



sentencing
ADVISORY
COUNCIL

MANDATORY TREATMENT FOR SEX OFFENDERS

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About this Research Paper

The Tasmanian Government has asked the Sentencing Advisory Council for advice on the implementation of mandatory treatment for sex offenders in custody and in the community.

This Research Paper considers mandatory treatment for sex offenders in prison and in the community. It considers the justifications for creating a mandatory treatment regime and the legal mechanisms that may be used to achieve that outcome.

Information on the Sentencing Advisory Council

The Sentencing Advisory Council was established in June 2010 by the then Attorney-General and Minister for Justice, the Hon Lara Giddings MP. The Council was established, in part, as an advisory body to the Attorney-General. Its other functions are to bridge the gap between the community, the courts and the Government by informing, educating and advising on sentencing issues in Tasmania. At the time that this paper was concluded, the Council members were Emeritus Professor Arie Freiberg AM (Chair), Dr Jeremy Prichard, Mr Scott Tilyard, Mr Peter Dixon, Ms Kim Baumeler, Mr Graham Hill, Professor Rob White, Ms Terese Henning, Ms Jo Flanagan and Ms Linda Mason. It is noted that Ms Kate Cuthbertson has recently joined the Council but did not take part in the Council's deliberations relating to this project.

Acknowledgements

The Council would like to thank all those who provided information in relation to this reference, in particular Liz Hawkes, Parole Board Tasmania; Andrew Verdouw, Tasmania Prison Service; Amy Washington, Community Corrections; Michelle Lowe, Department of Justice; Astrid Birgden, Consultant Forensic Psychologist; Gene Mercer, Department of Correctional Services, South Australia; Melissa Braden, Corrections Victoria; Jayson Ware, Corrective Services NSW; Aleisha Reader, Queensland Corrective Services; Barbara Sampson, Department of Correctional Services, Northern Territory; Gail Robertson, ACT Corrective Services; Stephen Hout, Department of Corrections, Minnesota; Tracy Berry, Indiana Department of Corrections; Liam Crossan-Maguire, NOMS Intervention Services, UK; Russell Bender, California Department of Corrections and Rehabilitation.

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1.

Introduction

1.1 BACKGROUND TO THIS PAPER AND TERMS OF REFERENCE

The Tasmanian Liberal Party made a pre-election commitment to make appropriate treatment compulsory for all sex offenders when they are in gaol.¹ In response to this commitment, the government enacted the *Corrections Amendment (Treatment of Sex Offenders) Act 2016* (Tas), which amended the *Corrections Act 1997* (Tas) to make participation or non-participation in appropriate treatment relevant to determining whether a sex offender is released on parole. The Act also made participation relevant to whether an offender can be given a remission of sentence. These reforms create an incentive for offenders to participate in treatment while in prison but they do not make participation mandatory in law. The Tasmanian Government has asked the Sentencing Advisory Council for advice on the implementation of mandatory treatment for sex offenders in custody and in the community. The Tasmanian Government has also committed an extra \$300 000 per year for treating sex offenders in prison.²

1.2 APPROACH OF THE COUNCIL AND SCOPE OF THE RESEARCH PAPER

Considerable community concern exists in relation to sex offenders, and the response of the legal system (as a component of a broader social response) is a crucial issue for governments and courts. Sexual offences cause substantial and long-term harm to victims, as well as to the families of victims and the community as a whole.³ Given the significant consequences of sexual offending, it is important to utilise strategies that are effective to reduce rates of sexual abuse and this Research Paper addresses one such strategy — the treatment of sex offenders. Specifically, as requested by government, this Research Paper considers mandatory treatment for sex offenders in prison and in the community. It considers the justifications for creating a mandatory treatment regime and the legal mechanisms that may be used to achieve that outcome.

In the preparation of this paper, the Council has also sought feedback from key stakeholders and responses were received from the Prisoners Legal Service, the Sexual Assault Support Service, Andrew Verdouw, Tasmania Prison Service, Professor Stephen Smallbone, Griffith University, and SHE (Support, Help and Empowerment Inc).⁴ The Council expresses its appreciation and has taken the feedback received into account.

Inherent in the implementation of mandatory treatment for sex offenders is the assumption that sex offenders invariably reoffend, that community safety is enhanced when all sex offenders receive treatment and that treatment (even coerced treatment) more effectively prevents reoffending when compared to no treatment at all. Sex offender treatment is an evolving field and it is not precisely settled what works in sex offender treatment, and consequently, the issues raised in this paper have proven controversial in the research literature. Although there is evidence to suggest that there is value in providing treatment, it is important not to overstate the significance of this treatment

1 Tasmanian Liberals, *Minimum Mandatory Sentencing for Serious Sex Offences Against Children*, 3, <<https://www.tas.liberal.org.au/sites/default/files/policy/Mandatory%20minimum%20sentences%20for%20offences%20against%20children.pdf>>.

2 Duncan Abey, 'Budget Targets Sex Criminals: Sentence Remission Carrot as \$300,000 Set Aside for Jail Therapy', *The Mercury* (online), 23 May 2016 <<http://www.themercury.com.au/news/politics/budget-targets-sex-criminals-sentence-remission-carrot-as-300000-set-aside-for-jail-therapy/news-story/fb2d1ff13d909214baf1c6db10984328>>.

3 Sentencing Advisory Council, Victoria (VSAC), *Sentencing Guidance in Victoria*, Report (2016).

4 SHE is a non-government agency in Tasmania for the provision of counseling services to women who have experienced family violence.

and create an unrealistic community expectation that mandatory treatment (particularly treatment in prison) will equal a 'cure'. For this reason, the Research Paper seeks to place the issue of treatment within a broader response framework that is focused on preventing sexual recidivism by considering the continuum from the initial sentence of imprisonment to the supports and supervision provided to an offender on their release into the community.

Chapter Two provides a brief overview of the profile of sex offenders to provide a context for the examination of mandatory treatment in prison. It also examines the recidivism rates for sex offenders and the factors that have been identified in the literature that are associated with reoffending.

Chapter Three examines the existing Sex Offenders Treatment Programs (SOTP) in Tasmania and provides an overview of the literature that has considered the effectiveness of sex offender treatment.

Chapter Four examines the current legislative framework that allows a court to impose treatment conditions on an offender and other mechanisms which may operate to coerce an offender to participate in a SOTP.

Chapter Five sets out various models for reform that could be implemented to exert increased legal coercion on an offender to facilitate participation in a sex offender treatment program, including the strengths and limitations of the models.

This paper only considers the issue of mandatory treatment in the context of sex offenders who serve their sentence at Risdon Prison and does not consider the programs that may be offered at Ashley Detention Centre. It also considers the community-based treatment options for offenders sentenced under the *Sentencing Act 1997* (Tas) but does not address the issue of treatment for offenders sentenced under the *Youth Justice Act 1997* (Tas). The appropriate treatment of young sex offenders raises complex and separate issues from the delivery of rehabilitation programs to adults and is beyond the scope of this paper.

As indicated, this Research Paper focuses on the issues surrounding the creation of legal mechanisms for the implementation mandatory treatment in a prison context in Tasmania, as well as in the community. Beyond agreeing that the model of sex offender treatment program implemented in Tasmania should be evidence-based and reflective of best practice for successful treatment, this paper does not address the extensive professional psychological literature on the specifics of treatment programs. It also does not focus on the provision of treatment under *Mental Health Act 2013* (Tas).

I.3 REHABILITATION AND MANDATORY TREATMENT

I.3.1 CUSTODIAL REHABILITATION PROGRAMS

Custodial rehabilitation programs for sex offenders are provided in all Australian jurisdictions as well as comparable overseas jurisdictions (New Zealand, Canada and England and Wales).⁵ There are also prison based sex offender programs in many states in the United States and many other countries. In relation to the requirement that offenders attend custody-based SOTPs before release, it is important to recognise that participation in sex offender programs is generally subject to some degree of coercion. In different jurisdictions, varying degrees of legal coercion are placed on offenders to facilitate participation.⁶ As shown in Figure I-1, coercion to participate in prison-based rehabilitation programs can be understood along a continuum associated with increased legal pressure placed on an offender from consensual 'voluntary' participation, where failure to participate is relevant to release on parole, through to mandatory treatment where a prisoner is compelled to attend treatment by a court order or legislative direction. There are limits to the degree of legal coercion in relation to the requirement to attend a psychological or rehabilitative treatment. Even if an offender is directed to attend without their consent, this would only entail an increased level of pressure but it would not guarantee participation or co-operation:

In psychological rehabilitation programmes ... the offender cannot be physically compelled to attend a treatment session, or even if he or she does attend, to participate fully. Directly coerced psychological or rehabilitative treatment in this absolute sense is virtually impossible.⁷

5 See Appendix A.

6 It is acknowledged that social pressure (from friends or family) may influence an offender's decision to take part in treatment, see Andrew Day, Kylie Tucker and Kevin Howells, 'Coerced Offender Rehabilitation – A Defensible Practice' (2004) 10(3) *Psychology, Crime and Law* 259, 260.

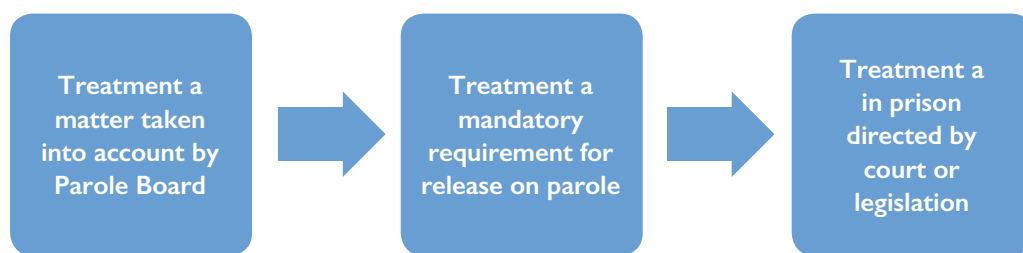
7 Ibid.

If the treatment entails rehabilitation rather than medication, it must be recognised that it is impossible to force an individual to fully engage in psychotherapeutic treatment.⁸ Further, 'offenders can only be engaged to change; they cannot be forced to change (with or without a compulsory treatment law).'⁹ Consideration also needs to be given to how the negative consequences that attach to a failure to attend a mandatory treatment program could differ in a practical sense from the legal pressures that are placed on an offender to voluntarily attend a rehabilitation program. In the criminal justice context, coerced treatment creates significant ethical concerns, as well as tensions between the legal system and treatment providers and raises practical questions about the effectiveness of compulsory treatment.¹⁰

Compulsory treatment is viewed as either using the judicial role appropriately with sanctions and rewards to retain participants and increase treatment efficacy or as forcing treatment upon involuntary participants, overriding due process, and providing unsolicited and ineffective treatment.¹¹

These issues are considered further below.

Figure 1-1: Continuum of legal coercion in participate in rehabilitation



Voluntary participation with consequences for failure to participate

In Australia, participation in all custody based SOTPs for adult sex offenders is voluntary in the sense that an offender must consent to participation in the program and may decline to participate. In some jurisdictions, programs are only available for those who admit their offending or, alternatively, separate 'denier' programs are offered.¹² While participation in SOTPs is not mandatory or compulsory, refusal to participate may nevertheless have negative consequences for an offender (by reason of mechanisms such as prison classification, loss of privileges, ineligibility for remissions and relevance to release on parole) and, accordingly, treatment may be understood to be coerced or 'quasi-mandatory'.¹³ In this sense, the offender is pressured by 'the existence of negative consequences for non-participation'¹⁴ but not compelled to participate. This reflects the position in Tasmania where participation is important for an offender's release on parole and essential for a grant of remission but not compulsory.¹⁵ Further, the *Sentencing Act 1997* (Tas) does not confer the power to a court to order an offender to participate in a program whilst in prison and there is no power at common law for a sentencing judge to enforce a recommendation that an offender receive treatment while in prison.¹⁶

8 Astrid Birgden, 'A Compulsory Drug Treatment Program for Offenders in Australia: Therapeutic Jurisprudence Implications' (2008) 30 *Thomas Jefferson Law Review* 367, 378; Alex Stevens, 'Editorial: On Coercion' (2005) *International Journal of Drug Policy* 207, 208.

9 Astrid Birgden and Luke Grant, 'Establishing a Compulsory Drug Treatment Prison: Therapeutic Policy, Principles, and Practices in Addressing Offender Rights and Rehabilitation' (2010) 33(5-6) *International Journal of Law and Psychiatry* 341, 348.

10 Birgden, above n 8, 378.

11 Ibid.

12 Traditionally, sex offender treatment placed considerable emphasis on the need for the offender to take responsibility for his (or her) offending and those who denied their conduct were excluded from the program. However, the evidence for this approach has been questioned: see Ruth Mann and Georgia Barnett, 'Victim Empathy Intervention with Sexual Offenders: Rehabilitation, Punishment, or Correctional Quackery?' (2013) 25 *Sexual Abuse: A Journal of Research and Treatment* 282; Jayson Ware and Ruth Mann, 'How Should "Acceptance of Responsibility" be Addressed in Sexual Offending Treatment Programs?' (2012) 17 *Aggression and Violent Behavior* 279. Many Australian jurisdictions (including Tasmania) now offer programs to those who deny their offending behaviour.

13 See Stevens, above n 8, for discussion of ethics of coerced treatment; Birgden, above n 8; Day, Tucker and Howells, above n 6.

14 Day, Tucker and Howells, above n 6, 260.

15 See [4.1] and [4.2]. It is noted that the Tasmanian government is to review the remission system, see Chris Clarke, 'Tasmanian Government to Review Prison Remission', *The Examiner* (Launceston), 27 July 2016.

