

Submission to the Inquiry into Victoria's Criminal Justice System

Introduction

1. The Post Sentence Authority's (the Authority) submission is directed only to the issue the Committee is exploring regarding strategies to reduce rates of criminal recidivism.
2. The purpose of the Authority's submission is to appraise the Committee of the post sentence scheme operating in Victoria which is designed to prevent offenders convicted and imprisoned for serious offences from reoffending by committing further serious sexual or violent offences on release from prison. When considering the complex issue of criminal recidivism, the Committee should be aware of the post sentence scheme and its contribution to reducing serious reoffending.

Post sentence scheme

3. The current version of the post sentence scheme is established by the *Serious Offenders Act 2018*.
4. Normally when an offender is released from prison (or completes their parole) at the end of their sentence for a serious offence, they return to the community without any restriction or monitoring. They have served the sentence imposed by the Court, they are no longer under sentence, and they are free to return to the community.

Eligible offenders

5. Under the post sentence scheme, eligible offenders who pose the highest risk of reoffending in a way that would cause serious harm to others can be made subject to a Court order that applies to them when they are released from prison at the end of their sentence and which is designed to prevent serious reoffending.
6. The post sentence scheme only applies to 'eligible' offenders who have been convicted and imprisoned for committing a serious sexual offence, or a serious violence offence, or both.
 - a. Serious sexual offences include (amongst other offences) rape, incest, sexual penetration of a child aged under 16 years, and offending relating to child abuse material.
 - b. Serious violent offending includes (amongst other offences) murder, manslaughter, intentionally or recklessly causing serious injury and kidnapping. Offences of intentionally or recklessly causing injury, assault, and culpable driving are not defined as serious violent offences for the purpose of the post sentence scheme.
7. When the post sentence scheme originally commenced in 2005, it was limited to offenders who had committed sexual offences against children. It was expanded in 2008 to extend to offenders who committed sexual offences against adults. Following the recommendations of the 2015 Complex Adult Victorian Sex Offender Management Review Panel (commonly known as the Harper Review), the scheme now applies to both serious sexual offenders and serious violent offenders.
8. In 2020-21 there were 1,760 eligible offenders imprisoned in Victoria.

Post sentence orders

9. If a Court determines that an eligible offender is an unacceptable risk of reoffending by committing a further serious sexual offence, a serious violent offence, or both, it may make the offender subject to a post sentence order. The post sentence order commences on the offender's release from prison at the end of their sentence. The primary purpose of the order is to protect the community from the unacceptable risk that the offender will commit a serious offence causing harm to another person.
10. As eligible offenders approach the end of their prison sentence, they are assessed by medical experts (a forensic psychiatrist or forensic psychologist) using internationally accredited assessment tools formulated to calculate risk of reoffending. Based on the assessment report, a decision is made about whether an application is made to a Court for a post sentence order.
11. There are two types of post sentence order –
 - a. Detention order (and interim detention order)
 - b. Supervision order (and interim supervision order)

Detention orders

12. Detention orders represent the most severe form of restraint on the rights of an offender. If a detention order is made by a Court, the offender must be detained in a prison for the duration of the order, even though they are no longer a prisoner under sentence. On 30 June 2021, there were only 4 offenders in Victoria who were subject to a detention order or an interim detention order.
13. Reflecting the serious infringement on the liberty of a person who is detained but not serving a sentence, it is the Director of Public Prosecutions who must apply to the Supreme Court for a detention order. The Supreme Court can make a detention order for up to three years at a time, and can renew the order if satisfied the offender needs to continue to be detained to protect the community from the unacceptable risk the offender poses. While an offender is subject to a detention order, the Court reviews the order at least every 12 months.

Supervision orders

14. On an application by the Department of Justice and Community Safety, the Supreme Court or the County Court can make a supervision order for up to 15 years, and the order may be renewed for further terms. The Court must review supervision orders at intervals of no longer than three years.
15. If an offender is subject to a supervision order, they reside in the community but subject to the conditions of the order. In addition to core conditions that apply to every supervision order, the Court will impose conditions addressing the offender's specific risk. Conditions may be imposed to regulate –
 - a. where an offender must reside
 - b. curfew hours an offender must be at their residence
 - c. if an offender must be accompanied by an approved person when outside their residence
 - d. drug and/or alcohol prohibition, and testing
 - e. places the offender cannot attend (for example, within a set distance of schools or playgrounds)
 - f. people the offender cannot have contact with (for example, other convicted offenders or victims of their offending)

