REINTEGRATING SEX OFFENDERS INTO THE COMMUNITY

Queensland's proposed reforms

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In June 2003 the Queensland Parliament enacted the *Dangerous Prisoners (Sexual Offenders) Act (DPSOA)*. The *DPSOA* authorises the Supreme Court of Queensland to order the continuing imprisonment of sex offenders beyond the conclusion of their prison term if they are judged to be an unacceptable risk to the community if released.

In June 2008 a review was conducted of all Queensland legislation and associated arrangements aimed at protecting the community from high-risk sexual and violent offenders. The review was conducted by an Inter-departmental Working Group (IWG) of the Queensland government, chaired by the Department of the Premier and Cabinet (DPC), with membership from the Department of Justice and Attorney-General (JAG), Department of Housing (DoH), Queensland Corrective Services (QCS), the Queensland Police Service (QPS), Queensland Health, the Department of Communities (DoC) and the Department of Child Safety (DChS). The IWG's report, *A New Public Protection Model for the Management of High Risk Violent and Sexual Offenders*,[1] indicates that the government has already accepted all of the recommendations made by the IWG, and that legislation will be tabled in the Queensland Parliament for implementation.[2]

In a section entitled 'Principles and Objectives', the report reads:[3]

> The community is understandably concerned about the risk posed by those offenders who are considered to be dangerous. It is incumbent upon government to provide the most effective public protection scheme possible. The review was conducted with the following principles and objectives in mind: recognition that strategies directed at treatment, rehabilitation and reintegration provide the best long-term solution to managing the risk posed by high risk offenders; the availability of suitable accommodation and adequate services are essential to ensuring the stability of high risk offenders when they are released into the community; any options for the management of high risk offenders must remain cognisant of fundamental legal principles underpinning the criminal justice system; and that in view of the complex nature of risk prediction that indefinite sentences and post-sentence detention should only be seen as a last resort.

The ultimate objectives, then, of the new Public Protection Model described in the report, can be summarised as: reintegration and release into the community; respect for the principles underpinning the criminal justice system; and post-sentence 'detention' as a last resort.

This article critically analyses a number of the recommendations in the report in light of these objectives and then reflects on the *DPSOA* experiment.

Reintegration and release into the community

Research indicates that housing placement and intensive community support is needed to maximise the prospects of successful reintegration. Unfortunately, housing options for people released from prison are typically extremely limited.[4] People released from prison are typically dependent on welfare or have low incomes which, when coupled with the stigma associated with time inside, can make it very difficult to obtain private tenancies.[5] Public housing options may be limited due to previous rent defaults.[6] People released under supervision pursuant to the *DPSOA* may have even more limited options, as these orders tend to be very strict,[7] and, unsurprisingly, are zealously policed.[8] In addition, pre-release housing and community support planning tends to be *ad hoc* and is inadequately resourced.[9]

There is a further complication: the criteria adopted by the probation and parole directorate of Queensland Corrective Services vis-à-vis suitability of housing are not based on objective scientific evidence. For example, proposed accommodation is routinely assessed as unsuitable on the basis that it is within an undefined radius of a park or school. In the generic relapse management plans utilised as templates within Queensland Corrective Services one of the 'triggers' of re-offending by those convicted of sexual offences against children is being proximate to children. This is true in a general sense since, in the absence of children, sexual offences against children cannot occur. The real issue, though, is whether any *particular* offender should have residence or other restrictions placed on him as far as being in proximity to children is concerned. Now, while this may be a valid consideration for some types of sex offenders it may well be irrelevant for those convicted of offences within their extended family, the group which constitutes the majority of sexual offenders against children.[10]

Research unequivocally demonstrates that there is a high correlation between the lack of post-release housing options and recidivism.[11] Developing a sensible and well-funded policy for pre-release planning and post-release housing and community support for people who are released from prison is in the best interest of the community, meets the objectives identified by the IWG,

REFERENCES

1. Queensland Government, *A New Public Protection Model for the Management of High Risk Sexual and Violent Offenders* (June 2008) <www.dcs.qld.gov.au/Publications/News_and_Events/News/HighRiskoffendersReportJune08.pdf> at 27 August 2008.