16 Richard Fox, 'The Compulsion of Voluntary Treatment in Sentencing' (1992) 16 *Criminal Law Journal* 37, 37.

Other serious consequences may attach to an offender's failure to participate in sex offender treatment if an offender is classified as a high-risk offender. In Victoria,¹⁷ Western Australia,¹⁸ New South Wales,¹⁹ the Northern Territory²⁰ and Queensland,²¹ the court has the power make an order for extended supervision or continued detention of an offender at the end of their prison sentence in circumstances where the offender poses an unacceptable risk of future serious offending. The failure to satisfactorily participate in treatment is expressly provided as being relevant to the assessment of whether the offender remains a serious danger to the community in Western Australia, New South Wales and Queensland.²² Tasmania does not currently have extended supervision orders but there is power for the sentencing court to declare that an offender is a dangerous criminal on the basis of the risk posed to the public.²³ If a dangerous criminal declaration is made, the offender will be held in prison indefinitely, until the offender can establish that the declaration is no longer needed for the protection of the public.²⁴ An offender's participation in a treatment program has been recognised by the courts as a factor that is relevant to the discharge of a dangerous criminal declaration.²⁵ An offender's participation in sex offender treatment in prison has also been relied upon by the court in making the determination as to whether or not an offender should be declared a dangerous criminal in circumstances where there was a considerable delay between the relevant conviction and the hearing of the application.²⁶

This is similar to the position in some American states, where the failure to participate in a SOTP in custody (while voluntary) may mean that a high-risk offender is made subject to civil commitment. This is a form of continuing detention where offenders who have completed their term of imprisonment are held for civil commitment, usually in state mental hospitals, because of the danger that they pose to themselves and others.²⁷ Refusal to participate in sex offender treatment in custody is relevant to civil commitment in Nebraska, where an offender who does not participate in a sex offender program is subject to the *Nebraska Civil Commitment Act* and may be determined to be a dangerous sex offender and involuntarily committed for treatment.²⁸ Similarly, in Minnesota while participation is voluntary, there are a number of negative consequences that may flow from refusing or quitting treatment or being terminated from a treatment program. Offenders are advised that the benefits of earning a sex offender treatment completion include that: (1) they may be less likely to be civilly committed; (2) they may be assigned to a lower risk level; and (3) it will reflect positively when decisions are made regarding their ability to have contact with minors, to live with minors and to maintain legal parentage.²⁹ Minnesota does not have a parole system, so an offender's release from prison does not depend on program participation. However, offenders can be given 'extended incarceration' of up to 30 days if they refuse, quit or are terminated from treatment.³⁰

Voluntary participation but participation mandated as a requirement for parole

In some jurisdictions an increased level of coercion is created by requiring an offender to satisfactorily complete a rehabilitation program in order to be eligible for parole whilst also maintaining that the offender's consent is required in order to participate in any such program. This approach has not been adopted in any Australian jurisdiction nor has it been adopted in New Zealand, Canada and England and Wales for adult sex offenders. However, it has been used in some American states where an offender cannot be released on parole unless the offender has completed the SOTP. For example, in Missouri, the *Sexual Assault Prevention Act* provides that 'all persons imprisoned by the

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

18 *Dangerous Sex Offenders Act 2006* (WA).

19 *Crimes (High Risk Offenders) Act 2006* (NSW).

20 *Serious Sex Offenders Act 2013* (NT).

21 *Dangerous Prisoners (Sexual Offences) Act 2003* (Qld).

22 *Dangerous Sexual Offenders Act 2006* (WA) s 7(3)(e), (f); *Crimes (High Risk Offenders) Act 2006* (NSW) s 9(3)(e), 17(4)(e); *Dangerous Prisoner (Sexual Offences) Act 2003* (Qld) s 13(4)(e), (f).

23 See *Sentencing Act 1997* (Tas) s 19. It is noted that the government intends to repeal the dangerous criminal provisions and introduce supervision and detention orders, which may contain similar provisions to those of other jurisdictions.

24 *Sentencing Act 1997* (Tas) s 20.

25 *IRS v Tasmania* [2013] TASSC 66.

26 *Director of Public Prosecutions v Phillips* [2006] TASSC 81.

27 Mark Kielsgard, 'Myth-Driven State Policy: An International Perspective of Recidivism and Incurability of Paedophile Offenders' (2014) 47 *Creighton Law Review* 247, 251. In 2010, it was reported that 21 states and the federal government have civil commitment schemes, see Jeslyn Miller, 'Sex Offender Civil Commitment: The Treatment Paradox' (2010) 98 *California Law Review* 2093.

28 Nebraska Department of Correctional Services, *Frequently Asked Questions Regarding Sex Offenders* (2014) <<http://www.corrections.nebraska.gov/pdf/Sex%20Offender%20FAQs%20Jan%202014.pdf>>.

29 Information provided by Stephen Huot, Department of Corrections, Minnesota, email to Rebecca Bradfield, 27 April 2016.

30 *Ibid.*

department of corrections for sexual assault offenses shall be required to successfully complete the [sex offender] programs ... prior to being eligible for parole or conditional release'.³¹

Mandatory participation

An additional level of coercion would be to require mandatory rehabilitation for sex offenders sentenced to a term of imprisonment. Outside the strict criteria for coerced psychiatric treatment under the *Mental Health Act 2013* (Tas) where prisoners with acute mental health illnesses who require specialised mental health in-patient treatment can be transferred to the Secure Mental Health Unit as a forensic patient,³² there are no provisions for mandatory treatment to be administered to prisoners in Tasmania and an offender's consent would be required for medical or psychological treatment. As noted, other adult sex-offender treatment programs that exist in Australia, England and Wales, Canada and New Zealand are all voluntary albeit with negative consequences attached if the offender fails to attend. In contrast, in some jurisdictions, participation in sex offender treatment is mandated.

In Denmark, sentenced sex offenders receive a short period of mandatory treatment at the beginning of their sentence. Sexual offenders sentenced to between three months and five years are required to stay in an Assessment and Referral Unit during their first five to seven weeks of imprisonment. During this time they must take part in a three-week preparatory program. This aims to provide for the assessment of the treatment needs of the offender and to encourage the offender to take part in the treatment program recommended as a result of the assessment. Subsequent treatment is not mandatory but refusal to take part in it may negatively affect future release on parole.³³

Mandatory treatment is also a requirement for sex offenders in Indiana, Iowa and New Jersey.³⁴ It is also required in Montana, where on sentencing a person convicted of a sexual offence, the court must designate the offender as a level 1, 2 or 3 offender and in relation to:

- level 1 and 2 offenders – order the offender to enrol in and successfully complete the educational phase of the prison's sexual offender treatment program;
- level 3 offenders – order the offender to enrol in and successfully complete the cognitive and behavioural phase of the prison's sexual offender treatment program.³⁵

An offender who has been ordered to enrol in and successfully complete a phase of a SOTP is not eligible for parole unless that phase of the program has been successfully completed.³⁶ In Alaska, not all sex offenders are ordered by the court to participate in treatment while in prison. However, for those offenders who are ordered by the court to participate in or complete treatment, a failure to do so may mean that the offender is not able to obtain parole.³⁷ In Rhode Island, an offender is required to go to a SOTP and a failure to do so will result in an inability to apply for parole.³⁸

In Japan, treatment of sex offenders in prison is also mandatory.³⁹

While there is no mandatory treatment of sex offenders in Australia, New South Wales is the only jurisdiction that allows a sentencer to compel a *drug-related* offender to receive treatment in prison as part of a sentence. This applies in relation to those drug offenders who have a Compulsory Drug Treatment Program order made, which

31 Mo Rev Stat § 589.040(2) (2015). This would also appear to be the case in Hawaii, Kentucky, Montana, Pennsylvania and Vermont, see Mary West, Scott Hromas and Paula Wenger, *State Sex Offender Treatment Programs: 50 - State Survey* (2000) <<http://www.csor-home.org/wp-content/uploads/2014/01/State-Sex-Offender-Treatment-Programs-50-State-Survey.pdf>>.

32 See *Corrections Act 1997* (Tas) s 36A; *Mental Health Act 2013* (Tas) s 87. See also Department of Health and Human Services, Wilfred Lopes Centre, <http://www.dhhs.tas.gov.au/mentalhealth/mhs_tas/gvt_mhs/forensic_mental_health_service/wilfred_lopes_centre>. There is also a limited power for a prisoner to be force fed in circumstances where the failure to eat food is endangering the life or health of the prisoner: *Corrections Regulations 2008* (Tas) reg 9(1).

33 Ellids Kristensen, Peter Fristed, Marianne Fuglested, Eva Grahn, Mikael Larsen, Tommy Lillebæk, Thorkil Sørensen, 'The Danish Sexual Offender Treatment and Research Program (DASOP)' in Douglas Boer, Richard Eher, Leam Craig, Michael Miner and Friedemann Pfäfflin (eds), *International Perspectives on the Assessment and Treatment of Sexual Offenders: Theory, Practice, and Research* (John Wiley and Sons, 2011) 251, 255-256.

34 Reagan Daly, *Treatment and Reentry Practices for Sex Offenders: An Overview of States* (2008) 9, <http://www.vera.org/sites/default/files/resources/downloads/Sex_offender_treatment_with_appendices_final.pdf>.

35 Mont Code Ann, § 46-18-207(1), (2) (2015).

36 Ibid § 46-18-207(3).

37 West, Hromas and Wenger, above n 31, 8.

38 Ibid 301.

39 Mari Hirayama, 'Sentencing and Crime Policy for Sex Offenders in Japan: The Possible Impact of the Lay Judge System' in Karen Harrison and Bernadette Rainey (eds), *The Wiley-Blackwell Handbook of Legal and Ethical Aspects of Sex Offender Treatment and Management* (Wiley-Blackwell, 2013) 168.

is a specialist drug treatment order targeted at repeat drug-related offenders with a high risk of recidivism and does not apply for all drug offenders. Under the *Drug Court Act 1998* (NSW), a court has an obligation to refer an offender who may be eligible to the Drug Court for a determination of whether the person should be made subject to a compulsory drug treatment order.⁴⁰ Offenders must be assessed as both eligible and suitable for the order.⁴¹ The order is said to be compulsory because neither the offender nor the Crown can appeal against the making of the order.⁴² In addition, the offender must comply with the compulsory drug treatment personal plan.⁴³ Treatment is provided in the Compulsory Drug Treatment Correctional Centre, which is a small, purpose built, stand-alone prison, subject to judicial oversight from the Drug Court. There are three phases of the program:

- **Stage 1** – closed detention where the offender is kept in full-time custody at the Compulsory Drug Treatment Correctional Centre for a minimum of six months;
- **Stage 2** – semi-open detention where the offender is kept in the Compulsory Drug Treatment Correctional Centre and may be allowed to attend employment, training or social programs in the community for a minimum of six months; and
- **Stage 3** – community custody, where the offender resides in the community under intensive supervision. The Drug Court determines release on parole.

This means that an offender could be living in the community after twelve months rather than the alternative of serving the 18 months or longer non-parole period in prison. In this way, the program has been designed so that the 'benefits of treatment outweigh the costs of non-participation'.⁴⁴ The 'powerful incentive of accelerated community reintegration under supervision prior to the expiry of the non-parole period' also counters the potential anti-therapeutic effect of the mandatory nature of the order.⁴⁵ In fact, research suggests that despite its mandatory nature, 'few participants see themselves as being compelled to participate'.⁴⁶ An evaluation conducted by the NSW Bureau of Crimes Statistics and Research found that '80 of the 95 participants (84%) perceived their admission to the Program as *voluntary* and any negative affective reactions decreased significantly between sentencing and the baseline interview and then maintained itself throughout the Program'.⁴⁷

Although the order is mandatory, an offender may choose to not comply with the order and this may result in the offender being ordered to regress to a previous stage in the Compulsory Drug Treatment Correctional Centre or having the order revoked.⁴⁸ If the order is revoked, the consequence for the offender 'simply means that they return

40 Section 18B.

41 An offender is eligible if – (1) 18 or older; (2) has not been convicted at any time of an offence involving a firearm, or murder, attempted murder or manslaughter, a sexual assault, or drug trafficking/supply offences; (3) sentenced to a non-parole period of at least 8 months and a sentence of not more than 6 years imprisonment; (3) resides in metropolitan Sydney. The Drug Court then considers whether: (1) the offender has a long-term drug dependence; (2) the facts and antecedents of the offence that indicate long-term drug dependence and associated lifestyle; and (3) the offender does not suffer from a serious mental condition that may lead to violence or restrict active participation in the program: see NSW Corrective Services, *Compulsory Drug Treatment Correctional Centre*, (18 August 2016) New South Wales Department of Justice (<<http://www.correctiveservices.justice.nsw.gov.au/Pages/CorrectiveServices/custodial-corrections/table-of-correctional-centres/compulsory-drug-treatment-centre.aspx#CompulsoryDrugTreatmentProgram>>).

42 *Drug Court Act 1998* (NSW) s 18D(4).

43 *Crimes (Administration of Sentences) Act 1999* (NSW) s 106C.

44 Birgden, above n 8.

45 Birgden and Grant, above n 9, 344.

46 Wayne Hall and Jayne Lucke, 'Legally Coerced Treatment for Drug Using Offenders: Ethical and Policy Issues' *Crime and Justice Bulletin* (Contemporary Issues in Crime and Justice No 144, Bureau of Crime Statistics and Research, 2010) 8 citing Joula Dekker, Kate O'Brien and Nadine Smith, *An Evaluation of the Compulsory Drug Treatment Program (CDTP)*, (NSW Bureau of Crime Statistics and Research, 2010).

47 Birgden and Grant, above n 9, 344. This reflects the reality that coercion has both an objective quality (the pressure that is applied) as well as a subjective quality (the perception of the person who is subject to the pressure), see Bruce Winick, 'A Therapeutic Jurisprudence Approach to Dealing with Coercion in the Mental Health System' 15 *Psychiatry, Psychology and Law* 25, 28.

