in part from the conflict between the expectations of the criminal justice system and mental health services' understanding of their responsibilities. There are efforts at senior levels to better align the criminal justice and mental health systems through strategic leadership and co-ordination, and through initiatives such as the Criminal Justice and Mental Health Systems' Planning and Strategic Coordination Board, which has been formed to provide a high level inter-agency forum to ensure strategic leadership and co-ordination across the criminal justice and mental health systems.[118] Such initiatives however have yet to achieve the widespread cultural change necessary if those caught between both systems, including those subject to the SSODSA, are to receive the treatment to which all who are ill are entitled.

5.256 It is in this context significant that area mental health services manage large numbers of individuals with histories of offending – and no small number of people who are acutely disturbed, threatening, and on occasion violent. Some 30 per cent of those cared for by area mental health services have criminal convictions[119] and, for the most part, their offending history has no impact on the willingness of those services to provide appropriate care. The difficulties arise when people are referred to mental health services directly from the criminal justice system.

[117] Consultation with Area Mental Health Services (20 August 2015).

[118] Criminal Justice and Mental Health Systems' Planning and Strategic Coordination Board Terms of Reference.

[119] V A Morgan et al., 'A Whole of Population Study of the Prevalence and Patterns of Criminal Offending in People with Schizophrenia and Other Mental Illness' (2013) 43 *Psychological Medicine* 1869–80.

5.257 While this report is focussing on the small number of offenders subject to post-sentence orders, this is a much broader issue. Many court orders specify, in effect, that the offender to whom the orders are directed be assessed and, where appropriate treated, by public mental health services. In practice community corrections officers struggle to even obtain assessments, let alone treatment.

5.258 The Department of Justice and Regulation received funding in the 2015–16 budget to pilot an approach to introduce advice from a mental health clinician about the appropriateness of a mental health treatment and rehabilitation condition as part of a community correction order. It seems, however, that such conditions are being included in community correction orders without the necessary discrimination. If the offender has exhibited any behavioural problem, the condition is sometimes imposed without enquiry as to whether its imposition is warranted or appropriate. As a result, referrals to public mental health services are being rejected because the person does not meet service eligibility criteria. The conditions set by the court are therefore commonly not met.

5.259 This is not a problem unique to Victoria. In England and Wales the reluctance of public mental health services to be involved in the management of mentally disordered offenders in the community has led to the development of private providers filling the gap. Currently there are more private than public providers of mental health services to mentally disordered offenders in the United Kingdom.

5.260 General area mental health services see their responsibility as being to assess and manage individuals diagnosed with serious mental illness. Issues of criminality and the risk of future offending are usually regarded as relevant only if the individual's disturbed state of mind (such as hallucinations and delusions) is immediately connected to that risk. Even then, if the apprehended risk of offending involves serious violence or sexual offending, area mental health services may consider service delivery to be the responsibility of the state's forensic mental health service.[120]

5.261 Forensicare is responsible for providing adult forensic mental health services in Victoria. Forensicare has a 116-bed secure hospital (Thomas Embling Hospital), together with comprehensive community based programs and a prison service, including the Community Forensic Mental Health Service; the Problem Behaviour Program; and the Community Integration Program.

[120] The situation is further complicated if drug and alcohol abuse are involved in either the psychotic state or the offending risk. The existence of separately administered substance abuse and mental health services creates multiple problems. In most of the UK and northern Europe the mental health and substance abuse services come under a single authority.

5.262 The Chief Psychiatrist's Investigation into Sean Price's management included recommendations to:

- develop an integrated forensic intensive case management service to support high-risk prisoners to successfully reintegrate to the community
- expand the Forensic Clinical Specialist Initiative to cover all mental health services,[121] and
- evaluate Forensicare's community forensic mental health service with a view to developing a service and business model to enable the capacity of the service to be expanded to support area mental health services in their management of high risk people.[122]

5.263 While these recommendations are constructive and will bring about positive change, there is also a cultural and practice divide to be bridged if there is to be inter-agency management of SSODSA offenders.

5.264 The Forensic Clinical Specialist Initiative has been evaluated positively as strengthening the relationships and referral pathways between area mental health services, the courts and correctional services. Another benefit identified by the evaluation of the initiative was the improved confidence and capability of staff to work with clients who present with forensic risk, resulting in higher quality assessments and improved capacity to manage this client group.[123]

5.265 The concerns of some area mental health services that may render them reluctant to enter a joint program of managing SSODSA offenders with mental health issues has to be viewed in terms of their financial and structural constraints. Resources are stretched, and the service model delivers community care focused on managing the symptoms of mental illness so as to prevent a full-blown relapse. Admissions can be brief, generally being measured in days, not weeks. This is accompanied by variable levels of additional psychological and social supports. Area mental health services are not funded to provide ongoing rehabilitation and support based on such things as programs within which psychological, psychiatric and social treatment interventions can be facilitated. These are the sorts of interventions that may be of benefit to SSODSA clients.

[121] The Panel notes that Ballarat Area Mental Health Services has not previously had the benefit of this forensic capacity, of use given their proximity to Corella Place, but will do so with the rollout of the initiative.

[122] Chief Psychiatrist, *Department of Health and Human Services Chief Psychiatrist's investigation into mental health services provided to Mr SP by Victorian public mental health service providers: Report* (2015).

[123] Department of Health and Human Services, *Forensic Clinical Specialist Initiative Evaluation, Formative Evaluation: Report 1* (February 2012).

Threshold for compulsory treatment and treatment interventions under the SSODSA

5.266 Sean Price highlighted many of the problems inherent in the community management of offenders diagnosed with serious mental illness. While he previously had episodes of psychotic illness that qualified him to be admitted to a psychiatric unit and to ongoing psychiatric treatment, during his period on a supervision order he never showed, or acknowledged, disturbances which would justify an area mental health service admitting him, or providing community mental health care, without his consent. Indeed, throughout his period on a supervision order he insisted on his sanity, and refused to accept treatment.

5.267 Although a minority, other offenders in the complex adult victim sex offender cohort whose cases were studied by the Panel were reported to be displaying significant deterioration in their mental health. This was of great concern to those responsible for their management.

5.268 Correctional programs rest on the premise that offenders should be encouraged and assisted to participate in them; and that people cannot be forced to change their behaviour. At the same time, compulsory measures through the use of the *Mental Health Act 2014* (Vic) and the *Disability Act* are sometimes seen as necessary to ensure treatment for the prevention of serious harm to self or others.

5.269 Section 160(2) of the SSODSA excepts conditions relating to medical treatment from the requirement, set out in section 160(1), that offenders must, in the absence of a reasonable excuse, comply with the conditions of supervision orders.

5.270 The statement of compatibility for the SSODSA[124] discusses this issue and refers to the English case *R(H) v Mental Health Review Tribunal*.[125] In that case, a condition of a patient's release from detention was to comply with a regime of medication. The English High Court held that this was not unlawful because there was no sanction for non-compliance.

5.271 The imposition of compulsory treatment outside the strict criteria and safeguards provided in the *Mental Health Act*, may breach section 10(c) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic), which provides that a person must not be subjected to medical treatment without his or her full, free and informed consent. It may also be incompatible with international human rights law. It is the Panel's understanding that these considerations saw the exemption (which was excluded from the original Bill), included in the final Act.