- g. use of internet capable devices (mobile phones, computers, cameras) and access to the internet
 - h. access to pornography or images of children
 - i. whether the offender is electronically monitored for whereabouts and/or alcohol consumption.
16. On 30 June 2021, there were 138 offenders subject to a supervision order or an interim supervision order.
17. Although offenders subject to a supervision order live in the community, they do not necessarily live in private residential accommodation. Accommodation options that are available reflect offenders offending, risks and needs. For example, serious sex offenders may be required to reside at a 'residential facility', such as Corella Place at Ararat. These facilities are operated by Corrections Victoria and, while not secure, provide an on-site level of oversight and management for offenders whose risks cannot be adequately managed in a less restrictive environment. A residential treatment facility (Rivergum Residential Treatment Centre) provides the option of a secure immersive therapeutic environment for suitable serious sex offenders or serious violent offenders (subject to an intensive treatment and supervision condition being made by a Court).
18. Serious offenders may also be considered for a range of supported accommodation options, specialist forensic disability accommodation, or secure mental health units.
19. Some serious offenders reside in residential accommodation in the community, after the proposed accommodation has been carefully assessed for suitability. For serious sex offenders, they may be transitioned to this accommodation from a residential facility when they have demonstrated insight into their risk of reoffending and that they can implement strategies to manage their risk in a less restrictive residential environment. Before any accommodation is approved for any offender, a thorough Environmental Scan is conducted and carefully considered.

Monitoring serious offenders

20. While subject to a post sentence order, a Specialist Case Manager (SCM) from Corrections Victoria is assigned to conduct regular supervision with the offender. They provide the primary point of contact with the offender. A significant support network assists the SCM, and the SCM engages with other supports and service providers for the offender.
21. Each post sentence offender is regularly considered by the Multi-Agency Panel, comprising Executive-level representatives from the Department of Justice and Community Safety, the Department of Health, the Department of Families, Fairness and Housing, and Victoria Police. These agencies are responsible for delivering services to address offenders' risks. At least every six months, they must review and update each offender's Coordinated Services Plan to detail the services identified to address the risks of each offender, and their commitment to deliver or facilitate those services in a coordinated way.
22. The Coordinated Services Plans draw from the assessment reports prepared by the medical experts for each offender and set out the individual risk factors and the interventions recommended to address and reduce the risks. The Coordinated Services Plans provide an ongoing record of how that is being done. Services identified may include –
 - a. offence specific treatment (normally provided by a specialist clinician employed by the Forensic Intervention Services branch of Corrections Victoria)
 - b. mental health treatment

- c. alcohol and drug counselling
 - d. psychological treatment addressing issues such as trauma and social anxiety
 - e. medical services
 - f. allied health services, such as speech pathology and occupational treatment
 - g. outreach support to facilitate pro-social activities and relationships in the community, including education, employment, daily activities such as banking and shopping, visiting family, attending church and culturally supportive activities
 - h. support to source appropriate and suitable accommodation.
23. An important feature of the post sentence scheme is that a dedicated unit of Victoria Police has been established to monitor, work with, and investigate offenders on post sentence orders. Other members of Victoria Police also respond to issues involving offenders on post sentence orders as required.

Key features of the post sentence scheme

24. Key features of the post sentence scheme include the following –
- a. Because offenders who are subject to a post sentence order are not under sentence, they are not part of the criminal justice system. Instead, they are part of, and must be dealt with as part of, the civil justice system.
 - b. The primary purpose of the post sentence scheme is to enhance the protection of the community.
 - c. The secondary purpose is to facilitate the treatment and rehabilitation of offenders who are subject to a post sentence order. Progress in treatment and rehabilitation should reduce the offender's risk, contributing to the primary purpose. It should also equip the offender to live a pro-social life in the community.
 - d. Each decision made under the *Serious Offenders Act 2018* must have community safety and protection as the paramount consideration.
 - e. The human rights of offenders who are subject to a post sentence order must be considered by the Authority and Corrections Victoria when making decisions under the *Serious Offenders Act 2018*.
 - f. When imposing conditions on a supervision order, a Court must ensure that they constitute the minimum interference with the offender's liberty, privacy or freedom, and reasonably relate to the gravity of the risk of the offender reoffending.
 - g. It is an offence for an offender to breach a condition of a supervision order, punishable by up to 5 years imprisonment.