48 The grounds in the *Crimes (Administration of Sentences) Act 1999* (NSW) s 106Q(1) for revoking the order are:

- (a) if (i) the offender has failed to comply with a condition of the offender's compulsory drug treatment personal plan; and (ii) that failure is of a serious nature; and (iii) in the opinion of the Drug Court, the offender: (A) is unlikely to make any further progress in the offender's compulsory drug treatment program, or (B) poses an unacceptable risk to the community of re-offending, or (C) poses a significant risk of harming others or himself or herself; or
- (b) if the non-parole period for the offender's sentence has expired or is about to expire and the offender is serving his or her sentence in closed detention (Stage 1) or semi-open detention (Stage 2); or
- (c) if the offender ceases to be an eligible convicted offender; or
- (d) if, in the opinion of the Drug Court (having regard to advice provided by the Director and the offender's progress in the compulsory drug treatment program), the offender is unlikely to make any further progress in the offender's compulsory drug treatment program; or
- (e) for any other reason the Drug Court sees fit.

to the conditions of ordinary imprisonment'.⁴⁹ In reality, then, the offender has a choice (albeit constrained) about whether to take part in treatment because the compulsory nature of the order only means that the offender will be housed in the Compulsory Drug Treatment Correctional Centre. As discussed above, while offenders can be actively encouraged to participate in treatment, they cannot be compelled against their will to actually take part or to satisfactorily take part in treatment.

1.3.2 COMMUNITY-BASED TREATMENT

Most Australian jurisdictions and comparable overseas jurisdictions (New Zealand, Canada and England and Wales) provide community-based treatment for sex offenders who are subject to a community-based order (either an order from the sentencing court or a parole order).⁵⁰ An offender is directed to take part in the program as a part of a community based sanction or as a condition of release on parole, and while an offender's consent to take part in treatment is generally required, failure to take part may result in a breach of the sentencing order or parole order with consequences for that breach. This is different to the situation that exists in relation to rehabilitation programs available in Australian prisons, where there is no direction from a court or administrative body to take part in treatment. Instead, in prison, an offender is made aware of the negative consequences that may follow if he or she does not participate in treatment (for example, relevance to release on parole). In contrast, for community-based treatment, the legal consequences for failure to participate relates directly to the treatment order of the court or parole board. In addition, treatment in the community may involve offenders being subject to a post-release supervision scheme for high-risk sexual offenders (in those jurisdictions where such supervision is available).

Treatment as a condition of a community-based order

As indicated, participation in sex offender treatment may be a requirement of a community-based sanction and the benefit the offender receives from compliance with the treatment condition is that the offender is allowed to be in the community under supervision.

In some jurisdictions, it is expressly stated that the offender must consent to the making of the order. For example, in Victoria an offender must consent to the making of a community correction order, which may contain a treatment and rehabilitation condition.⁵¹ However, if the offender no longer consents to the order, the court has the option of cancelling the order and re-sentencing the offender, which may be sentencing the offender to imprisonment.⁵² In addition, if the offender contravenes the community correction order, he or she commits an offence imprisonable by a term of not more than three months.⁵³

Even in jurisdictions where the legislation does not refer to the need for an offender's consent to impose a treatment condition to a community-based order, an offender cannot be forced to engage in psychological treatment. This is the situation in Tasmania, where a court may make a probation order that contains a condition that the offender submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer.⁵⁴ Nevertheless, an offender cannot be compelled to engage in psychological treatment (as discussed above) and if an offender chooses not to participate, this may amount to a breach of the order and the offender may be re-sentenced. In New South Wales, an offender who receives a suspended sentence can have a condition imposed that the offender takes part in a rehabilitation program.⁵⁵ While the legislative provisions do not refer to the need for

49 Hall and Lucke, above n 46, 8.

50 See Appendix B.

51 *Sentencing Act 1991* (Vic) ss 37(c), 48D. Under section 37, an offender must consent to the CCO generally and under s 48D, the court may attach a treatment condition.

52 *Sentencing Act 1991* (Vic) s 48M.

53 *Sentencing Act 1991* (Vic) s 83AD. See Sentencing Advisory Council, Tasmania (TSAC), *Phasing Out of Suspended Sentences*, Final Report No 6 (2016) Ch 7 and Appendix B for a summary of conditions that can attach to intermediate sentencing orders and consequences for breach.

54 *Sentencing Act 1997* (Tas) s 37(2)(d).

55 *Crimes (Sentencing Procedure) Act 1999* (NSW) ss 12(1), 95(c).

an offender to consent, an offender's participation in treatment will depend on their consent.⁵⁶ Again, this means that while offenders are not bound to take part in treatment, if they do not comply with the conditions imposed by the court, they breach the suspended sentence order and there is a presumption in favour of revocation of the order.⁵⁷

Treatment as a condition of a parole order

Treatment can also be required as a condition of an offender's release on parole. A parole order may be breached by a failure to comply with the parole conditions and there is discretion for the Parole Board to cancel the parole order and return the offender to prison. This means that the benefit for the offender of complying with the treatment condition is that the offender is able to remain in the community to serve the remainder of the period of the sentence of imprisonment under supervision. There is provision for a treatment condition to be attached to parole in all Australian jurisdictions, including Tasmania.⁵⁸ This is discussed further at [4.2].

Treatment as a requirement of a post-sentence supervision order

Treatment in the community may also involve offenders subject to a post-release supervision scheme for high-risk sexual offenders. As indicated, provision for post-sentence supervision has been introduced in several Australian jurisdictions in response to concerns about 'how to manage the small number of high risk offenders whose term of imprisonment is about to end'.⁵⁹ In Victoria,⁶⁰ Western Australia,⁶¹ New South Wales,⁶² the Northern Territory⁶³ and Queensland,⁶⁴ the court has the power to make an order for extended supervision or continued detention in circumstances where the offender poses an unacceptable risk of future serious offending.⁶⁵ The test for making the order is differently expressed in each jurisdiction but reflects a finding in relation to the unacceptable nature of the risk posed by the offender. Under the supervision and detention legislation, there is power for conditions to be imposed in relation to an offender's participation in treatment or rehabilitation programs.⁶⁶ There are consequences for an offender who does not obey the conditions of the treatment order — as liability for conviction for a separate imprisonable offence and as a basis for making a detention order (to replace the community supervision order).⁶⁷ As indicated, there is no power to make an extended supervision order in Tasmania but there are indications that the Tasmanian Government intends to introduce this type of legislation in Tasmania.

56 Corrective Services NSW, *Sex Offender and Violent Offender Therapeutic Programs* (24 April 2015) New South Wales Department of Justice, <<http://www.correctiveservices.justice.nsw.gov.au/Pages/CorrectiveServices/programs/sex-and-violent-offender-therapeutic-programs/sex-and-violent-offender-therapeutic-programs.aspx>>.

57 *Crimes (Sentencing Procedure) Act 1999* (NSW) s 98(3).

58 *Corrections Act 1986* (Vic) 74(4), (5); *Crimes (Administration of Sentences) Act 1999* (NSW) s 128; *Corrective Services Act 2006* (Qld) s 200(2); *Correctional Services Act 1982* (SA) s 68(1aa)(b); *Sentence Administration Act 2003* (WA) s 30(g); *Crimes (Sentence Administration) Act 2005* (ACT) s 136(a)(ii); *Parole Act* (NT) s 5(5)(b); *Corrections Act 1997* (Tas) 72(5).

59 Tasmania Law Reform Institute (TLRI), *Sentencing*, Final Report No 11 (2008) [6.4.13].

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

61 *Dangerous Sex Offenders Act 2006* (WA).

62 *Crimes (High Risk Offenders) Act 2006* (NSW).

63 *Serious Sex Offenders Act 2013* (NT).

64 *Dangerous Prisoners (Sexual Offences) Act 2003* (Qld).

65 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) ss 9(1), 35(1); *Dangerous Sexual Offenders Act 2006* (WA) s 7(1); *Crimes (High Risk Offenders) Act 2006* (NSW) s 5B(2); *Dangerous Prisoner (Sexual Offences) Act 2003* (Qld) s 13(1); *Serious Sex Offenders Act 2013* (NT) s 6.

66 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 17; *Serious Sex Offenders Act 2013* (NT) ss 19, 20; *Crimes (High Risk Offenders) Act 2006* (NSW) s 11(d); *Dangerous Prisoner (Sexual Offences) Act 2003* (Qld) ss 16(2)(b), 16B(1)(b) *Dangerous Sexual Offenders Act 2006* (WA) s 18(2)(b).

67 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) ss 160, 163; *Serious Sex Offenders Act 2013* (NT) ss 46, 58; *Crimes (High Risk Offenders) Act 2006* (NSW) ss 12, 13B(4); *Dangerous Prisoner (Sexual Offences) Act 2003* (Qld) ss 22, 43AA(1); *Dangerous Sexual Offenders Act 2006* (WA) ss 23, 40A(1).

2.

Characteristics of sex offenders

This Chapter provides a profile of the current sex offender population in prison in Tasmania. It also provides an overview of research that has considered sex offender characteristics and recidivism rates for sex offenders.

2.1 PROFILE OF SEX OFFENDERS IN TASMANIAN PRISONS

In Tasmania, at the time of writing, there are 61 sex offenders in the custody of the Tasmanian Prison Service.⁶⁸ There are two female offenders and 59 male offenders. Table 2-1 shows the distribution of offenders by principal offence as classified by the ANZSOC offence code.⁶⁹ The ANZSOC definition of aggravated sexual assault would include the Tasmanian offences of rape, aggravated sexual assault, unlawful sexual intercourse with a young person, maintaining a sexual relationship with a young person and indecent assault involving a child. Non-aggravated sexual assault would include indecent assault of an adult. Non-assaultive sexual offences against a child would include procure a child for prostitution/pornography and grooming offences. Child pornography offences involve the production, possession, distribution or display of child pornography.

Table 2-1: Current sex offenders in prison by principal offence

Principal Offence	Female	Male	Total
0311 - Aggravated sexual assault	2	43	45
0111 - Murder		2	2
0312 - Non-aggravated sexual assault		4	4
0321 - Non-assaultive sexual offences against a child		2	2
0322 - Child pornography offences		8	8
Total	2	59	61

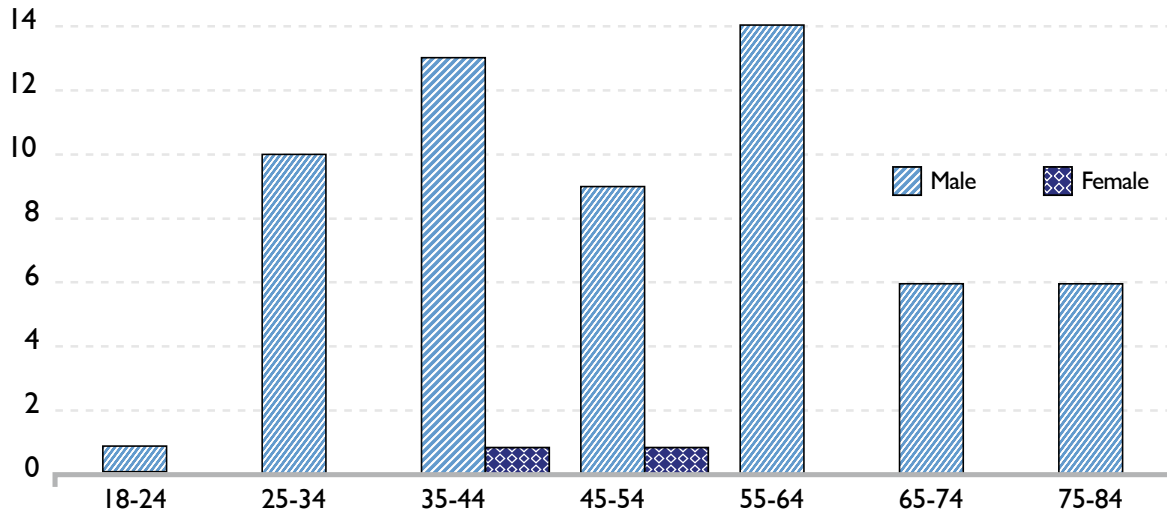
Source: Unpublished data, Tasmania Prison Service

68 Data are extracted by calendar year on the basis of the person being identified as a 'sex offender', that is contains the ANZOC offence code for any sex offence recorded on a legal document for the current episode of imprisonment, information provided by Tasmania Prison Service.

69 See Australian Bureau of Crime Statistics, *Australian and New Zealand Standard Offence Classification (ANZSOC) (2011) Cat 1234.0*.

Figure 2-1 shows the age distribution of sex offenders currently in the custody of the Tasmania Prison Service and reveals that 44.1% are aged 55 and over. Of male offenders, 20.3% are aged 65 and over.

Figure 2-1: Current sex offenders in prison by age categories



Source: Unpublished data, Tasmania Prison Service

Table 2-2 shows the number of sex offenders released in the years 2011 to 2015 and the reason for the release. It shows that in each year more offenders were released at the end of their sentence than are released to parole.

Table 2-2: Sex offenders released from prison by year of release and reason for release⁷⁰

Release Reason	Year					Total
	2011	2012	2013	2014	2015	
Death	1	-	-	-	-	1
Sentence Served	17	25	18	16	16	92
To Bail	1	-	1	2	-	4
To Parole	14	14	10	9	15	62
Transferred Interstate	-	1	-	-	-	1
Total	33	40	29	27	31	160

Source: Unpublished data, Tasmania Prison Service

⁷⁰ The prisoners released 'to bail' in the table below completed a sentence for a sexual offence during the episode of imprisonment. At the completion of the sentence they remained in custody on other matters, on which they were subsequently bailed.

Data are also provided in relation to sentence length. These are based on time served for sex offenders released in the relevant calendar year who were under sentence at the time of release:⁷¹

- Of the sex offenders released in 2011:
 - The median time served was 524 days.
 - The shortest time served was 18 days.
 - The longest time served was 2922 days.
- Of the sex offenders released in 2012:
 - The median time served was 374 days.
 - The shortest time served was 56 days.
 - The longest time served was 2933 days.
- Of the sex offenders released in 2013:
 - The median time served was 560 days.
 - The shortest time served was 60 days.
 - The longest time served was 2478 days.
- Of the sex offenders released in 2014:
 - The median time served was 272 days.
 - The shortest time served was 28 days.
 - The longest time served was 2271 days.
- Of the sex offenders released in 2015:
 - The median time served was 607 days.
 - The shortest time served was 58 days.
 - The longest time served was 3549 days.