[124] Victoria, Parliamentary Debates, Legislative Assembly, 12 November 2009, 4027–37 (B. Cameron Minister for Corrections).

[125] [2007] EWHC 884 Admin.

5.272 The exemption may have also been directed at avoiding a situation whereby offenders were forced to accept other treatment, not necessarily related to their mental health, such as anti-libidinal medications, which would have significant human rights implications.[126] It is also noted that some offenders subject to post-sentence orders have refused medical treatment because of a reaction to such medication or for other health reasons.

5.273 The Panel accepts the existing safeguards, the suitability of the test for compulsory treatment under the *Mental Health Act,* and more broadly the government's commitment to reducing, and where possible eliminating, restrictive intervention in mental health services.[127] The Panel is not suggesting that there is an issue with, or reform needed to, the existing threshold for compulsory treatment.

5.274 However the Panel also acknowledges that this places those responsible for managing such offenders in a potentially compromised position – especially in circumstances in which there is evidence of deteriorating mental health, which may or may not be accompanied by a corresponding increase in the risk posed by the offender, but also in which the offender's mental health issues have not yet met the threshold for compulsory treatment.

The need for forensic accommodation options that support coordinated service delivery

5.275 In discussions with the Panel, Forensicare[128] and others have identified the need for more intensive interventions than currently exist, where professional clinical case management is readily available in the residential setting. They suggest there needs to be a model of intensive risk case management for this small cohort, involving 'high dosage'[129] intervention – several hours a week, whereby all staff they have contact with are trained to work effectively with them.

5.276 Interventions would require a highly complex package and the foremost objective would be the appropriate reappraisal of risk and therapeutic interventions. Such a residential environment would need to employ step-up/step-down approaches, so that risk could be managed more effectively during a high risk incident, but the least restrictive environment possible would operate on a daily basis.

5.277 Other jurisdictions have explored options for accommodation which include intensive cognitive-behavioural rehabilitation programs. For example, since 1998, such programs have been delivered in New Zealand's Rimutaka Violence Prevention Unit.[130]

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126 The NSW Government recently announced a new taskforce to examine 'improving child protection through anti-libidinal treatment or 'chemical castration' of child sex offenders' Deputy Premier of NSW, Minister for Justice and Police and the Attorney-General, 'Taskforce on Anti-Libido Treatment of Child Sex Offenders', Media Release (26 August 2015) <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2015/Taskforce-on-anti-libido-treatment-of-child-sex-offenders.aspx>.

127 Department of Health, *Providing a Safe Environment for All - Framework for Reducing Restrictive Interventions: Report* (2013).

128 Consultation with the Victorian Institute of Forensic Mental Health (Forensicare) (20 August 2015).

129 'High dosage' in this context does not relate to medication but to the intensity of intervention being delivered.

130 Devon L L Polaschek, 'High Intensity Rehabilitation for Violent Offenders in New Zealand: Reconviction Outcomes for High-and Medium-Risk Prisoners' (2011) 26(4) *Journal of Interpersonal Violence* 664–682.

5.278 In Canada, the Regional Psychiatric Center in Saskatchewan carries out a six to eight month aggressive behaviour control program.[131] In Canada special provision is made for offenders wishing to be supervised in an aboriginal community and, in the development of a Correctional Plan, agencies are required to give the aboriginal community an opportunity to propose a plan for the offender's release on supervision, and integration, into the aboriginal community.

5.279 The Review of the *Crimes (Mental Impairment and Unfitness to be Tried) Act* by the Victorian Law Reform Commission recommended a new medium-secure forensic mental health facility be established as an approved mental health service for adults diagnosed with a mental illness who are subject to supervision orders under the *Crimes (Mental Impairment and Unfitness to be Tried) Act.*

5.280 Table 19 above shows the forensic beds currently operational in Victoria, comprising: 40 forensic acute care; 56 forensic continuing care; and 20 forensic sub-acute care. The Panel notes that, within these, there is an existing option to cater for SSODSA offenders. For example, the Prevention and Recovery Care Services sit between adult psychiatric inpatient units and the provision of intensive community treatment in a client's usual place of residence. They do not admit involuntary patients[132] so this could be a relevant option for SSODSA offenders with deteriorating mental health who do not meet the criteria for compulsory treatment. The services are described as:

> a step up from the person's place of residence or a step down from an inpatient unit. In this context, 'prevention' refers to the capacity to intervene early in an episode of illness or relapse to reduce the risk of escalation, to have positive impact on the pattern of illness and to minimise the harmful impact on individuals, their families and carers.[133]

5.281 However there would seem to be barriers to the feasibility under the current service model of these services being an accessible option to SSODSA offenders, including:

- The average length of stay in such as service is identified as ideally being between seven to 14 days, with a maximum length of stay of 28 days.[134] For an offender requiring longer term support with mental health issues this would provide minimal time for therapeutic or voluntary clinical interventions.
- Possible unsuitability for the service, due to a number of variables, including in particular clinical or safety risk, the offender's behaviour, and the mix of patients in the service at that time.[135] It is anticipated this could screen out many SSODSA offenders.
- The authorised psychiatrist of the relevant area mental health service has responsibility for entry to and exit from the service, and the relationships and referral pathways between area mental health services and correctional services may not be consistent across all regions.

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131 C Di Placido et al., 'Treatment of Gang Members Can Reduce Recidivism and Institutional Misconduct' (2006) 30 *Law and Human Behavior* 93–114.

132 Although those on a community treatment order may be voluntarily admitted for more intensive community treatment and support: Department of Health and Human Services, Adult Prevention and Recovery Care (PARC) Services Framework and Operational Guidelines (2010) 19.

133 Department of Health and Human Services, Adult Prevention and Recovery Care (PARC) Services Framework and Operational Guidelines (2010) 2.

134 Ibid 13.

135 Ibid 11.

5.282 At the other end of the spectrum there is the Thomas Embling Hospital which is a secure forensic mental health hospital managed by Forensicare. The hospital provides advanced clinical treatment and programs to patients from the criminal justice system as well as a number of psychotherapeutic programs. There are also vocational, education and training programs, health and wellbeing programs and other activities that are designed to provide purposeful, meaningful, and structured use of time while supporting psychological, social and emotional needs in a therapeutic, yet secure, environment.[136] Thomas Embling has the capacity to accommodate residents for longer stays in a therapeutic environment, although admission is generally limited to forensic patients detained under the *Crimes (Mental Impairment and Unfitness to be Tried) Act* or security patients transferred from prison who require involuntary treatment under the *Mental Health Act*. Apart from admission barriers and the fact that SSODSA offenders with declining mental health may not satisfy the criteria for compulsory treatment, the demand on the facility is enormous. The Department of Health and Human Services advised the Panel that master planning is currently underway which will include a feasibility study for a new medium secure forensic mental health service and the development of a business case for the expansion of and establishment of additional forensic community services. This will incorporate the eight new high-secure beds funded at Thomas Embling Hospital as announced in the 2015–16 state budget.[137]

5.283 The fundamental principle underpinning forensic services is that offenders should have the same level of mental health services, relative to need, as the general population. The most efficient and cost effective delivery of therapeutic interventions is difficult in locations which are not geographically proximate to both offender and service provider. Neither the Greenhill Detention Unit nor Corella Place can consistently, or even more than rarely, provide that proximity. This detracts from the availability to residents in those facilities of correctional programs which aim to adjust 'behaviour from a pattern that is criminal or anti-social to one that is more law-abiding or pro-social'.[138]

5.284 This is not a criticism of the staff with whom we met at Corella Place and Greenhill Detention Unit in Hopkins Correctional Centre and in whom we observed great professionalism and expertise in supervising offenders. On the contrary, the Panel wishes to record its appreciation of their professionalism.