2. Ibid 3.

3. Ibid 7–8.

4. Eileen Baldry, Desmond McDonnell, Peter Maplestone and Manu Peters, 'Ex-Prisoners and Accommodation: What Bearing do Different Forms of Housing have on Social Reintegration of Ex-Prisoners?' (Paper presented at the Housing, Crime and Stronger Communities Conference, Australian Institute of Criminology and the Australian Housing and Urban Research Institute, Melbourne, 6–7 May 2002) 4.

5. Maria Borzycki and Eileen Baldry, 'Promoting Integration: The Provision of Prisoner Post-Release Services', (2003) 262 *Trends and Issues in Crime and Criminal Justice* 2.

6. Offenders who occupied public housing before they were incarcerated may return to the Department of Housing on release to be greeted with an unpaid debt. This affects their chances of securing housing from that source: see Baldry et al, above n 4, 12.

7. See, eg, the comments made by Justice Chesterman in *Attorney-General for the State of Queensland v Toms* (No 4470 of 2006, 8 April 2008). Toms was arrested for breaching a supervision order that said that he could not consume alcohol. Justice Chesterman asked '[w]as he drunk? Did he cause any problems?' When Ms Maloney for the Attorney-General said '[n]o', Justice Chesterman remarked '[L]et the man have a drink.'

8. Ibid.

9. Baldry et al, above n 4, 4.

10. Jill S Levenson and Leo P Cotter, 'The Impact of Sex Offender Residence Restriction: 1,000 Feet from Danger or One Step from Absurd' (2005) 49(2) *International Journal of Offender Therapy and Comparative Criminology* 168–78.

11. Baldry et al, above n 4, 12.

and, indeed, helps to realise the *DPSOA*'s 'paramount' concern for the protection of the community.[12]

Recommendation 10 specifies that 'the practice of providing accommodation on prison property for those offenders who cannot be properly managed in a residential setting continue' and Recommendation 12 that 'the controlled disclosure of information about prisoners released on Supervision Orders to the community be endorsed. The amount of information disclosed should be dependent upon where the offender is accommodated and the offender's risk profile'.

Together, these recommendations give rise to some very serious concerns. There have been a number of well-publicised incidents in recent years where the details of residential placement arrangements for released offenders have been leaked to the media. It is not surprising that neighbours become anxious when they learn that a released offender is living nearby, and there is a real risk that this anxiety can turn into vigilantism.

The question whether the details of sex offenders' movements and housing arrangements should be made publicly available raises complex ethical issues and is not discussed in any detail in this article.[13] It is a question that warrants very thorough consideration and review by Australian governments. But even in the absence of such a review, it seems obvious that the 'controlled disclosure' of information about the residential arrangements of released sex offenders could very easily become anything but 'controlled'. Once the word is out it can be spread, and this is almost certain to damage attempts to reintegrate (a fragile process) and may even increase the likelihood of vigilantism. If both Recommendations 10 and 12 are implemented, it seems inevitable that many people released into the community under supervision orders will be end up back in the prison precinct.

There is another serious concern that can be raised about Recommendation 10. The 'accommodation' on the prison property at Wacol Correctional Centre (the accommodation referred to in that recommendation) is located only 20 metres from the prison and is surrounded by a 10 metre high barbed wire fence. In recent months, 24-hour CCTV and floodlights have been installed. A dog squad officer has also been placed just outside the new facility as an added security measure.[14] All 'residents' are given a security classification rating before moving into the precinct and are required to carry Queensland Corrective Services identification cards at all times.

This certainly seems like a prison, and raises the question whether people who are released on supervision orders and end up back in this prison precinct have, under international law, been punished twice for their crimes.[15]

In the absence of properly resourced and administered pre-release and post-release housing and community support policies, it is difficult to see how Recommendations 10 and 12 will operate to advance the objectives of reintegration and release into the community.