Post Sentence Authority

25. The Authority commenced operations on 27 February 2018 as part of the reforms implemented in response to the Harper Review.
26. The Authority is an independent statutory body playing a critical role in the post sentence scheme. It is responsible for –
- a. monitoring serious offenders who are on post sentence orders
 - b. making decisions to manage their risks, behaviour and progress
 - c. providing independent oversight to promote accountability in the post sentence scheme.

27. The Authority convenes formal hearings, sitting as a panel of three members, to note reports and make decisions about offenders subject to post sentence orders. It must give paramount consideration to the safety and protection of the community when making decisions.

Monitoring offenders on a post sentence order

28. The Authority receives highly detailed reports and information from Corrections Victoria regarding offenders subject to post sentence orders on a daily basis. The Authority monitors this information in a responsive and proactive way (including outside normal business hours if necessary), building a detailed understanding about the behaviour, risk, compliance, and progress of each offender on a post sentence order.
29. This knowledge informs the Authority when it is making decisions about, and reviewing the risk of reoffending of, serious offenders.
30. If required, the Authority will ask for more detailed information, and representatives of Corrections Victoria attend the Authority's hearings to give further information about case management responses and strategies to address escalating risk or concerning behaviour.
31. The Authority does not have day to day responsibility for the case management of serious offenders on a post sentence order – this is the responsibility of Corrections Victoria.

Making decisions to manage offenders on a post sentence order

32. When a Court places a serious offender on a supervision order, it sets conditions with which the offender must comply. During the term of the supervision order, the Court can change the conditions.
33. In accordance with authorisation given to it by the Court, the Authority can make formal directions under the supervision order conditions. Serious offenders must comply with the Authority's directions and may be prosecuted if they don't.
34. The directions the Authority makes give effect to the condition under which they are made, having regard to the current circumstances of the offender. The Authority can respond quickly, including outside normal business hours, to give directions to reflect changes in circumstances, escalation of risk, and the daily management of offenders.
35. Amongst other things, the Authority's directions may relate to where offenders must reside, their curfew hours, how they are accompanied in the community, where they can go, who they can have contact with and in what circumstances, supporting their treatment, whether they are electronically monitored to track their whereabouts or alcohol consumption, their access to and use of computers and the internet, and whether they can consume alcohol. Depending on the circumstances, Authority directions may ease the restrictions set by a condition to reflect their positive progress, or they may limit what the offender can do in response to an escalation of risk or poor behaviour.
36. In considering whether to make a direction, the Authority is assisted by extensive written reports and recommendations from Corrections Victoria.
37. If there is a registered victim, the Authority may invite a written submission from the victim about a direction that the Authority proposes to give. It carefully considers all submissions from registered victims, and it aims to ensure that, to the extent possible, their views are considered as part of its decision making.

38. The Authority can also conduct inquiries into serious offenders who contravene a direction that has been given to them by the Authority, or a condition that has been set by a Court. If the Authority is satisfied of the contravention, it considers the seriousness of the contravention and takes appropriate action in accordance with the legislation.

Independent oversight of the post sentence scheme

39. The Authority provides independent oversight of the post sentence scheme in two ways:
 - a. by reviewing Coordinated Service Plans for serious offenders
 - b. by reporting annually to the Victorian Parliament about the post sentence scheme.
40. To manage and reduce the risk of reoffending, and to facilitate the treatment and rehabilitation of serious offenders, the Department of Justice and Community Safety, Department of Families, Fairness and Housing, Department of Health, and Victoria Police are required to form a Multi-Agency Panel and jointly develop and commit to a plan for the delivery of services to address each supervised offender's risk factors in a coordinated way. The Multi-Agency Panel must prepare a Coordinated Services Plan for each offender, updating each plan every six months.
41. The Authority independently reviews the Coordinated Services Plan for each offender every six months. The Authority's review focusses on whether the plans meet the statutory requirements, whether they identify the offender's risk factors and describe the services to be made available to address those risk factors, and whether the responsible agencies have agreed to deliver or facilitate the services. By reviewing successive plans, the Authority can monitor whether the identified services have been made available and delivered. If the Authority has concerns, it can issue a notice and require additional information from the responsible agencies about the cause of delays or impediments to effective coordinated service delivery.