5.285 The Panel does consider it necessary to repair the current deficiencies in service provision for offenders who have mental health issues and who are subject to supervision orders under the SSODSA. The first step is to recognise that while area mental health services are funded to provide basic care, largely acute and crisis driven, to people with severe mental illnesses, more intensive engagement may be required beyond short periods of intervention at times for SSODSA offenders. Existing services should be reviewed by the Department of Health and Human Services to identify options that may enable this cohort to receive tailored support in an environment where there is specialist knowledge to assist SSODSA offenders with mental health issues.

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136 Information provided by the Department of Health and Human Services to the Panel on 16 July 2015.

137 Information provided by the Department of Health and Human Services to the Panel on 23 November 2015.

138 Laurence L Motiuk, 'The Evolution of Evidence-Based Correctional Programs in Canada' *151st International Training Course Visiting Experts' Papers, Resource Material Series* no. 88, 1.

Recommendation 33

Forensic mental health residential accommodation options must be increased to cater to offenders subject to the reformed post-sentence detention and supervision scheme. Such accommodation options must:

- have a therapeutic focus to support offenders whose mental health issues make Corella Place and unsupported community residential options inappropriate for their needs
- provide treatment on a voluntary basis, unless the criteria for compulsory treatment under the *Mental Health Act 2014* (Vic) are applicable and satisfied, and
- include options that provide for short term or medium term placements.

While any such accommodation option should operate as a designated mental health service under the *Mental Health Act 2014* (Vic), it must be appointed a residential facility for the purposes of any legislation giving effect to the reformed post-sentence detention and supervision scheme, so that courts have more options when making residence conditions. These accommodation options, and any interim arrangements until operationalised, should have the capacity to respond to the prevalence of mental health issues amongst offenders subject to post-sentence supervision orders.

5.286 The Panel notes appropriate oversight by the courts and the Public Protection Authority, in addition to documented risk management strategies through the coordinated Intervention and Management Plan, should support both transparency and appropriate oversight when residential placements change due to deteriorating mental health.

The Panel's view: multiple and complex needs approach to current and proposed accommodation options

5.287 The presence of co-occurring disorders in the population of offenders subject to the SSODSA has been at the forefront of the Panel's considerations when conducting this review.

5.288 A recent Victorian study investigated the relationship between mental illness, substance use disorders, antisocial personality disorder, and offending, and found:

> Forensic mental health services must take into account the effect that co-occurring disorders have on clients' functioning and offending. Those who work with people with psychiatric disabilities and co-occurring substance use disorders must ensure that the substance disorders are addressed to help ensure recovery from the mental illness and to reduce the likelihood of offending.[139]

5.289 Corrections Victoria is likewise keenly aware of the need for intensive and coordinated interventions for their complex offenders, and works extremely hard to secure the service responses needed, some of which are beyond their remit to deliver or demand.

5.290 The isolation of residential facilities such as Corella Place adds to the barriers which must be overcome to deliver the required interventions. Indeed the capacity of Corella Place as a residential facility to accommodate complex individual characteristics and timely access to services for offenders has prompted questions as to whether they would be better managed through alternative approaches and legislative frameworks:

> The complex personalities and impairments that are present in a majority of the people on these orders warrants consideration of whether alternative disability or mental health orders could be used to manage the risk. This would enable the post-sentence risk regime to operate in the least restrictive way possible, consistent with the requirements of the Act and the *Charter of Human Rights and Responsibilities Act 2006*. Consideration should be given to reforms that create more options and meaningful conditions that enable judges to tailor orders such that the supervision and treatment supports match the level of risk and the needs of the offender.[140]

5.291 The Panel has given specific attention to these issues, noting the prevalence of intellectual disability and mental health issues amongst the cohort, and recommended more accommodation options in response to these offenders' complex needs.

5.292 The Panel recognises however that offenders' complex needs are co-occurring, and any approach to reforming legislative, service delivery and governance models must be cognisant of this if it is to succeed. The same applies to accommodation options.

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[139] James Ogloff et al., 'Co-Occurring Mental Illness, Substance Use Disorders, and Antisocial Personality Disorder Among Clients of Forensic Mental Health Services' (2015) 38(1) *Psychiatric Rehabilitation Journal* 16–23.

[140] Correspondence from Victoria Legal Aid, Criminal Law Services to the Panel on 28 August 2015.

5.293 Irrespective of whether an offender subject to the SSODSA resides at Corella Place, elsewhere in the community, in a forensic residential disability service, or in forensic mental health residential accommodation, a multiple and complex needs approach should be applied to address co-occurring disorders. This approach must be bolstered in existing accommodation, and inform the development of proposed accommodation options.

5.294 The Panel notes that the Intervention and Management Plans, developed and delivered via the Public Protection Panel/s, will be invaluable in facilitating more holistic responses. Expanding the range of step-up and step-down options in existing and proposed accommodation options may also provide flexibility to tailor responses based on the dynamic nature of risk. Greater co-location of service responses, in residential or therapeutic environments accessible to offenders could also support this. For example, the Resettle prototype community risk assessment and intensive case management service in Merseyside in the northwest of England gives a positive example of intensive, coordinated interventions that aim to work with offenders until they are safe to move to other appropriate accommodations:

> They are transported from their accommodations into the Resettle centre each day to undergo a range of relevant group and individual therapies, education, and training work related to the acquisition of basic life skills (such as employment), as well as treatment, victim- and offence-focused work, support and guidance. All work with Resettle clients is based on a social therapy model, borrowing heavily from the Dutch *terbeschikkingstelling* model of intervention with offenders … Practitioners in Resettle come from a range of backgrounds including probation, psychology, mental health nursing, and social therapy … .[141]

Recommendation 34

Any of the current or proposed accommodation options available under the reformed post-sentence detention and supervision scheme should recognise the complexity of the cohort of offenders, such that irrespective of where an offender is residing, a multiple and complex needs approach should be applied to address co-occurring mental health and disability needs, substance use issues and problem behaviour. This approach should be reflected in the Intervention and Management Plan developed by the lead agency on the Public Protection Panel/s to deliver coordinated services and information sharing.

[141] Logan (2011), above n 72.

6. The Panel's recommendations in practice

6.1 The recommendations made in this report propose significant changes to the legislative and governance frameworks underpinning the existing post-sentence detention and supervision scheme.

6.2 As has been noted earlier in this report, aspects of the existing scheme operate at substantial cost to the Victorian Government. It is of course important when analysing these costs to acknowledge the benefits to the community that the scheme delivers in terms of community protection and reassurance – some of which are difficult or indeed, inappropriate, to measure in purely financial terms.