2.2 PROFILE OF SEX OFFENDERS IN COMMUNITY CORRECTIONS

In Tasmania, as at 1 June 2006, there were 48 sex offenders under the supervision of Community Corrections.⁷² They were all male offenders. Table 2-3 shows the distribution of offenders by principal offence as classified by the ANZSOC offence code.⁷³

Table 2-3: Current sex offenders under community supervision by principal offence

Principal Offence	Total
0311 - Aggravated sexual assault	23
0312 - Non-aggravated sexual assault	10
0322 - Child pornography charges	11
0321 - Non-assaultive sexual offences against a child	4
Total	48

Source: Unpublished data, Community Corrections

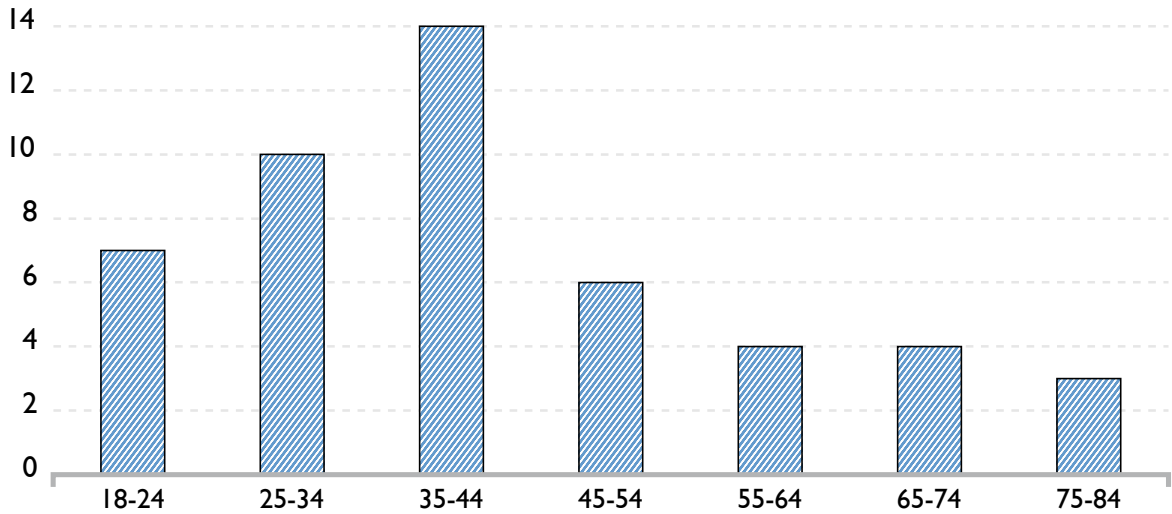
71 TPS is unable to disaggregate sentences relating to sex offences from other types of offences, therefore this data includes time served for all offences.

72 Information provided by Amy Washington, email to Rebecca Bradfield, 1 June 2016.

73 See Australian Bureau of Crime Statistics, above n 69.

Figure 2-2 shows that the age distribution of sex offenders under the supervision of Community Corrections and reveals that 22.9% are aged 55 and over.

Figure 2-2: Current sex offenders under community supervision by age categories



Source: Unpublished data, Community Corrections

Table 2-4 shows the type of order, with 64.6% being under a sentencing order imposed by the court and 35.4% being the subject of a parole order.

Table 2-4: Current sex offenders under community supervision by type of order

Types of orders	Number
Parole Order	17
Probation Order	15
Community Service Order	3
Suspended Sentence – Probation Order	10
Suspended Sentence – Community Service Order	3

Source: Unpublished data, Community Corrections

2.3 LITERATURE REVIEW ON CHARACTERISTICS OF SEX OFFENDERS

Research that has examined the characteristics of sex offenders has challenged commonly held assumptions that sex offenders are 'dedicated [and] ... driven by irresistible urges'⁷⁴ and instead suggests that criminal versatility is not uncommon for sex offenders.⁷⁵ In addition, contrary to the perception that strangers commit child sexual offences, the reality is that an offender is likely to be known to the victim.⁷⁶ Australian research examining the profile of child sex offenders found that there was:

74 Richard Wortley and Stephen Smallbone, 'Applying Situational Principles to Sexual Offences Against Children' in Richard Wortley and Stephen Smallbone (eds), *Situational Prevention of Child Sexual Abuse* (Criminal Justice Press, 2006) 7, 11.

75 This observation was also made in the context of New Zealand recidivism research: see Arul Nadesu, *Reconviction Rates of Sex Offenders: Five Year Follow-Up Study: Sex Offenders Against Children vs Offenders Against Adults* (2011) 12.

76 Kelly Richards, 'Misperceptions About Child Sex Offenders' (Trends and Issues in Crime and Criminal Justice No 429, Australian Institute of Criminology, 2011) 2-3.

- a low incidence of chronic sexual offending (less than one-quarter had a previous conviction for sexual offences);
- a high incidence of previous non-sexual offences (approximately 60% had convictions for non-sexual offences);
- a low incidence of stranger abuse (94% abused their own child or a child they already knew);
- a low incidence of networking among offenders (only about 8% had talked to other offenders); and
- a low incidence of child pornography use (approximately 10% had used child pornography).⁷⁷

Research also challenges the assumption that there is an identifiable 'sex-offender' type. Instead, it is recognised that sex offenders are a heterogeneous group with considerable variation across the offending population and that this variability has implications for their treatment needs. As explained by Lin and Simon:

Sex offenders are so labelled because of the crimes they have committed, rather than their specific risk profiles and clinical treatment needs. As we suggest in our analyses, many of those officially classified as sex offenders exhibit fundamentally dissimilar criminogenic needs than those who present high risk of repeat sexual offending — including those who persistently target children.⁷⁸

Based on an understanding of the diversity of sex offenders, there have been calls in other jurisdictions to move away from “one size fits all” approaches and towards strategies that acknowledge the complexity and diversity of sexual crime.⁷⁹ This means that there are limitations to what group-based treatment can achieve given the enormous variation of offenders and that there is a need to individualise treatment to account for these differences.⁸⁰ For this reason, the treatment program in Tasmania provides individualised treatment within a group therapy environment.⁸¹ The implications for offender treatment arising from an understanding of the different categories of offenders are discussed in more detail below.

Recent Australian research has sought to expand the understanding of the diverse categories of sex offending by constructing a career typology of child sexual offenders on the basis that this understanding will offer 'potential for a more carefully targeted delivery of prevention and treatment strategies'.⁸² This research considered the offending persistence (persistent vs limited) and versatility (specialised vs versatile) of child sexual offenders.⁸³ In this research, Wortley and Smallbone examined four offender categories:

- (1) limited/specialised (no previous sexual convictions/no previous nonsexual convictions);
- (2) limited/versatile (no previous sexual convictions/previous nonsexual convictions);
- (3) persistent/specialised (previous sexual convictions/no previous nonsexual convictions); and
- (4) persistent/versatile (previous sexual convictions/previous nonsexual convictions).⁸⁴

The authors found that the largest category of sex offender was **limited/versatile** (41.0%) offenders, that is, offenders currently serving a sentence for their first sexual offence but having at least one prior conviction for a nonsexual offence. These offenders were likely to offend in the family setting and to have relatively few victims, were generally heterosexual, tended not to have been sexually abused as a child, and the time of their first contact with the criminal justice system was at an early age. It was suggested that their offending patterns were those of an opportunist and were the result of a failure to inhibit self-gratifying urges.⁸⁵ It was further suggested that these offenders may benefit more from offender programs that target more general offence-related factors such as antisocial beliefs and attitudes, social problem-solving, empathy and the like rather than specialised sexual offender treatment programs.⁸⁶

77 Stephen Smallbone and Richard Wortley, 'Child Sexual Abuse: Offender Characteristics and Modus Operandi' (Trends and Issues in Crime and Criminal Justice No 193, Australian Institute of Criminology, 2001) summarised in Richards, *ibid* 2.

78 Jeffrey Lin and Walter Simon, 'Examining Specialization Among Sex Offenders Released from Prison' (2016) 28 *Sexual Abuse: A Journal of Research and Treatment* 253, 265.

79 *Ibid* 264.

80 Evidence to Public Hearing – Criminal Justice Roundtable (Day 2 - Adult sex offender treatment programs), Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 21 April 2016, 37-38 (Stephen Smallbone).

81 Information provided by Andrew Verdouw, 26 April 2016. Further information about the Tasmanian SOTP is provided at [3.1.1].

82 Richard Wortley and Stephen Smallbone, 'A Criminal Careers Typology of Child Sexual Abusers' (2014) 26 *Sexual Abuse: A Journal of Research and Treatment* 569, 583.

83 *Ibid*.

84 *Ibid* 575.

85 *Ibid* 581.

86 *Ibid* 582.

The next largest category, **limited/specialised** offenders (36.4%) consisted of offenders for whom the sexual offence was their first offence. As with the limited/versatile offenders, these offenders were likely to offend in the family setting and to have relatively few victims, they were generally heterosexual, tended not to have been sexually abused as a child, and were relatively old at the time of their first sexual contact with child. However, unlike the limited/versatile offenders, those in the limited/specialised category tended to abuse their victims repeatedly over an extended period of time.⁸⁷ It was suggested that 'many of these offenders may not require specialised sexual offender treatment programs, although individualised assessment and case formulations may indicate otherwise for some'.⁸⁸

The next category, **persistent/versatile** offenders (previous convictions for sexual and non-sexual offences) accounted for 17.8% of the sample. These offenders had involvement with the criminal justice system at an early age, reported a higher incident of sexual abuse as a child, had more victims, reported an earlier age for their sexual contact with a child, were more likely to have male victims and were more likely to abuse non-familiar victims. Based on these characteristics, it was suggested that these offenders may benefit from early intervention programs and that treatment programs needed to address sexual-offence-specific and more general criminogenic needs.⁸⁹

The smallest category was **persistent/specialised** (4.8%), that is offenders who have been convicted exclusively of sexual offences on multiple occasions. These offenders were more likely to have a history of being sexually abused as a child, reported earlier sexual contact with a child, were more likely to have male victims and were more likely to abuse non-familiar victims. They differed from persistent/versatile offenders because their involvement in the criminal justice system begun at a later age, they were more likely to have non-heterosexual orientations, reported more victims and were more likely to have frequent and extended sexual contact with their victims. It was suggested that these offenders are the most difficult to deter and 'are the most in need for specialised sexual offender treatment and risk management'.⁹⁰

2.4 RECIDIVISM RATES FOR SEX OFFENDERS

Contrary to popular perception, research that has examined recidivism rates for sex offenders demonstrates that sex offenders are less likely to reoffend than other offenders.⁹¹ This is relevant to a consideration of mandatory treatment for sex offenders because it suggests that a majority of sex offenders will not reoffend — even without treatment.⁹² While it is acknowledged that recidivism for sexual offences is difficult to measure given the low reporting rates of sexual offences and the high attrition rates⁹³ and that a 'conclusive understanding of sexual recidivism is yet to be attained',⁹⁴ meta-analyses have found consistently low recidivism rates among all sex offenders based both on official reports of offending and self-reports of offending.⁹⁵ A recidivism rate of 13.7% for sex offenders is 'widely cited in the literature as the best estimate of sex offender recidivism'.⁹⁶ Research on recidivism of

87 Ibid 580.

88 Ibid 581.

89 Ibid 582.

90 Ibid.

91 Arie Freiberg, Hugh Donnelly and Karen Gelb, *Sentencing for Child Sexual Abuse in Institutional Contexts* (Report for the Royal Commission into Institutional Responses to Child Sexual Abuse, 2015) 165. In research released in 2015, VSAC found that after nine years, the re-offending rate for all offenders sentenced in 2004-05 was 44.9%: VSAC, *Reoffending Following Sentence in Victoria: A Statistical Overview* (2015) 8. However, if traffic offences were excluded the re-offending rate was 33%: at 20. Sex offenders were least likely to reoffend (0.4% of the total offenders who reoffended) and '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', 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) 26 ('*Harper Review*') citing VSAC, *Reoffending Following Sentence in Victoria: A Statistical Overview* (May 2015) 9.

92 Ruth Mann and Jayson Ware, 'Editorial Commentary: Treating Sex Offenders Within a Corrections Context' (2012) 4 *Sexual Abuse in Australia and New Zealand* 2, 2.

93 See discussion in Richards, above n 76, 4-5; Denise Lievore, *Recidivism of Sexual Assault Offenders: Rates, Risk Factors and Treatment Efficacy* (Australian Institute of Criminology, 2004) ch 3.

94 Stephanie Huang, 'Sexual Recidivism: What is Known and What Remains to be Understood?' (Victoria Legal Aid, Research Brief, 2014) 4.

95 See Freiberg, Donnelly and Gelb, above n 91, 165-170; Karl Hanson, 'Who is Dangerous and When Are They Safe? Risk Assessment with Sex Offenders' in Bruce Winick and John La Fond (eds), *Protecting Society From Sexual Dangerous Offenders – Law, Justice and Therapy* (American Psychological Association, 2003) 63-74 cited in Bernadette McSherry, Patrick Keyzer and Arie Freiberg, 'Preventive Detention for 'Dangerous' Offenders in Australia: A Critical Analysis and Proposals for Policy Development' (Report to the Criminology Research Council, 2006) 12; Karen Gelb, *Recidivism of Sex Offenders: Research Paper* (VSAC, 2007) 2.

96 Freiberg, Donnelly and Gelb, above n 91, 165.

sex offenders in Victoria conducted to inform the review of the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) found that of those offenders who had been sentenced for a sexual offence in 2004–05, the majority of all sex offenders did not reoffend (84.7%) with only 15.3% of offenders being sentenced on a subsequent occasion for a new offence in the nine year follow up period.⁹⁷ Further, this research found that ‘the majority of reoffending consisted of a failure to comply with laws that exist to monitor and supervise sex offenders’.⁹⁸ Accordingly, the conclusion was ‘that (the highly published and terrible exceptions notwithstanding) reoffending by sex offenders is uncommon’.⁹⁹

Information in relation to the reoffending rates of prisoners released from prison in Tasmania is contained in the *Report on Government Services*, published annually by the Productivity Commission. The Commission reported that, using a two year follow up from the release of an offender from prison, 39.9% of prisoners were returned to prison and 50% of prisoners were returned to corrective services.¹⁰⁰ However, this does not report on differences in reoffending for different offence types and there are no studies that have specifically examined Tasmanian sex offender recidivism rates. There is some limited data available that are consistent with other research that has found low recidivism rates for sex offenders. In its consideration of sentencing for sex offences, the Council observed that some data were available from sentencing remarks and that these provided some insight into recidivism rates.¹⁰¹ In the 2001–13 period, there were a number of sex offence cases in Tasmania before the Supreme Court where the defendant had prior sex offence convictions. Overall, of 477 sex offence cases (rape, sexual intercourse with a young person, maintaining a sexual relationship with a young person, aggravated sexual assault and indecent assault) sentenced in Tasmania in the 2001–13 period, there were 57 cases with previous convictions where prior convictions were recorded for similar offences in either the Magistrates Court or Supreme Court. These data indicate a lower than 12% reoffending rate in the overall Tasmanian sex offence sample group, although there are limitations. These data are based solely on reconviction and the data, provided by the Tasmania Law Reform Institute and gathered from sentencing remarks, are incomplete given that it only includes information about prior convictions when the sentencing judge notes these.