Respect for the principles underpinning the criminal justice system

The fundamental objections to the *DPSOA* are now well known:[16] In short, the Act:

- authorises the re-imprisonment of a person without a fresh crime
- authorises the reimprisonment of a person without a criminal trial
- punishes a person twice for a previous offence
- creates uncertainly as to the real length of a prison sentence
- distorts sentencing principles by effectively lengthening them, breaking the nexus between community censure as a component of a sentence and the crime for which a sentence is imposed
- distorts sentencing principles by altering the deterrence value of a sentence, rendering sentences for sex offences, essentially, indeterminate
- removes certainty from sentencing
- disturbs the calculation of proportionality that takes place in sentencing.

However, in light of the High Court's decision in *Fardon v Attorney-General (Qld)*[17] it is unlikely that these objections will create any real obstacle to the expanded use of imprisonment for preventive detention purposes.[18] The court upheld the constitutional validity of the *DPSOA* on the basis that the imprisonment was not punitive.[19]

In this context, Recommendation 13 of the report can be considered. This recommendation states that the *DPSOA* should be amended to increase the interval between periodic reviews from one to two years. Before analysing this proposal it is important to note that 'annual reviews' under the *DPSOA* do not actually result in a prisoner being reviewed annually. The annual review provisions of the *DPSOA* only require that an application by the Attorney-General to continue the detention of a prisoner beyond the conclusion of their previous detention order must take place within one year of the last order of the court. In other words, if a person is subjected to a continuing detention order on 1 January 2009, it is not necessary for the Attorney-General to make an application in sufficient time for a further review to be completed by 1 January 2010; it is only necessary for the Attorney-General's application to be lodged within a year of the previous order.

This was confirmed in *A-G v Fardon*.[20] Fardon was convicted of rape, sodomy and assault occasioning bodily harm in Townsville on 30 June 1989 and was sentenced to 14 years imprisonment.[21] His sentence expired on 27 June 2003,[22] and he was then re-imprisoned pursuant to the *DPSOA*. After a series of interim detention orders were made,[23] the Supreme Court ordered that Fardon 'be detained in custody for an indefinite term for control, care and treatment'.[24] The High Court explained that this order could only last a year because of s 27 of the *DPSOA*.[25] Accordingly, the Attorney-General filed and served an application for the first annual review on 1 November 2004. Justice

12. *DPSOA* s 13(6).

13. For an illuminating debate, see Ernie Allen and Nadine Strossen, 'Megan's Law and the Protection of the Child in the On-Line Age' (1998) 35 *American Criminal Law Review* 1319–41.

14. Personal communication, Reeanna Moloney, Prisoners Legal Service, 11 March 2008.

15. Patrick Keyzer and Sam Blay, 'Double Punishment? Preventive Detention Schemes under Australian Legislation and their Consistency with International Law: The *Fardon* Communication' (2006) 7 *Melbourne Journal of International Law* 407–24.

16. For further consideration of these issues, including the (lack of any) relationship between the principles underpinning sentencing in criminal trials and the approach taken in *DPSOA* cases, see Patrick Keyzer, Cathy Pereira and Stephen Southwood, 'Pre-emptive Imprisonment for Dangerousness in Queensland under the *Dangerous Prisoners (Sexual Offenders) Act 2003*: The Constitutional Issues' (2004) 11 *Psychiatry, Psychology and Law* 244–53, particularly 250–1.

17. *Fardon v Attorney-General* (2004) 223 CLR 575.

18. See Bernadette McSherry, 'Sex, Drugs and "Evil" Souls: The Growing Reliance on Preventive Detention Regimes' (2006) 32(2) *Monash University Law Review* 237–74.

19. See Patrick Keyzer, 'Preserving Due Process or Warehousing the Undesirables? To What End the Separation of Judicial Power of the Commonwealth?' (2008) 30 *Sydney Law Review* 101–14.

20. *Attorney-General v Fardon* (Unreported, Philippides J).

21. *Attorney-General v Fardon* [2003] QSC 379, [2] (White J).

22. Ibid.

23. *Attorney-General v Fardon* [2003] QSC 200; *Attorney-General v Fardon* [2003] QSC 379; *A-G v Fardon* [2003] QSC 331.