6.3 The Panel also acknowledges that some of the recommendations made in this report will have considerable cost implications for the State of Victoria. This is particularly so in the case of those recommendations which will require a capital outlay, including the establishment of the Public Protection Authority and the investment in the infrastructure required to support the development of more tailored and flexible options to accommodate offenders and manage their risk of reoffending. While the Panel has recommended that the scheme be broadened to include serious violent offenders, it seeks to narrow the focus of the scheme by recommending two-part eligibility criteria that include a cap on the length of qualifying sentences. Therefore, any impact on costs due to such an extension of the scheme may be neutralised, if the Panel's advice on the eligibility criteria is accepted.[1]

6.4 That said, the Panel is of the view that the reforms proposed by it, which require investment, will be well worth the expenditure, particularly those that relate to:

- early assessment and delivery of offence-specific treatment in prison
- independent and rigorous custodial oversight of interventions and management of those offenders who present the greatest likelihood of causing serious interpersonal harm on release, and
- coordinated inter-agency service delivery, coupled with community accommodation options, that are tailored to the multiple and complex needs of offenders.

6.5 These reforms are put forward, not only to improve community safety (which of course has its own financial benefits) but for their potential, in the long run, to deliver a more cost-effective post-sentence scheme.

[1] Recommendation 2 proposes changes to the eligibility criteria by fixing the minimum length of an eligible sentence of imprisonment imposed on an eligible offence at three or four years' imprisonment. There is presently no such requirement under the SSODSA.

Costs associated with the existing post-sentence detention and scheme

6.6 Corrections Victoria has provided the Panel with an outline of some of the costs associated with the scheme. Some of these have been discussed in detail in the earlier chapters of this report. The Panel has found it somewhat difficult, within the constraints of the time allocated to it for the purpose of this review, to obtain a comprehensive picture or estimate of the overall costs specific to the post-sentence scheme. This appears to be because, in a number of instances, Corrections Victoria collates its data by reference to its general operations, rather than specifically in relation to its financial expenditure for the post-sentence scheme.

6.7 For example, with the exception of Corella Place, it was not possible for Corrections Victoria to specify the staffing costs relating to case managing those subject to the supervision orders under the scheme, as this is undertaken by correctional services staff within the regional network of Corrections Victoria. The overall management of supervision order offenders is the responsibility of the Executive/Regional Directors and Regional General Managers of Community Correctional Services, with case management provided by an allocated Specialist Case Manager and oversight provided by the relevant Principal Practitioner. In addition to managing supervision order offenders, Specialist Case Managers manage sex offenders on parole – with equivalent Principal Practitioner oversight.[2] Some other costs are also difficult to quantify, such as those relating to the various courts involved in the scheme.

6.8 With these important caveats in mind, the Panel has endeavoured to set out below a summary of some of the major areas of expenditure associated with the administration of the scheme by Corrections Victoria in the last financial year.[3]

Sex Offender Management Branch

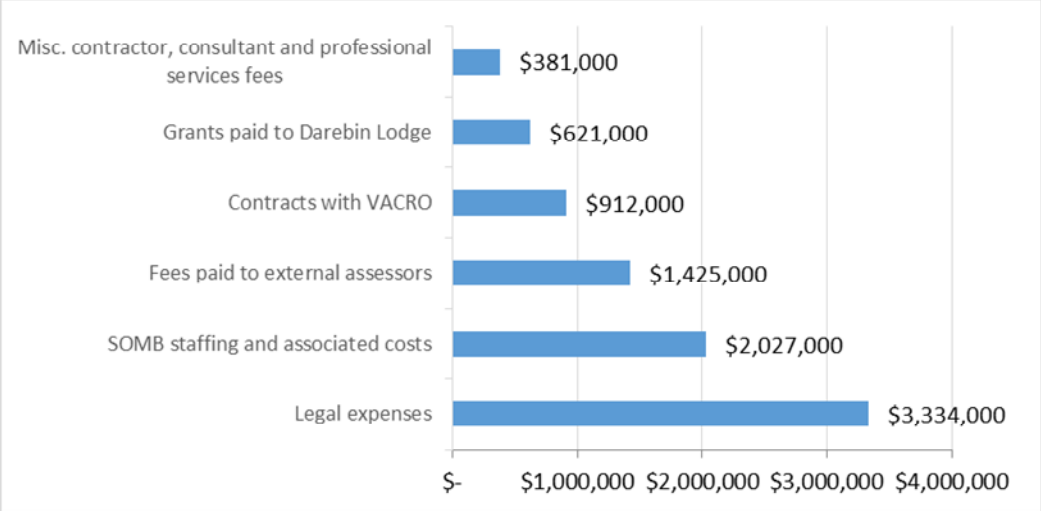
6.9 The chart below sets out a general breakdown of the expenditure for the Sex Offender Management Branch of Corrections Victoria during 2014–15. The total expenditure for the Branch for that year was $8,700,000.

6.10 Of note, staffing costs include salaries, information technology, training and overheads. Legal expenses include fees paid to external legal firms and the Victorian Government Solicitor's Office (an administrative office of the Department of Justice and Regulation) and comprise disbursements, including barrister fees, but do not include legal expenses incurred by the Office of Public Prosecutions. The fees paid to external assessors include approximately 76 full clinical reports and 51 assessment reports.

[2] The Panel acknowledges that it is perhaps only relatively recently that the growth in numbers of offenders subject to the scheme would justify the work required to produce a more accurate breakdown of costs associated with it.

[3] Information and data provided by Corrections Victoria to the Panel on 16 November 2015.

Figure 15: Expenditure for the Sex Offender Management Branch, Corrections Victoria, 2014–15[4]



Corella Place residential facility employee costs

6.11 In addition to the expenditure incurred by the Sex Offender Management Branch, another key cost of the scheme related to employee expenses associated with the Corella Place Residential Facility, which in 2014–15 amounted to approximately $4,650,000. This includes staffing costs associated with eight of the 48 Specialist Case Managers and two of the 26 Principal Practitioners employed state-wide.

Specialised Offender Assessment and Treatment Service

6.12 Corrections Victoria has advised that total expenditure for treatment provided by the Specialised Offender Assessment and Treatment Service in 2014–15 was approximately $5,500,000. This encompasses all costs associated with the Service, including but not limited to contractors, consultants and professional services, employee costs and outsourced contracts. It is noted that these costs were not specific to offenders subject to supervision orders.

[4] VACRO refers to the Victorian Association of Care and Resettlement of Offenders (see glossary); SOMB refers to the Sex Offender Management Branch; Darebin Lodge is a supported residential service.

Electronic monitoring

6.13 Corrections Victoria also provided the Panel with an outline of expenditure associated with the electronic monitoring of supervision order offenders (some of whom reside at Corella Place and some elsewhere in the community) and parolees.[5] The expenditure includes the cost of contractors, consultant and professional services fees, electronic monitoring equipment, outsourced contracts and employee costs. These figures have not been included in this report as the expenditure is not specific to the post-sentence scheme and also includes costs relating to parolees who are subject to electronic monitoring.[6] However, the Panel observes that the costs associated with electronic monitoring were considerable, particularly in proportion to other important functions undertaken by Corrections Victoria.