Research has also examined the reoffending patterns of different categories of sex offenders given that sex offenders are not a single, homogeneous group and an understanding of the variations in the rates of reoffending for different categories has implications for clinical and policy responses. Research suggests that some categories of offender are particularly at risk of reoffending,¹⁰² with recidivism research showing that ‘there are identifiable characteristics of offenders that increase their likelihood of repeating their [sexual] offences’.¹⁰³ It appears that ‘the risk of reoffending is greatest for sex offenders who start offending at early age, having stable deviant sexual preferences, have multiple convictions for sexual offending, and have committed diverse sexual offences’.¹⁰⁴ Meta-analysis (using sub-samples from Canada, the United States, and England and Wales) found that extra-familial child molesters whose victims were boys had the highest rates of recidivism and incest offenders had the lowest rates of recidivism. This is set out in Table 2-5.

97 *Harper Review*, above n 91, 27. It was noted, however, that ‘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.’

98 *Ibid* 28.

99 *Ibid*.

100 Productivity Commission, *Report on Government Services, Part C: Justice*, (2015) C.18, <<http://www.pc.gov.au/research/ongoing/report-on-government-services/2016/justice/rogs-2016-volume-c-sector-c.pdf>>. It is noted that there are limitations of this measure of reoffending: (1) it only focuses on offenders released from prison and not those who receive other sentencing types; (2) reoffending is defined in a limited way (return to prison or community corrections); and (3) there is a limited follow up period: see VSAC, *Reoffending Following Sentence in Victoria: A Statistical Overview*, above n 91, 2.

101 TSAC, *Sex Offence Sentencing*, Final Report 4 (2015) [5.3].

102 Freiberg, Donnelly and Gelb, above n 91, 169.

103 Gelb, above n 95, 30.

104 *Harper Review*, above n 91, 25 citing Gelb, above n 95, vii.

Table 2-5: Sexual recidivism (%) across time and samples

Sub-group	5 years	10 years	15 years
All sex offenders	14	20	24
Rapists	14	21	24
Extended incest child molesters	6	9	13
'Girl victim' child molesters	9	13	16
'Boy victim' child molesters	23	28	35
Offenders without prior sexual conviction	10	15	19
Offenders with prior sexual conviction	25	32	37
Offenders over age 50 at release	7	11	12
Offenders less than age 50 at release	15	21	26

Source: Harris and Hanson¹⁰⁵

This is 'consistent with other research and suggests that younger offenders, offenders who have a prior sexual conviction, and extra-familial offenders who target boys represent more "high-risk" types than other kinds of sex offenders'.¹⁰⁶

Research has also identified key static and dynamic risk factors¹⁰⁷ associated with sexual offending:

- static predictors within criminal history – number and types of offences and victims;
- stable dynamic predictors – sexual deviance and an anti-social, 'crime-prone' personality;
- acute dynamic predictors – access to victims, anger, and substance abuse.¹⁰⁸

For the purposes of this paper, it is noted that a failure to complete treatment (that is, dropping out of treatment) has been identified as a stable risk factor with a positive relationship with repeat offending.¹⁰⁹ Other factors that have been identified include 'negative emotional states, poor interpersonal/self-management and poor social support'.¹¹⁰ It is also noted that 'whilst individual risk factors are clearly identified, the predictive value of each individual factor is quite small'.¹¹¹

105 This table is replicated from the table in Freiberg, Donnelly and Gelb, above n 91, 167.

106 Freiberg, Donnelly and Gelb, above n 91, 168.

107 Static risk factors are historical and unchangeable, such as criminal history. Dynamic risk factors are those with an ability to change and are classified as stable dynamic factors (reasonably stable but may change gradually over a lifetime) and acute dynamic factors (may fluctuate rapidly): see Huang, above n 94, 7.

108 See *ibid* 8-10; Gelb, above n 95, 30.

109 R K Hanson and M T Bussiere, 'Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies' (1998) 66 *Journal of Consulting and Clinical Psychology* 348, 353.

110 Gelb, above n 95, 30.

111 Huang, above n 94, 2.

3. *Rehabilitation programs for convicted sex offenders*

In Tasmania and other jurisdictions (in Australia and internationally), there has been a move towards a focus on offender rehabilitation as a means of reducing reoffending and improving community safety. This Chapter provides an overview of the rehabilitation programs that are available for sex offenders in Tasmania, as well as the literature on the effectiveness of sex offender treatment programs.

3.1 SEX OFFENDER REHABILITATION PROGRAMS IN TASMANIA

3.1.1 CUSTODIAL PROGRAMS IN TASMANIA

In Tasmania, a sex offender treatment program is available for prisoners at Risdon Prison called New Directions. A sex offender treatment program commenced in Tasmania in 2004–05 and the current model is based on the Queensland sex offender treatment program but also draws on the approach to treatment in New South Wales and Victoria.¹¹²

As at 22 March 2016, there were 32 inmates at Risdon who had been accepted into the program, who were in the program or who had completed the program. There were 54 inmates with a conviction for a sexual offence and only five had declined to participate in the program.¹¹³

The New Directions program is a rolling open program where offenders take part in group therapy with the program length varied depending on the offender's assessed risk of reoffending.¹¹⁴ The program uses cognitive behaviour therapy and draws on the 'good lives model' and the 'Risk, Needs, Responsivity' principles.¹¹⁵ Cognitive behaviour therapy focuses 'on changing sexual behaviours and interests, modifying cognitive distortions, and addressing a range of social difficulties'.¹¹⁶ The 'good lives model' is a 'strengths-based approach to offender rehabilitation, and is premised on the idea that we need to build capabilities and strengths in people, in order to reduce their risk of reoffending'.¹¹⁷ In effect, it determines the goals a person was striving for in his (or her) offending and then establishes pro-social means to achieve those goals while emphasising a therapeutic alliance.¹¹⁸ The 'Risk,

112 See Appendix A.

113 Email from Michelle Lowe to Rebecca Bradfield, 24 March 2016.

114 Static 99 is an actuarial assessment instrument created by Karl Hanson and David Thornton for use with adult male sex offenders who are at least 18 at the time of release into the community. It is the most widely used assessment tool in the world: Static 99 Clearinghouse, *Static-99/Static 99R* <<http://www.static99.org/>>.

115 Interview with Andrew Verdouw, Team Leader — Interventions Program Unit, Tasmania Prison Service, 28 April 2015.

116 Lievore, above n 93, 78.

117 Good Lives Model, *Information* <<http://www.goodlivesmodel.com/information>>. SHE supported a program based on this model. In contrast, Professor Smallbone expressed the view that the Good Lives Model does not have the same scientific standing as the RNR model, and in the major meta-analyses it is not included in the treatment types that seem to be effective. SHE also recommended the incorporation of Trauma Informed Care (TIC) into current therapeutic practice. TIC considers childhood trauma as a major contributing factor to the occurrence of sex offending in adulthood and maladaptive or abusive behaviours are considered through the lens of early trauma, see further Jill Levenson, 'Incorporating Trauma-informed Care into Evidence-based Sex Offender Treatment (2014) 20 *Journal of Sexual Aggression* 19. The Council, given its area of expertise, does not offer advice on the effectiveness of any particular model of treatment. Instead, it reiterates its view that the model of sex offender treatment program implemented in Tasmania should be evidence-based and reflective of best practice for successful treatment.

118 Information provided by Astrid Birgden.

Needs, Responsibility' principles are internationally recognised and underpin many prison-based offender rehabilitation programs for adult offenders.¹¹⁹ This approach is risk management focused and the principles can be summarised as follows:

The Risk principle suggests that higher risk offenders stand to benefit more from rehabilitation programs than low risk offenders; the Needs principle suggests that programs should target individual 'criminogenic' needs, or those dynamic risk factors that are directly related to offending behaviour, and the Responsibility principle refers to those internal and external factors that may impede an individual's response to interventions' such as weak motivation or program content and delivery.¹²⁰

Generally, all offenders are eligible to participate (even offenders who maintain their innocence after conviction) provided that they are willing to take part and are assessed as able to participate. Currently, the group size is limited to seven offenders with only one offender who denies his conduct being allowed at any one time. The program is run in the minimum security division and therefore, as a general rule, an offender needs to have minimum security classification to attend. However, some offenders with a medium security classification have been able to attend. In addition, individual treatment has been offered to offenders who are not situated at Risdon Prison. Offenders are not eligible until the sentencing process is finalised, and this means that offenders who appeal their sentence cannot participate until the appeal process is finalised. In addition, some offenders may not be suitable for group sessions given their low level of intellectual functioning and these offenders receive individual sessions. Offenders with short prison sentences cannot access the program as they need a minimum of nine months to complete the program.¹²¹ This means that no treatment is offered to offenders with sentences less than nine months.¹²² Offenders with shorter sentences are also not treated individually as a general rule but, where possible, inmates with shorter sentences can participate in some of the shorter preparatory programs for release offered in Risdon, especially those that deal with drug/alcohol use.¹²³ There is no sex offender program offered to female sex offenders.

All offenders with sentences longer than nine months are approached about participation in the program. If an offender declines, the process is to follow up with the offender in six months time to provide the offender with another opportunity to participate. Resource constraints mean that there is no preparatory program offered (as exists in some other jurisdictions)¹²⁴ and there is no 'after-care' or maintenance program offered. Again, there is no capacity to actively case manage offenders in prison and there has been no continuity of treatment from custody to the community beyond the preparation of an exit report from the sex offender treatment program and attendance at the community conference to provide information about the offender's treatment and goal setting (contained in the report).¹²⁵ The exit report is provided to the Parole Board and to Community Corrections.

Since the program's inception, there has been a total of 359 sex offenders in prison and 115 of those (32%) have completed the program (including five on an individual basis). Of the offenders who completed the program, there were only three inmates who completed the program on their first sentence and were returned to prison for further offending or breach of parole. Overall, there were 66 offenders who actively declined (18.4%), 66 offenders who were ineligible because of their sentence length (18.4%) and 16 offenders who did not complete the program (4.6%). There were nine offenders who did not take part in sex offender treatment during their first sentence who subsequently reoffended and were returned to prison. This means that the vast majority of the offenders who did not take part in treatment were not returned to prison for another sexual offence, and, in particular, of those 66 offenders who declined treatment, only three reoffended and were returned to prison.¹²⁶ However, it is possible that some of these offenders reoffended but received a suspended sentence or a non-custodial sentence rather than being returned to prison for their subsequent offence.

The treatment status of those offenders who reoffended and were returned to prison since the inception of sex offender treatment at Risdon Prison is shown in Table 3-1.

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- 119 Karen Heseltine, Andrew Day and Rick Sarre, 'Prison-based Correctional Offender Rehabilitation Programs: The 2009 National Picture in Australia' (AIC Reports: Research and Public Policy Series 112, 2011) 34.
- 120 Kevin Howells, Karen Heseltine, Rick Sarre, Linda Davey and Andrew Day, *Correctional Offender Treatment Programs: The National Picture in Australia* (2004), 71 <<http://www.criminologyresearchcouncil.gov.au/reports/200203-04.html>>.
- 121 Interview with Andrew Verdouw, Team Leader — Interventions Program Unit, Tasmania Prison Service, 28 April 2015.
- 122 Information provided by Andrew Verdouw, 26 April 2016.
- 123 Email from Andrew Verdouw to Rebecca Bradfield, 5 May 2015.
- 124 See Appendix A.
- 125 It is noted that additional funding has recently been provided to allow the prison to introduce individual case management in the prison, see [1.1], [5.1.1].
- 126 Email from Andrew Verdouw to Rebecca Bradfield, 5 May 2015.

Table 3-1: Treatment status of offenders who reoffended and were returned to prison

Offender	First sentence	Second sentence
1	Not participate (short sentence)	Completed
2	Not participate (short sentence)	Not participate (short sentence)
3	Declined	Declined
4	Not participate (health issues)	Declined
5	Not participate (intellectual disability)	Not participate (intellectual disability)
6	Completed	Declined
7	Declined	Not participate (short sentence)
8	Declined	Declined
9	Did not complete	Not participate (short sentence)
10	Completed	One on one work
11	One on one work	Not yet approached
12	Completed	Declined

Source: Unpublished data, Tasmania Prison Service

Of the 90 sex offenders released from prison between 1 July 2012 and 30 June 2015, 58 had parole eligibility, 32 completed the New Direction Program, 20 were eligible but declined to participate, 5 did not complete the program, 32 were not eligible due to insufficient time in custody and 1 was not suitable.¹²⁷

3.1.2 COMMUNITY BASED PROGRAMS

There is currently only limited treatment available for sex offenders in the community. Such treatment relies on independent counselling services undertaken through private providers and there may be difficulty obtaining an appointment in the North and North-West due to a lack of treatment providers who work in this area.¹²⁸ There are no government funded community-based treatment programs for sex offenders in Tasmania. Further, there is no capacity to run group work programs for sex offenders in the community given the small number of offenders involved and the dispersed geographical location of these offenders.