24. *Attorney-General v Fardon* [2003] QSC 379 at [102].

25. *Fardon v Attorney-General (Queensland)* (2004) 223 CLR 575, 619–20.

Research unequivocally demonstrates that there is a high correlation between the lack of post-release housing options and recidivism.

Moynihan conducted a review of the applicant on 8 and 9 February 2005 and delivered judgment on 11 May 2005.[26]

In *A-G v Fardon*, Dan O'Gorman SC argued that where a continuing detention order is made, the court must review that order at the end of one year after the order first has effect.[27] O'Gorman submitted that while Justice Moynihan did not deliver his judgment ordering the applicant to be the subject of a continuing detention order until 11 May 2005,[28] the order had effect from 6 November 2004 because this was the date the original continuing detention order of Justice White first had effect. He argued that it was a statutory requirement that where the court makes a continuing order of the type made by Justice White on 6 November 2004, the court must review that continuing order at the end of one year after the order first has effect.[29] On that basis, the effect of the order of Justice Moynihan lapsed on 6 November 2005. Consequently, the order of Justice Moynihan, whenever it was made, could not have effect beyond one year after the order of Justice White first had effect on 6 November 2004. Section 27 of the *DPSOA* provides:

> 27 Review – periodic
>
> (1) If the Court makes a continuing detention order, the Court must review the order at the end of 1 year after the order first has effect and afterwards at intervals of not more that 1 year after the last review was made while the prisoner continues to be subject to the order.
>
> (2) The Attorney-General must make any application that is required to be made to cause the reviews mentioned in subsection (1) to be carried out.

O'Gorman argued that if s 27 was ambiguous, then any such ambiguity had to be resolved in Fardon's favour because:

- the right to personal liberty is the most fundamental of all legal rights[30]
- the right to personal liberty cannot be impaired or taken away without lawful authority and then only to the extent and for the time which the law prescribes[31]
- the *DPSOA* does not displace this common law principle, nor the corollary principle of statutory construction that courts do not impute to the legislature an intention to abrogate or curtail fundamental rights or freedoms unless such an intention is clearly manifested by unmistakable and unambiguous language[32]
- there is a rule of statutory construction that presumes a construction that favours liberty.[33]

Notwithstanding the significance of these principles of statutory interpretation, which reflect the fundamental principles of common law criminal justice, the Supreme Court rejected this argument. In practical terms, this means that a person subject to the *DPSOA* is re-imprisoned for periods of 18 months at a time, rather than 12 months. Taking into account the fact that a continuing detention order tends to last 18 rather than 12 months, the decision to lengthen continuing detention orders from 'one' to two years is very likely to mean that they will last two-and-a-half years. With that knowledge, the recommendation that continuing detention orders should be lengthened can be evaluated.

The report describes the rationale for extending continuing detention orders as follows:

> The annual review of continuing detention orders currently creates considerable difficulties for QCS in terms of its ability to obtain up-to-date evidence for the purpose of these reviews. A longer period between reviews would allow for an application to be made on the best available evidence as to the offender's current risk status. This would give QCS sufficient time to implement the Court's recommendations and assess the offender's progress in achieving the goals in his IMP. More importantly it would allow offenders sufficient time to demonstrate a change in behaviour and reduction in risk and for offenders to engage in the intensive sexual offender rehabilitation programs and consolidate treatment gains. For these reasons the IWG proposes that the period between legislated reviews of continuing detention orders be increased to two years.

The Supreme Court and Court of Appeal have noted that QCS has had problems in this area before. In *Attorney-General v Francis*,[34] Justice Mackenzie was plainly exasperated by the failure of Queensland Corrective Services to implement a plan ordered by the Supreme Court for the treatment of Mr Francis, remarking that 'if there isn't a government commitment to facilitate the plan, then it is a question whether I should order [Mr Francis'] continuing detention to give effect to it'. Justice Mackenzie remarked:

> [33] It cannot be lost sight of that the Act is concerned with preventative detention after the prisoner would otherwise have been released by effluxion of his finite sentence. Undue protraction of incarceration of the person because administrative procedures either do not exist to enable him to rehabilitate sufficiently to be released, or to prove that the actual risk in his case is not unacceptable, or because the administrative procedures unduly delay such rehabilitation or proof, is hard to convincingly justify. The Act is, after all, intended by its terms to allow continued detention only for as long as the unacceptable risk to the community clearly exists. It is not intended to lock up

26. *Attorney-General v Fardon* [2005] QSC 137.