Investing in treatment and rehabilitation

6.14 Although the financial information set out above does not include all of the costs associated with the scheme, what is clear is that some of the costs associated with its administration are substantial in comparison to some of those spent on key items relating to the treatment and rehabilitation of offenders. By way of example, in the last financial year, the expenditure on legal expenses and procuring external assessments for the purpose of litigation under the SSODSA was close to the total cost of treatment delivered by the Specialised Offender Assessment and Treatment Service. Another particularly stark example of this situation is outlined in Chapter 5, where the Panel identified that the average cost of driving an offender from Corella Place to treatment in Melbourne outweighed the cost of delivering the treatment by the Service.

6.15 The Panel notes that the need for greater investment in the rehabilitation and treatment of offenders than is currently the case was a common theme in its consultations. Indeed, Victoria Legal Aid made this point most succinctly and pertinently in a letter to the Panel, following consultation on the review:

> Targeted investment that goes towards increasing and improving treatment and support services, as well as the skill of staff tasked with the difficult job of managing these complex clients is key to improving the efficacy of any post-sentence regime. When proper investment also sits alongside a more responsive legislative framework that provides additional options to better manage risks and those offenders who truly require post-sentence supervision, we will actually be able to reduce the cost, as well as deliver a greater level of protection to the community.[7]

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5 At 30 June 2015, 130 such offenders were subject to wearing an electronic monitoring device. The average number of offenders wearing such a device for the 2014–15 financial year was as follows: 37 parolees; 41 supervision order offenders at Corella Place; and 18 supervision orders residing in the community.

6 Corrections Victoria advised the Panel that in the 2014–15 financial year, approximately 61 per cent of offenders subject to electronic monitoring were offenders subject to post-sentence supervision, the remainder being parolees.

7 Correspondence from Victoria Legal Aid to the Panel on 28 August 2015.

6.16 The Panel is also of the view that the recommendations directed at investment in early intervention, improved access to treatment and programs, more appropriate accommodation options and better coordinated inter-agency service delivery have the potential to redress this imbalance by:

- reducing the number of offenders who reach the end of their sentence at a level of risk which results in their consideration for post-sentence detention or supervision, and
- in those circumstances where it is necessary to make an offender subject to post-sentence detention or supervision, minimising the duration and intensity of such orders.

6.17 Further, the Panel has made a number of recommendations that relate to ways in which the administrative costs associated with the scheme may be minimised. Of particular note are the recommendations it has made in relation to the responsibilities of the new Public Protection Authority to provide guidance on fiscally responsible risk assessment and the changes it has recommended to the process for the prosecution of breaches of supervision orders.

6.18 Efforts to minimise the administrative costs associated with the scheme should not stop with implementation of these recommendations however. Minimising costs will require continued vigilance and innovation on the part of those responsible for the scheme to ensure that the use of resources is proportional, considered, and value for money.

Recommendations in practice

6.19 The Panel has prepared two figures to illustrate the changes in process that would be given effect if its recommendations were to be implemented. Figure 16 outlines the current process under the SSODSA for an offender sentenced in the County Court for numerous serious sexual and violent offences to a sentence of imprisonment for 12 years with a non-parole period of nine years, while Figure 17 outlines the process for the same offender under the Panel's proposed changes.

6.20 Some reforms become problematic because they expand beyond the boundaries originally contemplated for them. The registration of sex offenders is perhaps an example. When conceived, it was thought that a relatively small number of registrations would result. On any view, that number has grown beyond all reasonable expectations. It is now so large as to have created its own problems.

6.21 Conscious of the danger that the same fate may befall the Panel's recommendations, it at first contemplated suggesting that a sunset clause be inserted in any legislation by which those recommendations were to be put into effect. On balance, however, the Panel is of the view that the legislative requirement for a rigorous review after five years would be sufficient to neutralise the danger, while a sunset clause could inhibit such improvements in the scheme as might be sought at the time at which the sunset clause is to take effect.

6.22 Consistently with this, and given the scope and possible implications of the recommended changes, the Panel considers it important that there be a review of any of the reforms that are implemented. Such a review would allow the government to assess whether they are operating as intended and whether any amendment is required. The Panel recommends that any legislation introduced in response to this review include a provision which requires the Minister for Corrections to conduct a review of legislation within a specified period. This could be similar to sections 44 and 45 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) which set a period of four and eight years respectively for review by the Attorney-General.

6.23 To assist in the conduct of such a review, and to ensure that a proper appraisal of the financial costs specifically associated with the scheme can be made, the Panel considers that it may be of assistance, where possible, for the Department of Justice and Regulation, Corrections Victoria and related bodies (for example the new Public Protection Authority) to collect financial data pertaining to the scheme in a way which more easily allows such an assessment to be made. This resource will also be an important mechanism for the Department to assess whether services, be they delivered internally or by external contractors, are proportional and delivering value for money.

Recommendation 35

Any legislation introduced in response to this review should include a provision that requires the Minister for Corrections to conduct a review of the legislation after five years of its operation.

Figure 16: Progression under current model (basic overview)