Reduction of criminal recidivism

42. Based on its experience, the Authority offers the following observations about how the post sentence scheme contributes to the reduction of criminal recidivism.
43. The primary purpose of the post sentence scheme is to enhance the protection of the community from serious sexual offending or serious violent offending by offenders who have been convicted and imprisoned for committing these types of offences in the past and continue to present with an unacceptable risk of reoffending on their release from prison.
44. That is, the scheme is designed to reduce serious offending causing personal harm by offenders posing the highest risk of committing those offences.

Rate of recidivism – serious reoffending

45. On 30 June 2021 there were 138 offenders subject to a supervision order or interim supervision order. In 2020-21 three serious offenders were convicted of committing a serious sex offence while on a supervision order. No serious offender was convicted of committing a serious violent offence.
46. For the three reporting years that the Authority has operated (2018-19 to 2020-21) there have been a total of 10 serious offenders convicted of serious sexual offences committed while on a supervision order (an average of 3.3 per year), and one serious offender convicted for committing a serious violent offence (an average of 0.3 per year). The average number of offenders on supervision orders or interim supervision orders for this three-year period is 136.

47. Over the same period, there have been a total of 100 serious offenders convicted of contravening the conditions of their supervision order (an average of 33.3 per year).
48. Reflecting the scheme's purpose which is to prevent serious reoffending, the preventative nature of the scheme, and the comprehensive monitoring tools that are in place, mean that escalating behaviour is likely to be identified and dealt with before more serious offending occurs. For example, if a serious offender's risk of committing serious offences will increase by taking illegal drugs, they may be subject to regular drug testing under the conditions of their supervision order. These tests may lead to charges for offences relating to drug use or failing to comply with the drug test requirements of their order. Prosecution on charges of contravening the conditions of the supervision order may contribute (together with other strategies) to prevent escalation to serious sexual or violent reoffending linked to drug use. While the conviction of offenders on the lesser offences may be regarded by some as a form of recidivism, it is, in fact, a demonstration of the post sentence scheme working effectively to prevent serious reoffending. This is borne out by the data cited above.
49. It is, of course, impossible to compare data for the serious offences committed by offenders on post sentence orders to the offending they would have committed had they not been on orders. What can be said, though, is that –
 - a. While it cannot be certain if, or when, serious offenders will have committed further serious offending if they had not been subject to a post sentence order, the assessment of their risk as unacceptably high is a strong indicator of the high likelihood they would commit serious reoffending if they were not subject to a supervision order.
 - b. This can be contrasted to the low rate of serious reoffending by those who are subject to a supervision order, notwithstanding that the risk of reoffending of every offender on a post sentence order has been assessed as being unacceptably high.

Is the post sentence scheme effective?

50. The Authority is of the view that the post sentence scheme established under the *Serious Offenders Act 2018* effectively enhances the protection of the community from serious reoffending by offenders subject to the scheme. This is apparent from the low rate of serious reoffending reported above.
51. The scheme's effectiveness was improved by the implementation of the recommendations of the Harper Review, with key improvements including –
 - a. the expansion of the scheme to include serious violent offences
 - b. committing the agencies responsible for delivering services to address offenders' risks to working collaboratively to plan for, implement, and report on the services being provided
 - c. increased resources to support, supervise, and monitor offenders, including a dedicated police unit responsible for post sentence offenders
 - d. the commissioning of a residential treatment facility
 - e. the dedicated oversight role of the Authority.
52. While the ultimate measure of the effectiveness of the scheme may be the rate of serious reoffending, there are considerations of effectiveness. These include the opportunity for offenders to engage in services to address their risks; the opportunity for stable accommodation; assistance with building pro-social support networks; addressing health and disability needs. Engaging with the support and services offered under the post sentence scheme can reduce the offender's risk of reoffending to a point that it is

no longer unacceptable. This is reflected in data to be reported in the 2020-21 Annual Report that shows 11 offenders were able to come off their supervision order when it expired or was revoked in 2020-21.

53. The operation and effectiveness of the *Serious Offenders Act 2018* must be formally reviewed within 5 years of the commencement of all provisions of the Act, in accordance with the requirement contained in section 348 of the Act.
54. Despite the effectiveness of the post sentence scheme, no scheme – no matter how effective – can guarantee that there will not be serious reoffending.

Conclusion

55. The Authority understands that the issue of criminal recidivism is complex.
56. Hopefully, the information provided in this submission is of assistance to the Committee, and helps the Committee to understand the post sentence scheme and its role in protecting the community from serious reoffending by the highest risk sexual and violent offenders.
57. If the Committee is interested in the information raised in the Authority's submission and wishes to explore it further, the Authority is happy to assist.