27. [2005] QSC 005.

28. *Attorney-General for the State of Queensland v Fardon* [2005] QSC 137.

29. *DPSOA* s 27(1).

30. *Attorney-General v Fardon* [2003] QSC 331 [19]–[24] (Atkinson J); *Attorney-General v Fardon* [2003] QSC 370 [23] and [25] (White J); *Attorney-General v Foy* [2005] QSC 1 [11] (Douglas J).

31. *Williams v The Queen* (1986) 161 CLR 278, 292 (Mason, Brennan JJ).

32. *Attorney-General v Fardon* [2003] QSC 331 [21] (Atkinson J).

33. *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476 [30] (Gleeson CJ).

34. [2005] QSC 381. This case is considered further in Patrick Keyzer and Suzanne O'Toole, 'Time, Delay and Nonfeasance: The *Dangerous Prisoners (Sexual Offenders) Act 2003* (Queensland)' (2006) 31(4) *Alternative Law Journal* 198–202, 200–1.

people and throw away the key if they may have prospects of rehabilitation to an extent where they can be released, given the opportunity, but are denied that opportunity due to administrative or procedural inadequacies.

It is difficult to understand why QCS should need a period of two years to administer a sex offender treatment program and conduct a review of an offender's progress when none of the programs presently offered in Queensland prisons last longer than about 40 weeks (and this program is made up of only a few meetings per week). It is especially difficult to understand why two years is needed for the purposes outlined above when one takes into account that the Sexual Offender and Dangerous Offender Assessment Committee is tasked to refer offenders to the Attorney-General for consideration (whether an application should be filed with the Supreme Court to keep them in prison) some 18 months before that offender's sentence is due to end.[35] Perhaps if the Committee could also notify the offender of that decision to refer their case to the Attorney-General the offender could work with QCS to help get access to a treatment program before their sentence expires. This might even remove the need for an application to be made under the *DPSOA*, lessening the workload for all government departments concerned, and, incidentally, allowing prisoners to be released at the conclusion of their prison terms. In making this comment it is pertinent to note that many offenders are denied parole on the basis that they have not completed a sexual offender treatment program for the prosaic reason that they are on a waiting list for entry into such a program. It is not unusual for inmates to be on a waiting list for a long time.

Post-sentence detention as a last resort

Finally, the report purports to be directed to the objective of using post-sentence detention as a last resort. But it is difficult to see how any of the reform proposals outlined above achieve that objective.

As noted above, Recommendation 13 states that the length of standard continuing detention orders be doubled. This plainly contradicts the objective of using post-sentence detention as a last resort. Provision should be made in the *DPSOA* to enable the Supreme Court to order a period of supervision in the community during which time the former prisoner could access a sex offender treatment program in that setting. Ongoing counselling and support may be necessary for some, if not many, released offenders. In light of the public's serious interest in ensuring that sex offenders do not commit further crimes, it is surprising that resources have not been expended by government on the community support and treatment programs that might help to reduce sex offender recidivism. While there is provision in the legislation for a prisoner to apply to the Supreme Court for early release during the continuing detention order period,[36] the difficulties that prisoners can have gaining access to legal representation and the services of independent psychologists and psychiatrists render this right almost meaningless.[37]

Recommendation 10 endorses the continued use of what is effectively a new prison to 'accommodate' people who are otherwise entitled to release. This recommendation is also plainly inimical to the objective of using post-sentence detention as a last resort when the character of the accommodation is taken into account (barbed wire, lights, dogs, identity cards, guards etc). It is plain that this is simply a new variety of post-sentence detention.