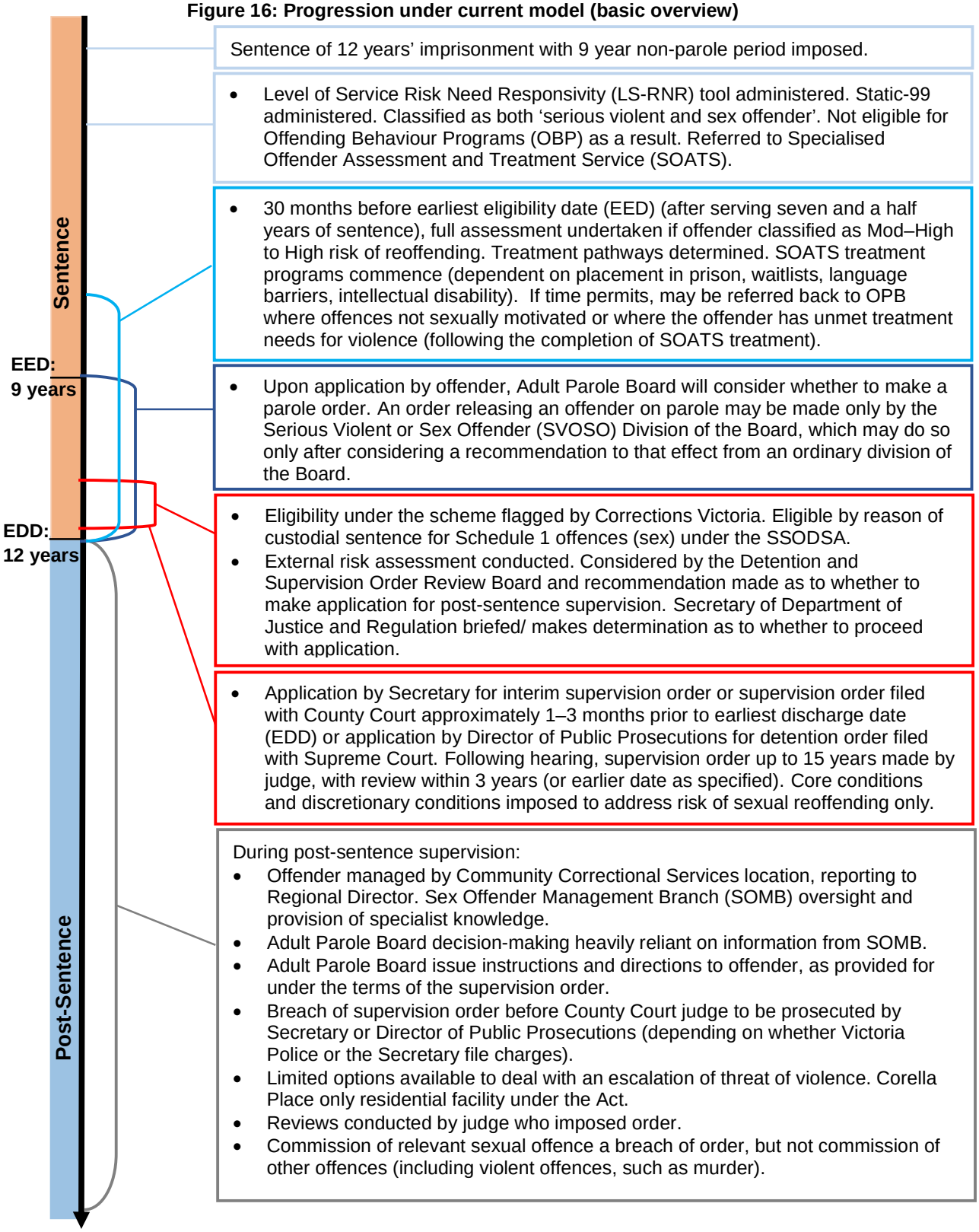
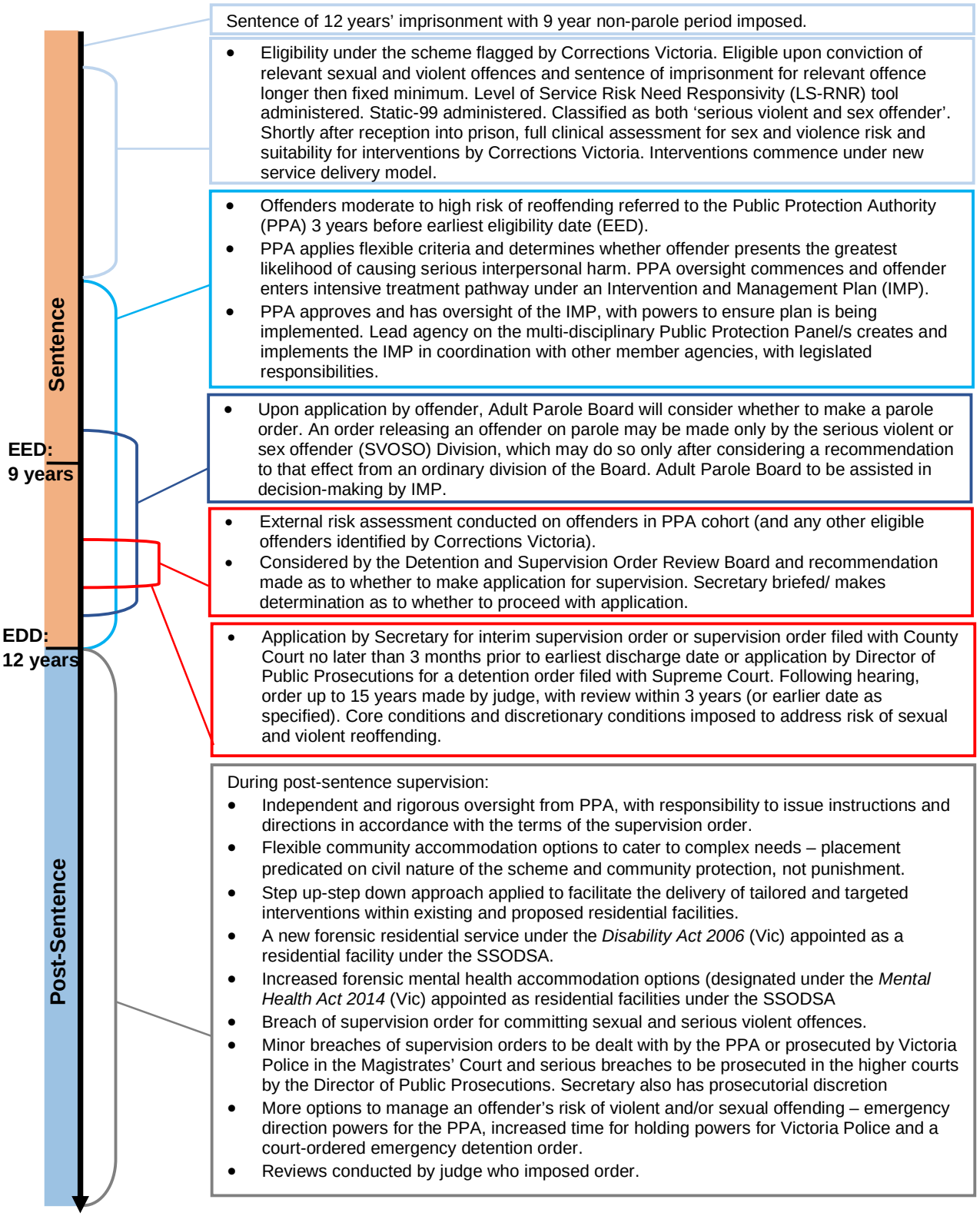


Figure 17: Progression under proposed model (basic overview



Appendices

Appendix 1 – meetings, observations and visits

List of meetings

Number	Meeting	Date
1	Greg Wilson, Secretary to the Department of Justice and Regulation	3 June 2015
2	Allison Will, Director, Criminal Law Policy Larissa Strong, Director, Justice Health	3 June 2015
3	Jan Shuard, Corrections Commissioner; Andrew Reaper, Deputy Commissioner Offender Management	3 June 2015
4	Sex Offender Management Branch, Corrections Victoria (Andrew Reaper, Deputy Commissioner Offender Management; General Manager)	9 June 2015
5	Peter Ewer, Executive Director North West Metropolitan Area, Community Correctional Services	9 June 2015
6	Offender Management Development Branch, Corrections Victoria (General Manager)	10 June 2015
7	Dr Mayumi Purvis, Director CCA and Honorary Fellow, University of Melbourne	15 June 2015
8	Specialised Offender Assessment and Treatment Services, Corrections Victoria (General Manager; Deputy Managers)	17 June 2015
9	Sunshine Community Correctional Services (Peter Ewer, Executive Director North West Metropolitan Area; General Manager; Principal Practitioner)	18 June 2015
10	Detention and Supervision Order Division, Adult Parole Board (His Honour Frank Shelton, Acting Chairperson of the Board; His Honour Peter Couzens, incumbent Chairperson of the Board; Chief Administrative Officer of the Board; General Manager Operations of the Division; Manager of the Division)	19 June 2015
11	Dr Pradeep Philip, Secretary Department of Health and Human Services	01 July 2015
12	Leanne Beagley, Director, Mental Health	01 July 2015