Sex offenders in the community are, however, subject to mandatory intervention by Community Corrections under a new management approach. The Community Based Sex Offender Case Management and Interventions has been rolled out by Community Corrections. Extensive training has been delivered to Community Corrections staff working with sex offenders in relation to sexual offending, management of sex offenders and case management skills. This has been done through the engagement of various consultants from different fields, including from interstate and overseas.¹²⁹ Probation officers develop individual case plans for sex offenders in their caseload. This is done by means of pre-planning and the development of an individual case management plan. The case management plan takes into consideration the unique nature of the offence and characteristics of the individual and uses various risk assessment measures that determine static, dynamic and stable risk factors.¹³⁰ Regular peer review meetings have been introduced for probation officers who are supervising sex offenders in the community.

There is only limited scope for a formal transition from custody to community supervision. If an offender has taken part in the New Directions program and is released on parole, an exit report is prepared for Community Corrections. New Directions always recommend that sex offenders, on release, have a supportive group of people around them to keep them accountable. The support group members are usually identified by the inmate during the later stages of treatment and may include supportive family members, friend/s, a medical or other health professional and where parole/community supervision is a factor, a Community Corrections staff member. This information is

¹²⁷ Information provided by Michelle Lowe, email to Rebecca Bradfield, 16 May 2016.

¹²⁸ Information provided by Amy Washington, 25 May 2016.

¹²⁹ Ibid.

¹³⁰ Ibid.

written as part of the final report, which is forwarded to the Parole Board (if applying for parole) and to Community Corrections when parole is granted. Once released, a representative of New Directions will attend a community conference where his or her role is to speak to the group about the inmate's treatment and verbalise the goal setting elements of the report.¹³¹ There are limitations in the transfer of information from the Tasmania Prison Service to Community Corrections at a systems level (for example, Community Corrections are unable to directly access information from the programs that the offender took part in prison and there are different case management approaches).¹³²

3.2 EFFECTIVENESS OF REHABILITATION PROGRAMS FOR SEX OFFENDERS

Extensive research and commentary exists in relation the efficacy of treatment for sex offenders, including the effectiveness of prison based rehabilitation programs. Some researchers have concluded that treatment does not reduce recidivism while others have suggested that some forms of treatment can be effective for some offenders.¹³³ However, while the state of the literature is not settled and the efficacy of treatment remains controversial, evidence does suggest that sex offender treatment can be effective to reduce recidivism, particularly community-based programs. This literature is outlined below.

At the outset, it is noted that a source of the controversy is the quality of the evidence that demonstrates the effectiveness of sex offender treatment in terms of a reduction in recidivism. Methodological difficulties arise from: (1) the low base rates of sexual recidivism that makes it difficult to detect significant difference in reconviction rates between treated groups and untreated groups; and (2) the problems of matching control groups (such as characteristics of those who refuse treatment or deny offending and also closer supervision provided on release for offenders who do not undertake treatment). This means that any observed effect may not be due to treatment but may instead be due to other differences between treated and untreated offenders (for example, those who refuse treatment or do not complete treatment may be higher risk offenders).¹³⁴ Further, it is said that the 'gold standard' methodology for effectiveness studies is a randomised control design, which is not usually feasible in a correctional setting.¹³⁵

Other factors that complicate consensus on the effectiveness of sex offender treatment include the heterogeneity of the offender group and the treatment approaches that exist.¹³⁶ While meta-analysis suggests that overall treatment is effective, by its nature, meta-analysis collates the results from multiple evaluations to determine program effectiveness.¹³⁷ This means that within the evaluations there are programs that worked very well, programs that had a neutral effect and programs that made things worse.¹³⁸ Accordingly, it is difficult to determine the features that were effective from the features that were ineffective. This aspect of the efficacy of sex offender treatment programs requires further research.¹³⁹

131 Email from Andrew Verdouw to Rebecca Bradfield, 26 May 2016.

132 Information provided by Amy Washington, 25 May 2016.

133 See for example, David Ho, 'Ineffective Treatment of Sex Offenders Fails Victims' (2015) *BMJ* 350 (Personal View) states that 'no evidence from academic or policy research has shown that the treatment programme significantly reduces sexual reoffending. To be clear: convicted sex offenders are sent to prison, undergo this treatment programme, are deemed to have been somewhat rehabilitated, and are released to the public; however, they are as likely to offend as before receiving treatment'. In contrast, Jamie Walton and Shihning Chou, 'Sex Offender Treatment: Commentary on Ho' (2015) *BMJ* 350 write that, 'claiming that treatment is ineffective in the absence of consistent high quality evidence to support such a claim does not accurately convey the state of affairs in the field'. Similarly, Johann Koehler and Friedrich Lösel, 'A Differentiated View on the Effects of Sex Offender Treatment' (2015) *BMJ* (eletter), write that Ho's view is misleading because 'the piece overlooked research that suggests findings contrary to his conclusion, and he infers uniformity of outcomes from heterogeneous studies'.

134 Adam Carter, 'Sexual Offending Treatment Programmes: The Importance of Evidence-Informed Practice' in Kieran McCartan (ed), *Responding to Sexual Offending: Perceptions, Risk Management and Public Protection* (Palgrave Macmillan, 2014) 111, 112.

135 See Evidence to Public Hearing – Criminal Justice Roundtable (Day 2 - Adult sex offender treatment programs), Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 21 April 2016, 37 (Stephen Smallbone).

136 Martin Schmucker and Friedrich Lösel, 'The Effects of Sexual Offender Treatment on Recidivism: An International Meta-analysis of Sound Quality Evaluations' (2015) 11 *Journal of Experimental Criminology* 597, 598.

137 Sarah Macgregor, *Sex Offender Treatment Programs: Effectiveness of Prison and Community Based Programs in Australia and New Zealand* (Brief 3, 2008 Indigenous Justice Clearinghouse) 1.

138 Evidence to Public Hearing – Criminal Justice Roundtable (Day 2 - Adult sex offender treatment programs), Royal Commission into Institutional Responses to Child Sexual Abuse, 21 April 2016, 37 (Stephen Smallbone).

139 Ibid.

Instead of sweeping controversies about sex offender treatment we need hard empirical work on what works with whom, in what contexts, under what conditions, with regard to what outcomes, and also why.¹⁴⁰

However, while these limitations are important so as to not 'overstate value of treatment, it is acknowledged that treatment is an important response to a significant social problem'.¹⁴¹ And, if there is evidence of even small reductions of recidivism, then this is important given 'the extremely high impact of sexual offending on victims and their families'.¹⁴²

In its recent consideration of the management of serious sexual and violent offenders conducted in Victoria, the *Harper Review* summarised the state of the research and indicated that recent studies had found a positive correlation between treatment and 'desistance' (that is, the cessation of offending or other antisocial behaviour):¹⁴³

- 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.¹⁴⁴
- 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 the average follow-up period of 4.7 years.¹⁴⁵
- A Colorado study by Lowden and colleagues found that participating 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.¹⁴⁶
- 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 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 per cent in untreated offenders) and a relative reduction in recidivism of 26.3 per cent.¹⁴⁷

Similarly, other internationally recognised experts have stated that 'there have been a number of recent methodologically sound evaluations of the effectiveness of sex offender treatment programmes, all reaching similar conclusions' — that sex offenders treatment can reduce the rates of offending — both of sexual offences and other offending.¹⁴⁸

In the Australian context, researchers have indicated that evidence now suggests 'that sex offender treatment is at least moderately effective in reducing reoffending. Not all programs are equally effective however, and a number of sex offenders will re-offend even after treatment — particularly those assessed as high risk'.¹⁴⁹ An evaluation of the New South Wales prison based program (CUBIT) conducted in 2008 found that '8.5% of sex offenders who were treated ... committed a further sexual offence in the follow up period (3.75 years) compared with the predicted sexual recidivism rate of 26%'.¹⁵⁰ The Victorian sex offender treatment program was evaluated in 2007, and this review found that, '4% of SOP treatment completers reoffended sexually, 20% of those who withdrew from

140 Koehler and Lösel, above n 133.

141 Drew Kingston, Pamela Yates and Phillip Firestone, 'The Self-Regulation Model of Sexual Offending: Relationship to Risk and Need' (2012) 36 *Law and Human Behavior* 215, 215.

142 Gelb, above n 95, 37.

143 *Harper Review*, above n 91, 138-139.

144 Brian Lovins, Christopher T Lowenkamp and Edward J Latessa, 'Applying the Risk Principles to Sex Offenders: Can Treatment Make Some Sex Offenders Worse?' (2009) 89 *The Prison Journal* 344. It is noted that this study did not examine treatment in prison, instead it examined intensive treatment at a half-way residential house compared with less intensive treatment in the community.

145 Karl Hanson, Guy Bourgon, Leslie Helmus and Shannon Hodgson, *A Meta-Analysis for the Effectiveness of Treatment for Sex Offenders: Risk, Need, and Responsivity: Report* (Public Safety Canada, 2009).

146 Kerry Lowden, Nicole Hetz, Linda Harrison, Diane Patrick, Diane Pasini-Hill and Kim English, *Evaluation of Colorado's Prisons Therapeutic Community for Sex Offenders: A Report of Findings* (Department of Public Safety, 2003).

147 Schmucker and Losel, above n 136.

148 Sharon Casey, Andrew Day, James Vess and Tony Ward, *Foundations of Offender Rehabilitation* (Routledge, 2013) 121.

149 Patrick Sheehan and Jayson Ware, 'Preparing Sex Offenders for Treatment: A Preliminary Evaluation of a Preparatory Programme' (2012) 4 *Sexual Abuse in Australia and New Zealand* 3, 3.

150 Macgregor, above n 137, 3 citing A Hoy and D A Bright, *Effectiveness of a Sex Offender Treatment Programme: A Risk Band Analysis* (unpublished) (2008).

SOP reoffended sexually and 10% of those who were removed from SOP reoffended sexually'.¹⁵¹ A review of the Queensland program, published in 2010, found that:

all types of recidivism were lower for treated offenders than untreated offenders. This difference was significant for nonsexual violent (2.5% vs 9.6%) and 'any' recidivism (20.9% vs 32.3%), but not for sexual recidivism (3.2% vs 6.0%). Even though unrelated offenders were almost twice as likely to be detected for new sexual offences, the low base-rates of sexual recidivism prevented meaningful statistical analysis.¹⁵²

This review also found that sexual recidivism rates were higher for those offenders did not receive standard supervision (for example, parole) on release (7.1%) compared to those who released with standard supervision (2.6%).¹⁵³ In relation to sexual recidivism, two factors were identified as being significantly and uniquely related to reoffending: (1) a higher assessed static risk, and (2) being discharged without supervision. It was noted that 'although treated offenders were either marginally or significantly less likely than untreated offenders to re-offend, treatment (by itself) was not a unique predictor of recidivism'.¹⁵⁴ For this reason it was stated that '[i]n terms of factors that can be controlled by QCS [Queensland Corrective Services], participation in treatment, together with standard community supervision, seems to be the best combination for reducing re-offending'.¹⁵⁵

A key feature of the research conducted in relation to the effectiveness of treatment for the purposes of this paper is the relevance of coercion to treatment efficacy. Indeed, it would be perverse to suggest that the state could coerce treatment that has no effect on subsequent behaviour. While there may be a perception that coerced treatment is less likely to be effective than voluntary treatment in reducing recidivism, this is not necessarily borne out in the literature. Recognising that 'engaging coerced clients in treatment is a task that requires great therapeutic skill',¹⁵⁶ and perhaps more so in the context of sex offenders (where offenders will be required to disclose highly embarrassing and personal information which is harder for them than say a drug user where the behaviour is more socially acceptable),¹⁵⁷ coercion does not mean that treatment will be ineffective.

Research that has examined the impact of volunteering compared with mandatory treatment has found that 'voluntary versus non-voluntary treatment participation did not differ in their outcomes'.¹⁵⁸ This means that:

(1) offenders brought to treatment via external pressures such as judicial orders may benefit from treatment, and (2) that voluntariness in itself is not a sufficient condition for successful treatment.¹⁵⁹

In addition, aside from the outcomes of coerced treatment, research shows that coercion can be effective to facilitate participation in treatment by bringing offenders into treatment and keeping them there.¹⁶⁰ The 'trends in research findings suggest that over time, treatment itself can be successful at transforming some psychological aspects of the coerced clients so that he or she is more likely to comply with and complete treatment and experience successful outcomes'.¹⁶¹ However, there is a risk that offenders who are coerced to take part in treatment will only participate to avoid negative consequences and may simply go through the motions and 'fake' compliance. Research suggests that these offenders are more likely to reoffend.¹⁶² Accordingly, it is important to be aware that applying additional pressure to offenders who do not want to participate in treatment may be counter-productive.¹⁶³ It is also important that the approach to treatment is done in a way that minimises the anti-therapeutic effects of coercion

151 Macgregor, above n 137, 3 citing Owen et al. It was noted that there was a possibility that program drop outs were more likely to reoffend with or without treatment given the nature of offenders who drop out of programs.

152 Stephen Smallbone and Meredith McHugh, *Outcomes of Queensland Corrective Services Sexual Offender Treatment Program*, Final Report (2010) 57-58.

153 Ibid 46.

154 Ibid 51.

155 Ibid.

156 Day, Tucker and Howells, above n 6, 267.

157 This observation was made by Astrid Birgden, email to Arie Freiberg, 11 June 2016.

158 Schmucker and Lösel, above n 136, 622; Melissa Grady, Daniel Edwards, Carrie Pettus-Davis and Jennifer Abramson, 'Does Volunteering for Sex Offender Treatment Matter? Using Propensity Score Analysis to Understand the Effects of Volunteerism and Treatment on Recidivism' (2012) 25 *Sexual Abuse* 319.

159 Schmucker and Lösel, above n 136, 622.

160 Day, Tucker and Howells, above n 6, 265.

161 William M Burdon and Catherine A Gallagher, 'Coercion and Sex Offenders: Controlling Sex-Offending Behavior Through Incapacitation and Treatment' (2002) 29(1) *Criminal Justice and Behavior* 187, 102.