Recommendation 12 authorises the controlled disclosure of residential placement locations of former prisoners. As we have discussed, this reform will only serve to increase the likelihood that people entitled to release will end up in prison when the people to whom the information is disclosed share that information in an uncontrolled way.

In short, none of these reforms is directed to the objective of using post-sentence preventive detention as a last resort. All of them increase the likelihood that a person will be further detained.

Conclusions

While the continuing detention of sex offenders beyond the conclusion of their prison terms is politically popular,[38] there are additional important reasons why community-based programs should figure more prominently in future reforms to the management of sex offenders in Queensland.

First, there are legitimate questions to be raised about the capacity of Queensland Corrective Services to conduct adequate risk assessments. The tests presently used by QCS to determine the risk of recidivism have been thoroughly discredited as predictors of any particular individual's propensity to re-offend.[39] In fact, the results of these tests are essentially meaningless in predicting recidivism for any particular individual.[40] Although there are tests that have a high diagnostic accuracy, such as the Sexual Violence Risk-20,[41] the administration of these tests and the assessment of the results require a high level of skill and experience. This raises the issue of the level of skill and experience of psychologists employed within Queensland Corrective Services: the majority are interns. As far as can be ascertained, there are very few psychologists employed within Queensland Corrective Services who are fully qualified forensic psychologists. Recommendation 6 of the report is that the *DPSOA* 'be amended to widen the category of persons who can provide risk assessment reports for the purposes of initial applications, reviews and breach proceedings to include psychologists'. This is a good reform because forensic psychologists and forensic psychiatrists have different skill sets and it expands the number of people available to conduct risk assessments for the Crown and the prisoners. However, the legislation as it currently stands does not specify that forensic psychologists (ie those capable of admission as full members of the College of Forensic Psychologists of the Australian Psychological Society) should conduct such assessments, merely psychologists.

A second concern can be raised in this context. The report contemplates that QCS personnel will have

35. Queensland Corrective Services, *The Management of Convicted Sex Offenders in Queensland* (October 2007) <www.correctiveservices.qld.gov.au/Publications/Corporate_Publications/reviews_and_reports/MgtSexOffenders.pdf> at 28 August 2008.

36. *DPSOA* s 28. At the time of writing, no cases have been decided which invoke this provision.

37. See, eg, Anne Grunseit, Suzie Forell and Emily McCarron, *Taking Justice Into Custody: The Legal Needs of Prisoners*, Law and Justice Foundation of New South Wales, July 2008, 93–107, 261–79.

38. The *DPSOA* was enacted with the unanimous support of Queensland's unicameral Parliament (there was one abstention).

39. Ian R Coyle, 'Pre-sentence Reports and Risk Assessment', K Frizton and P Wilson (eds), *Forensic Psychology and Criminology: An Australian Perspective* (2008) 252–66.

40. Stephen D Hart, Christine Michie and David J Cooke, 'Precision of Actuarial Risk Instruments: Evaluating the Margins for Error of Group Versus Individual Predictions of Violence' (2007) 190 (Supp. 49) *British Journal of Psychiatry* 60–5; Paul Mullen, 'Dangerous and Severe Personality Disorder and in Need of Treatment' (2007) 190 (Suppl. 49) *British Journal of Psychiatry* 3–7.

41. Vivienne de Vogel, Corine de Ruiter, Daan van Beck and Gwen Mead, 'Predictive Validity of the SVR-20 and the Static-99 in a Dutch sample of Treated Sexual Offenders' (2004) 28 *Law and Human Behavior* 235–51.

... it is pertinent to note that many offenders are denied parole on the basis that they have not completed a sexual offender treatment program for the prosaic reason that they are on a waiting list for entry into such a program.

a more robust role in the risk assessment process. Recommendation 5 is that the *DPSOA* should be 'amended to mandate that the court consider in addition to any risk assessment provided, a report from Queensland Corrective Services as to an offender's suitability for release into the community at the time of making an initial order, upon review or for the purposes of any breach proceedings'. Leaving aside the constitutional difficulties that may attend 'mandating' the court's consideration of any type of evidence,[42] there are problems associated with having Queensland Corrective Services personnel conducting final risk assessments. A system that enables independent, qualified forensic psychologists and psychiatrists to conduct risk assessments would be preferable.