13	Larissa Strong, Director, Justice Health	3 July 2015
14	Chris Eccles, Secretary to the Department of Premier and Cabinet	3 July /2015
15	Victorian Association for the Care and Resettlement of Offenders (VACRO) (Fiona Rogers, Manager, Transitional Programs, Senior Case Manager, Transitional Programs and Senior Case Manager, Community Support Program)	3 July 2015
16	Corella Place, Corrections Victoria (Andrew Reaper, Deputy Commissioner Offender Management; General Manager; cross section of staff)	10 July 2015
17	Judges of the County Court of Victoria	15 July 2015
18	Victoria Legal Aid (Helen Fatouros, Director Criminal Law Services; Senior Public Defender; Program Manager, Summary Crime Program; Senior Lawyer; Senior Policy and Strategic Projects Officer, Criminal Law)	16 July 2015
19	Judges of the Supreme Court of Victoria	16 July 2015
20	Clare Morton, Director, Victim Support Agency	16 July 2015
21	Professor James Ogloff	23 July 2015
22	John Champion SC, Director of Public Prosecutions and the Office of Public Prosecutions (Senior Crown Prosecutor; Directorate Manager of the Policy and Advice Directorate, Principal Solicitor and Senior Solicitor, Policy and Advice Directorate)	23 July 2015
23	Professor Mark Oakley Browne, Chief Psychiatrist	28 July 2015
24	Multiple and Complex Needs Initiative (MACNI) (Stuart Lindner, Director; Assistant Director, Service Implementation and Support Branch)	5 August 2015
25	Department of Health and Human Services (Pier De Carlo, Executive Director, Service Design & Operations Division and a cross section of staff from Disability, Youth Justice and Child Protection)	5 August 2015
26	Victoria Police Intelligence and Covert Support Command (Tracy Linford, Assistant Commissioner; Senior Forensic Psychologist; Superintendent, Intelligence and Covert Support Command – Regional Intelligence Capability; Detective Senior Sergeant, Sex Offender Registry)	5 August 2015

27	Offending Behaviour Programs, Corrections Victoria (Andrew Reaper, Deputy Commissioner Offender Management; General Manager)	11 August 2015
28	Corella Place, Corrections Victoria (Andrew Reaper, Deputy Commissioner Offender Management; General Manager; cross section of staff)	12 August 2015
29	Victoria Police, Ararat (Superintendent Paul Margetts; Local Commander for Grampians shire; Detective Sergeant)	12 August 2015
30	Ballarat Area Mental Health Service (Tamara Irish, Executive Director Mental Health; Abdul Khalid, Associate Professor & Director of Clinical Services, Mental Health Services)	13 August 2015
31	Major Offenders Review for Detention Order Offenders, Hopkins Correctional Centre (Brendan Money, Assistant Commissioner, Sentence Management Branch; General Manager Major Offenders Unit; General Manager Sex Offender Management Branch; Operations Manager, Hopkins Correctional Centre)	13 August 2015
32	Neil Paterson, Chief of Staff, Chief Commissioner's Office, Victoria Police	14 August 2015
33	Graham Ashton AM APM, Chief Commissioner, Victoria Police	20 August 2015
34	Area Mental Health Services (Larry Bochsler, Austin Health; Associate Professor Ruth Vine, Melbourne Health; Associate Professor Peter Bosanac, Clinical Director Mental Health & Aged Care Services, St Vincent's Hospital Melbourne; Jacques Classen, Latrobe Regional Hospital; Dr Anthony Cidoni, Unit Head Dandenong Adult Mental Health, Monash Health)	20 August 2015
35	Victorian Institute of Forensic Mental Health (Forensicare) (Tom Dalton, Chief Executive Officer; Jonathan Norton, Executive Director Prison and Community Operations; Dr Kevin Ong, Assistant Clinical Director Community Operations; Dr Jen McCarthy, Psychologist and Problem Behaviour Program Manager)	20 August 2015

36	Regional Services Network, Corrections Victoria (Gabrielle Levine, Executive Director, South Area, Jodi Henderson, Executive Director, North Area; Peter Ewer, Executive Director, North West Area; Catherine Darbyshire, Regional Director, Grampians; Will Crinall, Regional Director, Gippsland; John Duck, Regional Director, Hume; Len Norman, Deputy Director, North West Metro Area; Clare Malone, Acting General Manager, Regional Services Network)	26 August 2015
37	New South Wales Corrections (Michelle Micallef, Director Sydney West, Community Corrections; A/General Counsel, Office of the General Counsel; Director Strategy, Community Corrections; State-wide Manager Programs)	4 September 2015
38	Greg Davies APM, Victims of Crime Commissioner	8 September 2015
39	Registered victim 1	9 September 2015
40	Dr Danny Sullivan	10 September 2015
41	Family Violence Royal Commission (The Honourable Marcia Neave, Commissioner and Annie Tinney, Director, Community Engagement)	10 September 2015
42	Judges of Victorian County Court	10 September 2015
43	Registered victim 2	11 September 2015
44	Registered victim 3	11 September 2015
45	Deborah Glass OBE, Victorian Ombudsman	11 September 2015
46	Victims Register, Victim Support Agency (Victims Register Prisoner Compensation Quarantine Fund Co-ordinator; Victims Register Operations Manager)	22 September 2015
47	His Honour David Jones AM	8 October 2015
48	Detention and Supervision Order Division, Adult Parole Board Detention and Supervision Order Division, Adult Parole Board (His Honour Peter Couzens, Chairperson of the Board; His Honour Frank Shelton, Chairperson of the Division; Chief Administrative Officer of the Board; Full time member of the Board; General Manager Operations of the Division)	15 October 2015

List of observations and visits

Number	Observation / Visit	Date
1	Detention and Supervision Order Review Board (observation of meeting)	9 June 2015
2	Detention and Supervision Order Division, Adult Parole Board (observation of meeting)	22 June 2015
3	County Court (observation of review of supervision order)	6 July 2015
4	Corella Place (visit and tour of facility)	10 July 2015
5	Hopkins Correctional Centre, Greenhill Detention Unit (visit and tour of facility)	10 July 2015
6	Corella Place (observation of quarterly supervision order reviews)	12 August 2015
7	Hopkins Correctional Centre, Greenhill Detention Unit (observation of monthly detention order reviews)	13 August 2015

Appendix 2 – Glossary of key terms

Acquired Brain Injury (ABI): refers to any damage to the brain that occurs after birth (with the exception of Foetal Alcohol Spectrum Disorder).

Community Correctional Services: is a division of Corrections Victoria, which oversees the delivery of community corrections in Victoria. Community Correctional Services involves the management and supervision of offenders in the community. These are offenders that are serving court-imposed orders either as an alternative to imprisonment or as a condition of their release on parole from prison. Offenders who are in the community and subject to court-imposed orders or parole must report regularly to their community corrections officer and may have to participate in unpaid community work and rehabilitation programs.

Child victim sex offender cohort: sex offenders subject to the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) who have offended only against children (any person aged under 16 years).

Complex adult victim sex offender cohort: complex sex offenders subject to the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) who have offended against adult victims (any person aged 16 years or more). These offenders are considered to be 'complex' because they:

- have a complex offending profile by presenting a risk of violent offending (in addition to a risk of sexual offending), and/or
- are, by reason of their issues and needs (including one or more of mental health issues, personality traits/behavioural issues, cognitive impairment and substance misuse) difficult to treat and manage.