162 Sheehan and Ware, above n 149, 3.

163 See Sarah Brown and Ruth Tully, 'Components Underlying Sex Offender Treatment Refusal: An Exploratory Analysis of the Treatment Refusal Scale – Sex Offender Version' (2014) 20 *Journal of Sexual Aggression* 69.

meaning that the challenge is how to motivate offenders to take part in treatment 'while respecting autonomy (therapeutic) and not fostering resentment (anti-therapeutic)'.¹⁶⁴

A related issue is the problem of offenders who initially commence treatment and subsequently drop out of treatment programs given that research suggests treatment attrition is related to recidivism.¹⁶⁵ However, it is not clear whether this increased recidivism is attributable to the failure to complete treatment per se or whether it relates to the risk profile of offenders who are likely to withdraw from treatment.¹⁶⁶ Studies have found that non-completers are more likely to be 'high-risk, high-needs offenders' and this may explain the failure to continue in treatment and also the increased risk of reoffending.¹⁶⁷ This suggests that there is a need to better understand the reasons why offenders drop out of treatment¹⁶⁸ and to develop strategies to retain offenders in treatment.

Other features of the research literature reveal that:

- **Community-based treatment is generally more effective than treatment in prison.**¹⁶⁹ It has been suggested that this may be due to the "contamination effects" in the prison subculture, a lack of deterrence, a deferred transfer of learned contents to the world outside, difficulties during resettlement and other influences'.¹⁷⁰ The Sexual Assault Support Service (SASS) also noted research that supports integration of intervention between prison and community-based treatment:

Losel and Schmucker found that community-based programs were generally more effective than programs in prison settings, with mixed-setting programs showing intermediate effects. These findings are consistent with the results of reviews of the effectiveness of general offender rehabilitation programs, which have also shown that community-based programs are generally more effective than prison-based programs. These effects tend to hold even when pre-existing risk-related differences between community-based and prison-based offenders are controlled. Prison-based programs can be effective, but it is very important that they are linked structurally with community-based services.¹⁷¹
- **Treatment is more effective for high-risk offenders.**¹⁷² In relation to low risk offenders, 'the recidivism rate is so small that treatment cannot add much to further reduce reoffending'.¹⁷³ In addition to the lack of any identified benefit for treating low-risk offenders, some researchers have suggested that requiring treatment participation of low risk offenders may increase their risk of reoffending as they are exposed to others with criminogenic needs.¹⁷⁴
- **Treatment is more effective if it reflects the 'Risk, Needs and Responsivity' principles.**¹⁷⁵ This means that treatment should be focussed on offenders with the highest risk of reoffending (as stated above), it needs to target the dynamic risk factors (or criminogenic needs) of the offender and it needs to adjust to the individual differences of the offenders.¹⁷⁶ However, it is noted that the 'Risk, Needs and Responsivity' principles have not yet been thoroughly evaluated with sexual offenders.¹⁷⁷

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- 164 See Astrid Birgden, 'Consent Versus Coercion and Offender Rights and Community Rights in Sexual Offender Rehabilitation' (manuscript submitted for publication).
- 165 Stephen Wormith and Mark Olver, 'Offender Treatment Attrition and Its Relationship with Risk, Responsivity, and Recidivism' (2002) 29 *Criminal Justice and Behavior* 447, 451.
- 166 See Mark Olver, Keira Stockdale and Stephen Wormith, 'A Meta-Analysis of Predictors of Offender Treatment Attrition and its Relationship to Recidivism' (2011) 79 *Journal of Consulting and Clinical Psychology* 6, 16.
- 167 Ibid 15.
- 168 See Melissa Grady, Adrienne Howe and Emma Beneke, 'Increasing Retention Rates in Sex Offender Treatment: Learning from Expert Clinicians' (2013) 20 *Sexual Addiction and Compulsivity* 171.
- 169 Gelb, above n 95; Schmucker and Lösel, above n 136, 621, 623; Bitna Kim, Peter Benekos and Alida Merlo, 'Sex Offender Recidivism Revisited: Review of Recent Meta-analyses on the Effects of Sex Offender Treatment' (2015) *Trauma, Violence and Abuse* 1, 10-11; Evidence to Public Hearing – Criminal Justice Roundtable (Day 2 - Adult sex offender treatment programs), Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 21 April 2016, 52 (Stephen Wong).
- 170 Schmucker and Lösel, above n 136, 621.
- 171 SASS, quoting Stephen Smallbone and Meredith McHugh, *Outcomes of Queensland Corrective Services Sexual Offender Treatment Programs*, Final Report (2010) 8-9.
- 172 Schmucker and Lösel, above n 136, 622.
- 173 Ibid.
- 174 Don Andrews and James Bonta, *The Psychology of Criminal Conduct* (Anderson, 4th ed, 2006) 280.
- 175 Stephen Smallbone, William Marshall and Richard Wortley, *Preventing Child Sexual Abuse: Evidence, Policy and Practice* (Willan Publishing, 2008) 113.
- 176 Ibid 113-114.
- 177 Jill Stinson and Judith Becker, *Treating Sex Offenders: An Evidence-Based Manual* (Guilford Press, 2013) 6.

Treatment of sex offenders is complex and multiple factors can affect treatment effectiveness including program delivery, the therapeutic relationship, the treatment environment and how the offender responds to the program.¹⁷⁸ 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 offence dynamics of individual sex offenders'.¹⁷⁹ Further, the value of treatment should not be overstated. It is a factor in reducing the risk of recidivism but it is only one aspect of a broader system response (a continuity of care) that needs to assist to reintegrate an offender in the community.¹⁸⁰

178 *Harper Review*, above n 91, 139.

179 Roger Przybyiski, *The Effectiveness of Treatment for Adult Sexual Offenders*, Research Brief (Sex Offender Management Assessment and Planning Initiative, July 2015) 4.

180 Evidence to Public Hearing – Criminal Justice Roundtable (Day 2 - Adult sex offender treatment programs), Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 21 April 2016, 54 (Stephen Wong).

4. *Mandatory treatment for sex offenders in Tasmania*

This Chapter examines the mechanisms available under the current Tasmanian sentencing and parole regime to coerce a sex offender to undergo sex offender rehabilitation in prison and in the community. It also examines the power of the Parole Board to order an offender to take part in rehabilitation as a condition of parole.

4.1 CUSTODIAL PROGRAMS

In Tasmania, while it is not mandatory to participate in the New Directions program, a sex offender's participation in the program is relevant to the Parole Board decision to release an offender on parole. Under recent changes to the *Corrections Act 1997* (Tas), the Director of Corrective Services is required to prepare a written assessment of the offender's participation or non-participation. This assessment must include consideration of the prisoner's attendance and compliance, attitude and behaviour and responsiveness during treatment. The assessment must also consider whether the treatment was completed, and if not, the reasons for non-completion, including whether the offender's participation was stopped or suspended on the grounds that the offender's participation was unsatisfactory or that treatment was not longer available, practicable or appropriate, or whether there were other valid grounds for the cessation or suspension.¹⁸¹ The Parole Board will be required to take into account 'any notice or assessment given to the Board concerning the prisoner's participation or non-participation in appropriate treatment' when determining whether or not to release the prisoner on parole.¹⁸²

These provisions apply if the Director of Corrective Services is satisfied on reasonable grounds that appropriate treatment is available.¹⁸³ The Director is required to give a sex offender prisoner reasonable opportunity to participate in the treatment unless satisfied on reasonable grounds that: (a) the prisoner is medically or psychologically unfit to participate in the treatment; or (b) the prisoner is not cognitively capable of participating in the treatment; or (c) there is insufficient time for the prisoner to complete the treatment'; or (d) the prisoner's participation in the treatment could compromise the safety, security or good order of the prison.¹⁸⁴ These criteria reflect the current eligibility requirements that exist for the New Directions Program and mean that there remains a strong incentive to participate in the program for sex offenders who are eligible for parole and wish to be released on parole. However, the legislation does not go as far as to provide that failure to successfully participate in the program will mean that an offender is not to be granted parole. It is also recognised in the legislation that not all sex offenders will be able to access treatment.

Changes have also been made to the *Corrections Regulations 2008* (Tas) that govern the power of the Director to grant remission to prisoners and these changes mean that an offender is not able to be granted a remission in sentence if the offender has chosen not to participate in appropriate treatment or has chosen to participate but that participation was unsatisfactory.¹⁸⁵ Remissions are reductions in the length of prison sentences and as a general rule, under the remission scheme that applies in Tasmania, all prisoners sentenced to nine months or more get

181 *Corrections Act 1997* (Tas) s 31(4).

182 *Ibid* s 72(4)(kb).

183 *Ibid* s 31(1). 'Appropriate treatment' is defined in s 3 as 'a professional intervention to address the underlying causes of offending behaviour'.

184 *Ibid* s 31(2).

185 *Correction Regulations 2008* (Tas) reg 22(4).

a reduction of three months from their sentence.¹⁸⁶ These amendments will mean that participation in the New Directions program is 'quasi-mandatory' for offenders who wish to rely on the remission system, given that if they do not satisfactorily take part, then they will not receive a remission.

Previously, the statutory criteria for release on parole did not specifically list refusal to participate in treatment as a relevant factor. However, it did direct the Parole Board to have regard to the likelihood of an offender reoffending and the rehabilitation of the prisoner. Participation in treatment would be relevant to this assessment. The Board was also directed to consider any reports tendered to the Board¹⁸⁷ and for sex offenders, the Board was provided with a report from the facilitators of the Sex Offender Treatment Program.¹⁸⁸ It was the approach of the Board to regard participation in the New Directions program as a fundamental prerequisite to an order for parole.¹⁸⁹ Accordingly, even without the recent legislative changes, there was a clear incentive for an offender to satisfactorily participate in the rehabilitation program and, as shown in Table 4-1, since 2012–13, a majority of sex offenders have completed the New Directions Program before being release on parole.

Table 4-1: Sex offenders and parole 2011–12 to 2014–15

	Year			
	2011–12	2012–13	2013–14	2014–15
Sex offenders considered for parole	28	25	34	38
Sex offenders granted parole	25	5	15	10
Sex offenders granted parole who completed the New Directions (sex offenders) Program	14	5	11	9

Source: Parole Board Annual Report 2014-15

4.2 TREATMENT AS A CONDITION OF PAROLE

As discussed at [1.3.2], treatment can be required as a condition of an offender's release on parole in Tasmania. Under the *Corrections Act 1997* (Tas) s 72(5), the Parole Board has a wide discretion to impose conditions on an offender on release and a parole order can be subject to such terms and conditions as the Parole Board considers necessary. The Parole Board has indicated that there are standard conditions (as well as special conditions that may be attached to a parole order) including the requirement to '[a]ttend as directed by the Probation Officer any rehabilitation program nominated by the Probation Officer and not, without the permission of the Probation Officer, be discharged from or do anything to bring about a discharge from that program'.¹⁹⁰

In relation to sex offenders, the Parole Board often imposes conditions in relation to psychological counselling (where appropriate) and if this occurs, most offenders usually get a mental health treatment plan from a general practitioner under the Medicare scheme and then attend a psychologist. However, as indicated, there may be difficulties for an offender accessing treatment services, particularly in the North and North West of the state. There are also problems because few psychologist bulk-bill and the 'gap' payment may be prohibitive for some offenders. In addition, it is common for the Parole Board to require an offender to convene a community support group, if this recommendation is included in the New Directions report. In addition, the Parole Board typically imposes conditions in relation to:

- contacting particular persons (for example, the victim or the mother of the victim (in the case of child victims));
- an offender's ability to have access to children by the use of place restriction orders (for example, not loitering near a school or toilet or other place where children are regularly present); and/or
- prohibiting an offender from entering into paid or voluntary work where the offender would have access to children.

186 *Correction Regulations 2008* (Tas) reg 22.

187 *Corrections Act 1997* (Tas) s 72(4).

188 Parole Board, *Annual Report 2014-15* (2015).

189 In the matter of the *Corrections Act 1997* and in the matter of an Application for Parole by P M L (2016).

190 Parole Board, above n 188, 25.

4.3 COMMUNITY-BASED PROGRAMS

There are provisions in the *Sentencing Act 1997* (Tas) for courts to impose treatment requirements for adult offenders who are not sentenced to immediate imprisonment. These orders are couched in mandatory terms, as there is no express requirement for an offender to consent to the making of the order (as exists in some jurisdictions).¹⁹¹ However, an offender's (un)willingness to comply with the requirement for treatment may mean that the order is cancelled or varied or may amount to a breach of the order.

Treatment can be imposed as a condition of a suspended sentence, if the court requires the offender to submit to the supervision of a probation officer.¹⁹² The court can also combine a probation order with a suspended sentence¹⁹³ or impose a probation order as an independent sentencing option and an offender can be directed to take part in education and/or treatment as a special condition of a probation order.¹⁹⁴ These provisions can be used to allow a judge to direct that a sex offender undergo psychological assessment and treatment as a condition of a probation order. There is no requirement that an offender consent to the making of the order but consent is implicit because the order may be cancelled if the offender is no longer willing to comply with the conditions of the order.¹⁹⁵ However, the general nature of the condition in the sentencing order may mean that an offender can refuse to take part in psychological counselling but offer to take part in other programs and so may technically not be in breach of the order.¹⁹⁶ This differs from the situation that applies in the case of family violence offences, where there is a specific provision in the *Sentencing Act 1997* (Tas) s 7(ea) that allows the court to make a rehabilitation program order.

Proposals that would allow a court to direct an offender take part in mandatory treatment in the community have also been included in the Council's consideration of sentencing options to replace suspended sentences, contained in the *Phasing Out Suspended Sentences: Final Report*. The Council has recommended the introduction of home detention in Tasmania and one of the core conditions of the proposed home detention order is the requirement to engage in personal development activities or in counselling or treatment as directed (Recommendation 20). The Council has also recommended an expansion of probation and community services orders with the introduction of a new non-custodial sentence called the community correction order (CCO) (Recommendation 32). A requirement to attend educational and other programs as directed by the court or a probation officer, to undergo medical, psychological or psychiatric assessment or treatment are special conditions that can attach to a CCO. The Council did not recommend that consent should be a pre-condition to the imposition of a CCO but it did indicate that an offender's suitability for the order should be an overarching consideration in the making of the order and imposing special conditions and an offender's willingness to take part in treatment is relevant to this issue.

4.4 PARTICIPATION IN SEX OFFENDER PROGRAMS IN TASMANIA

4.4.1 PRISON-BASED TREATMENT

As indicated, in prison, there are strong incentives for an offender to participate in the New Directions program and data indicate that most offenders who are released on parole have completed the program.¹⁹⁷ However, it is noted that not all offenders take part in treatment and that there are a variety of reasons for non-participation.