Third, there is reason to be pessimistic about the prospect of effective treatment being given within a corrective facility in Queensland. There is no evidence that the programs run for sexual offenders in Queensland Corrective Services have any effect whatsoever in reducing recidivism. The majority of properly controlled studies of the effectiveness of sexual offender treatment programs conducted in correctional facilities have failed to yield positive results.[43] The notable exception here seems to be community-based programs where there is ongoing involvement with an offender, by highly trained professionals, while they are in the community.[44] In light of this, the criticism that can be levelled at the report is obvious; such ongoing involvement cannot occur when offenders are not released into the community. Nor can it occur when inmates refuse to acknowledge their guilt and, as a direct consequence, are denied entry into the sexual offender treatment programs conducted by Queensland Corrective Services, however effective they may be. Such inmates are routinely assessed as being at risk of recidivism because of their denial of guilt despite the fact that denial does not predict recidivism in sexual offenders (perhaps with the exception of a very small subset of the population of sexual offenders).[45]

Finally, community-based supports for released sex offenders should be designed to deal with both sex offending and offending generally. It is a gross logical and empirical error to argue that because an individual has committed a particular type of offence they therefore have an enduring interest in committing this type of offence in the future. If this hypothesis were true then it would follow that all sexual offenders would be more likely to recidivate in terms of sexual offences rather than recidivate generally. Yet, the empirical data demonstrates precisely the opposite. There is a great deal of evidence to show that, once caught, most sex offenders in the lower risk categories do not go on to be reconvicted of new sex offences. Sexual offenders are almost three times more likely to recidivate with a non-sexual offence than a sexual offence.[46]

Public concern about the release of sex offenders is totally justified. The government should be doing everything they can to decrease the risk that sex offenders will recidivate upon release. However, while the new Public Protection Model outlined in the IWG report identifies a number of laudable objectives, it is difficult to see how the recommendations made are designed to achieve those objectives. The objectives of reintegration and release into the community, respect for the principles underpinning the criminal justice system and post-sentence 'detention' as a last resort would be more likely to be realised if the government funded a system of community-based treatment involving qualified, independent experts for people who have been released from prison.

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42. *Chu Kheng Lim v Minister for Immigration* (1992) 176 CLR 1, 37.

43. R Karl Hanson and Monique T Bussiere, 'Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies' (2002) 66(2) *Journal of Consulting and Clinical Psychology*, 348–62; James A Seager, Debra Jellicoe and Gurmeet K Dhaliwal, 'Refusers, Dropouts and Completers: Measuring Sex Offender Treatment Therapy' (2004) 48(5) *International Journal of Offender Therapy and Comparative Criminology*, 600–12; Janice K Marques, Mark Wiedernaders, David M Day, Craig Nelson and Alice van Ommeren, 'Results form California's Sex Offender Treatment and Evaluation Project (SOTEP)' (2005) 17(1) *Sexual Abuse: A Journal of Research and Treatment* 79–107.

44. Karen Gelb, *Recidivism of Sex Offenders: Research Paper* (Sentencing Advisory Council 2007); N J Wilson and D Wales, 'Overview of Treatment: Corrections and Mental Health' in Katarina Fritzon and Paul Wilson (eds), *Forensic Psychology and Criminology an Australian Perspective* (2008) 186–201.

45. Kevin L Nunes, R K Hanson, Philip Firestone, Heather M Moulden, David M Greenberg and John M Bradford, 'Denial Predicts Recidivism for Some Sexual Offenders' (2007) 19(2) *Sexual Abuse: A Journal of Research and Treatment* 91–105.

46. R Karl Hanson and Kelly E Morton-Bourgon, 'The Characteristics of Persistent Sexual Offenders: A Meta-Analysis of Recidivism Studies' (2006) 73(6) *Journal of Consulting and Clinical Psychology* 1154–63.