Complex Adult Victim Sex Offender Management Review Panel: is the independent multi-disciplinary panel comprising the Honourable David Harper AM, Professor Paul Mullen and Professor Bernadette McSherry and who were commissioned by the Minister for Corrections, the Hon. Wade Noonan MP to review the management of serious sex offenders under the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic).

Corella Place: is a residential facility located in Ararat, which was established under the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic). It is currently operating over two campuses and it is designed to provide transitional accommodation, supervision and support for serious sex offenders who are subject to supervision orders, when appropriate accommodation cannot be found elsewhere in the community.

Deputy Commissioners Instructions: provide a framework for corrections to effectively manage offenders and prisoners. The Instructions outline minimum requirements and practices that must be carried out by all staff to meet legal obligations, court and Australian Parole Board expectations. They are in line with National Correctional Standards and Corrections Victoria's audit process. They are living documents that are updated as required. The Deputy Commissioner's Instructions ensure consistent implementation of the principles enshrined in the Offender Management Framework. All staff members are expected to manage prisoners and offenders in accordance with relevant legislation, manuals and policy requirements. This includes taking into account diversity considerations, such as gender, youth, disability and people from culturally and linguistically diverse (CALD) backgrounds. They may also contain Practice Guidelines that detail additional information to support the instructions.

Detention and Supervision Order Division, Adult Parole Board: is the Detention and Supervision Order Division of the Adult Parole Board which is specifically responsible for administering orders under the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic). Its specific functions are to monitor compliance with and administer the conditions of a supervision order; to give directions and instructions to an offender in accordance with any authorisation given to the Adult Parole Board under supervision order; to make decisions to ensure the carrying into effect of the conditions of supervision orders; to make recommendations to the Secretary in relation to applying to a court to review the conditions of supervision orders; and to review and monitor the progress of offenders on supervision orders.

Detention and Supervision Order Review Board: This non-legislative body is comprised of senior executives from a range of agencies who consider eligible offenders under the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic). The Board makes recommendations to the Secretary to the Department of Justice and Regulation regarding whether to apply for a supervision order or refer the matter to the Director of Public Prosecutions. Agencies and statutory office holders represented on the Board include the Victorian Government Solicitor, Victoria Police, the Department of Health and Human Services, the Department of Education, the Director of Public Prosecutions, a community representative, and the Department of Justice and Regulation (including the Victims Support Agency).

Detention order: is an order which allows for the continued detention of those serious sex offenders who would continue to pose an unacceptable risk if the offender was to remain in/return to the community. Detention orders are determined by the Supreme Court of Victoria, can be made for up to three years and can be reviewed for further periods of three years. The Supreme Court must review a detention order annually and can review the order at a shorter interval if required by the court. The Director of Public Prosecutions makes applications for detention orders.

Environmental Scan (Escans): are conducted to identify and assess individual risk and protective factors for a residence proposed by an offender whose current sentence is for sexual offences. They also make recommendations about the suitability or unsuitability of the residence based on these factors. Escans are conducted when an offender who is subject to a supervision order proposes accommodation, or proposes to change address. They are also conducted before the release of a sex offender on parole, and when such offender intends to change address.

Multiple and Complex Needs Initiative (MACNI): is a time-limited specialist service for people 16 years and older, who have been identified as having multiple and complex needs. This includes people with combinations of mental illness, substance abuse problems, intellectual impairment, acquired brain injury and forensic issues. MACNI is a joint initiative of the Department of Health and Human Services and the Department of Justice and Regulation. MACNI provides assessment, care plan coordination and brokerage funding for those high risk individuals whose multiple and complex needs challenge existing legislative frameworks and service systems.

Parole: is the conditional release by a parole board of a prisoner serving a sentence of imprisonment to allow the prisoner to serve the remainder of the sentence in the community for the period remaining in his or her sentence. While on parole, the offender is subject to conditions specified in the order granting parole, including supervision, reporting requirements, treatment programs and conditions relating to place of residence. Failure to comply with the conditions of parole can result in the cancellation of the offender's parole and the offender returning to prison. The Adult Parole Board of Victoria has jurisdiction over the parole of adult offenders serving sentences of imprisonment under Victorian law.

Principal Practitioner: is a key position involved in the management of sex offenders. He or she provides oversight of case management practices of moderate-high and high risk sex offenders. The Principal Practitioner provides advice and consultation in relation to identified offender risk escalation behaviours, incident management and quality assurance practices and processes with the above identified offender group. This level of oversight occurs in close consultation with relevant management. The Principal Practitioner works closely and collaboratively with a range of internal and external stakeholders, including the Adult Parole Board, Victoria Police, the Major Offenders Unit, Sex Offender Management Branch, Regional Directors, Community Correctional Services and prison General Managers.

Registered intellectual disability: A person who has been assessed by the Secretary to the Department of Health and Human Services as having an intellectual disability and is eligible for services under the *Disability Act 2006* (Vic).

Specialised Offender Assessment and Treatment Service: provides specialised assessment and therapeutic interventions to sexual offenders, as well as violent offenders with a registered intellectual disability, confirmed acquired brain injury, or offenders who have low cognitive functioning. The services are provided in prison and in the community to offenders on court orders, prisoners on parole and those subject to post-sentence supervision. The Service is a state-wide centralised service delivery model with 54 full time equivalent staff (psychologists, social workers and administration).

Sex Offender Management Branch: delivers a coordinated and integrated approach to the management of sexual offenders across both prison services and community corrections, including post-sentence supervision. The Branch is responsible for key elements of sex offender management within the organisation and comprises a number of functional areas including policy and project management, assessment and treatment and operations.

Specialist Case Managers: are responsible for delivering high quality case management to a caseload of the highest priority sex offenders, under correctional supervision. Specialist Case Managers are responsible for ensuring that the nature of sex offender management aligns with best practice initiatives used by Corrections Victoria.

***Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) (SSODSA):** the primary purpose of this Act is to enhance the protection of the community by requiring offenders who have served custodial sentences for certain sexual offences and who present an unacceptable risk of harm to the community to be subject to ongoing detention or supervision. The secondary purpose of this Act is to facilitate the treatment and rehabilitation of such offenders.

Supervision order: allows for post-sentence supervision of serious sex offenders who pose an unacceptable risk of committing a relevant offence if a supervision order is not made and the offender is in the community. Supervision orders can be determined by either the County Court or Supreme Court, can be made for up to 15 years and can be renewed for further periods of up to 15 years. The orders must be reviewed every three years by the court, or within a shorter period as specified by the court. They must include certain core conditions, and the court must consider imposing other relevant conditions. The Secretary to the Department of Justice and Regulation makes applications for supervision orders.

Victorian Association for the Care and Resettlement of Offenders (VACRO): is a non-government organisation which provides support and information to offenders and their families.

Victorian Institute of Forensic Mental Health (Forensicare): is responsible for providing adult forensic mental health services in Victoria. Forensicare has a 116-bed secure hospital (Thomas Embling Hospital), together with comprehensive community based programs and a prison service.

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