Some offenders may decline to participate in New Directions as they are not motivated by its relevance to parole given that they may not be eligible for parole or they may choose not to apply for parole. In the period 2012–13 to 2014–15, there were 17 sex offenders who were eligible to apply for parole who were released after serving their sentence without applying for parole.¹⁹⁸ As shown in Table 2-2, in the years 2011–15, there were more sex offenders released at the end of their sentence than released to parole. Other prisoners may not participate because they may not be eligible to participate in the program due to the length of their sentence, as the SOTP is not offered

191 See for example, *Sentencing Act 1991* (Vic).

192 *Sentencing Act 1997* (Tas) s 24(2)(b).

193 *Ibid* s 8(1).

194 *Ibid* s 37(2).

195 *Ibid* s 41(6)(b).

196 Information provided by Amy Washington, 25 May 2016.

197 See [4.1].

198 Email from Michelle Lowe to Rebecca Bradfield, 24 March 2016. It is not known if any of these offenders had taken part in the New Directions program.

to offenders who serve sentences where the time to serve is less than nine months or for other reasons such as intellectual functioning or ill-health. These factors appear to be more common reasons for an offender not taking part in the New Directions treatment program rather than direct refusal to participate given that data indicate that a minority of offenders who are released without completing the New Directions program were eligible to participate (see Table 4-2).

Table 4-2: Offenders released without completing New Directions

Year	No of offenders not completed New Directions	No of offenders eligible for New Directions	Proportion
2012-13	23	11	47.8%
2013-14	16	7	43.7%
2014-15	19	6	31.6%

Source: Unpublished data, Department of Justice

4.4.2 COMMUNITY-BASED TREATMENT

As indicated, there is no community-based rehabilitation program for sex offenders. If an offender is directed to have treatment as part of their parole conditions, the offender has individual treatment with a psychologist (which is funded by the usual Medicare arrangements for mental health treatment).¹⁹⁹

199 See Department of Health, Australian Government, 'Better Access to Mental Health Care: fact Sheet for Patients' <<http://www.health.gov.au/internet/main/publishing.nsf/content/mental-ba-fact-pat>>.

5.

Options to expand requirements for mandatory treatment

This Chapter considers options to expand the requirements for mandatory treatment for sex offenders in Tasmania. It presents three options for reform to treatment provided in custody and considers their respective strengths and weaknesses. It also considers the need for reforms to the legislative framework that provides for sex offender treatment in the community.

5.1 CUSTODIAL TREATMENT

5.1.1 OPTION 1: MANDATORY TREATMENT

An option to place additional pressure on an offender to take part in sex offender treatment while in custody would be to require a judge to impose a treatment condition on all sentenced sex offenders, where appropriate treatment is available for the offender. This could be done by an amendment to the *Sentencing Act 1997* (Tas). This approach has the advantage of judicial authority. However, the requirement for treatment in prison relates to management in prison and not punishment and so, alternatively, there could be a legislative direction that required all sex offenders sentenced to imprisonment to receive treatment where appropriate treatment was available. This could be achieved by an amendment to the *Corrections Act 1997* (Tas). The mandatory direction for treatment would need to be supported by legal consequences for failure to comply with the direction by either refusing to take part in treatment or unsatisfactory participation.

Mandatory treatment could be supported on the basis that evidence suggests that offenders may not participate in treatment without some level of coercion.²⁰⁰ For example, in the United Kingdom, it was found that 41% of sexual offenders interviewed stated that they would only participate in treatment in order to obtain parole.²⁰¹ Accordingly, coercion to encourage an offender to participate in treatment may be beneficial as it may bring offenders to treatment who may not otherwise take part if it was entirely voluntary. Research also shows that external pressure to take part is not necessarily detrimental to treatment outcomes and reoffending rates as skilled practitioners can develop effective therapeutic relationships with offenders once they are involved in treatment. Mandatory treatment is the strongest form of external pressure that can be applied and it gives a clear direction to the offender that they must participate in treatment.

However, it can be argued that the requirement for mandatory treatment is unnecessary, counterproductive and inappropriate. For example, one argument is that it is unnecessary to make treatment in prison mandatory to achieve the desired outcome of encouraging sex offenders to take part in treatment in prison and that the requirement for mandatory treatment will not necessarily result in an increase in participation rates. Significant coercion already exists given that it is unlikely than an offender would be released on parole or have his dangerous criminal status removed unless the offender has taken part in sex offender treatment in prison. As discussed at [1.3.1], it is not possible to compel a person to participate in psychological treatment and this remains the case whether treatment is mandatory or voluntary. It is the consequences that flow from non-participation that are significant for offenders (the 'stick') and it is only possible to impose a finite number of consequences (for example, denial of parole, remissions for prison

200 Astrid Birgden and Frank Vincent, 'Maximizing Therapeutic Effects in Treating Sexual Offenders in an Australian Correctional System' (2000) 18(4) *Behavioral Sciences & the Law* 479, 482.

201 Don Grubin and David Thornton, 'A national program for the assessment and treatment of sex offenders in the English prison system' (1994) 21(1) *Criminal Justice and Behavior* 55 cited in *ibid*, 482.

based offenders) on an offender who does not comply. This is true regardless of whether treatment is expressed to be voluntary but coerced (the current position) or expressed as a mandatory requirement.

In addition, it can be argued that it is discriminatory to provide that treatment for sex offenders is mandatory when this requirement does not apply to other categories of offenders. The Prisoners Legal Service expressed the view that it 'is unfair to force [offenders] to undertake any program. Deprivation of liberty is punishment enough'. Similarly, SHE expressed the view that 'enforcing mandatory treatment programs presents possible breaches to human rights, as it limits the autonomy of offender'. SHE wrote that a treatment framework should be adopted that 'focuses on 'treatment-as-rehabilitation' instead of 'treatment-as-management' on the basis that this will facilitate a rights based approach and improve community safety by reducing reoffending.

Further, it is possible that mandating treatment for offenders in prison may actually decrease effective participation in the program and so be counterproductive. Research on coerced participation in rehabilitation programs has found that treatment tends to be accepted as 'fair' by offenders 'when it is made clear that it is their decision to accept or refuse treatment' and accordingly, it has been argued that '[r]educing the reality and the perception of excessive and "unfair" coercion should be an important objective in rehabilitation, both for ethical and practical reasons'.²⁰² If compelled, offenders may take part in the treatment but fail to engage and merely 'go through the motions' or alternatively commence the treatment program but not make satisfactory progress and be exited from the program.²⁰³ This is a concern as research suggests these sex offenders have higher recidivism rates.²⁰⁴ Further, these offenders, given their failure to satisfactorily participate in treatment, may not be released on parole and will be unconditionally released (untreated) at the end of their sentence. This also increases the risk of recidivism as supervision on parole has been associated with reduced recidivism rates for sex offenders compared to offenders who are released unsupervised.²⁰⁵ An increase in forced participation may also be damaging to group treatment dynamics and harm the treatment outcomes for all participants.

The Prisoners Legal Service wrote that '[m]andatory treatment is a waste of taxpayer funds. You cannot force adults to do anything and nor should you. Autonomy is critical [to] the human condition'. The view was expressed that there is no benefit from forcing offenders to take part in treatment, as motivation was necessary to undertake programs. The view that treatment should remain voluntary was also expressed by the Sexual Assault Service. SHE also preferred voluntary treatment and supported increasing 'efforts to encourage participation in treatment programs (similar to what is offered in other states of Australia), such as education, motivational or pre-treatment programs.

There is also a foreseeable risk that mandating treatment for all sex offenders will mean that the capacity of the Tasmanian Prison Service to provide treatment may be compromised. In other jurisdictions, there is evidence that sex offenders treatment programs are only available to a limited number of offenders and waiting lists are long.²⁰⁶ Unless mandatory treatment is accompanied by significant funding, decisions will need to be made about the allocation of treatment resources and offenders who are unable to access treatment in a timely manner may face serious consequences (such as denial of parole). It is noted that the Tasmania Prison Service has now received \$300 000 per year funding to ensure all sex offenders in prison receive case management, counselling and assessment.

The efficacy of treatment for all sex offenders as a means of improving community safety by reducing recidivism is not supported in the research literature. The majority of sex offenders will not reoffend even without treatment.²⁰⁷ Further, as discussed at [3.2], research supports the allocation of,

202 Day, Tucker and Howells, above n 6, 267 referring to J Rigg, 'Measures of perceived coercion in prison treatment settings' (2002) 25 *International Journal of Law and Psychiatry* 473, 483.

203 For example, an American study has doubted the benefit of parole as a legal coercion as the authors suggested that an impending parole board hearing may provide sufficient motivation to seek treatment but those who begin treatment only for this reason are unable or unwilling to remain compliant with treatment: Carl Clegg, William Fremouw, Thomas Horacek, Angel Cole and Rebecca Schwartz, 'Factors Associated With Treatment Acceptance and Compliance Among Incarcerated Male Sex Offenders' (2011) 55 *International Journal of Offender Therapy and Comparative Criminology* 880, 891.

204 See [2.4], [3.2]. John La Fond, *Preventing Sexual Violence: How Society Should Cope with Sex Offenders* (American Psychological Association, 2005) 81.

205 See [3.2].

206 Patrick Keyzer, 'The International Human Rights Parameters for the Preventive Detention of Serious Sex Offenders' in Bernadette McSherry and Patrick Keyzer (eds), *Dangerous People: Policy, Prediction, and Practice* (Routledge, 2011) 25, 33.

207 See [2.4].

the highest levels of treatment and supervision [to] the highest risk sex offenders. This not only serves to make the best use of limited resources, but it has been suggested that intensive treatment of low-risk sex offenders may, in fact, increase rather than decrease the risk, potentially by exposing them to the deviant interests and behaviours of high risk sex offenders.²⁰⁸

Research evidence also indicates that sex offenders are a heterogeneous group and that not all sex offenders necessarily require sex offender treatment to address their criminogenic needs and may benefit from other forms of interventions.²⁰⁹ In his comments, Professor Smallbone observed that 'calls for mandatory treatment seem to place undue faith in the effectiveness of treatment, and seem to separate sex offending as a special category of crime (there must be something psychologically 'wrong' with sex offenders).'

In the review conducted by the Complex Adult Victim Sex Offender Management Review Panel (the '*Harper Review* Panel'), it was noted that in Victoria no treatment was provided to offenders that were assessed by the Specialised Offender Assessment and Treatment Service as being of low risk²¹⁰ and the Panel questioned the utility of treating offenders assessed in the moderate-low category. The *Harper Review* Panel suggested that the 'funds saved on such interventions could be better directed to tailoring treatment to those who most need it, being those at moderate risk or above'.²¹¹ The Panel also stated that:

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 who risk is greater than low.²¹²

In the Tasmanian context, there are a number of offenders who are imprisoned for historical sexual offences. In such cases where there has been a significant delay between the offending behaviour and the criminal conviction, these offenders are now of an advanced age and have low risk of reoffending. While it is not disputed that punishment (by way of imprisonment) was absolutely appropriate given the seriousness of their offending, it may be doubted whether rehabilitation in prison is necessary or appropriate for this cohort of offenders. This also may apply to other offenders assessed as low risk.

Alternatively, it could be argued that providing treatment to all sex offenders (including low risk sexual offenders) 'sends the message to perpetrators and the public that all sexually abusive behaviour is addressed'.²¹³ In addition, these assessments rely on the accuracy of the assessment tools and it is acknowledged that there are limitations in the actuarial instruments used to predict sex offender recidivism.²¹⁴ Nevertheless, despite these difficulties, 'the best established use for the existing risk assessment approach is in identifying low risk groups'.²¹⁵ However, it may be argued that offenders identified as low risk may still present a significant potential for recidivism as some lower risk offenders may graduate to higher risk categories.²¹⁶

Mandatory treatment of sex offenders could be supported on the basis that it accords with community views about the need to treat sex offenders in prison. It could be argued that treating all sex offenders may be effective to improve community confidence in the correctional system. However, this is not supported by studies of public perceptions, which have found that only a slight majority of the public (51%) think that treatment was a 'good idea' and only 30% of the public think that sex offenders should always have treatment.²¹⁷ Further, mandatory treatment is not likely to alter community views about sex offenders as there is a perception that sex offenders are highly likely to reoffend (regardless of treatment) with only 4% of those surveyed believing that treatment would 'usually' be effective.²¹⁸

208 Heseltine, Day and Sarre, above n 119, 14. See also Helen C Wakeling, Ruth E Mann and Adam J Carter, 'Do Low-risk Sexual Offenders Need Treatment?' (2012) 51(3) *Howard Journal of Criminal Justice* 286.

209 See [2.4].

210 *Harper Review*, above n 91, 158.

211 *Ibid* 159.

212 *Ibid* 160 referring to Lovins, Lowenkamp and Latessa, above n 144, which found that low risk sex offenders who were given intensive treatment were 21% more likely to reoffend than low risk sex offenders who were not given intensive treatment.

213 Wakeling, Mann and Carter, above n 208, 286.

214 See the *Harper Review*, above n 91, 151-153. For further discussion of the needs for high quality assessment, see [5.1.2].

215 *Harper Review*, above n 91, 153.

216 Evidence to Public Hearing – Criminal Justice Roundtable (Day 2 - Adult sex offender treatment programs), Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 21 April 2016, 2-3 (Stephen Smallbone).

217 Freiberg, Donnelly and Gelb, above n 91, 147-8 citing S Brown, 'Public Attitudes toward the Treatment of Sex Offenders' (1999) 4 *Legal and Criminological Psychology* 239.

218 *Ibid*.

The requirement for mandatory treatment for all sex offenders could be opposed on the basis that it is unrealistic and an inappropriate allocation of resources. Even if treatment is expressed to be mandatory, not all offenders will be able to take part under the current treatment structure. As noted at [3.1.1], many offenders who currently do not participate in treatment at Risdon Prison are ineligible for treatment rather than being treatment refusers. There is no sex offender program currently available provided for female offenders and offenders sentenced to imprisonment for short sentences (less than nine months). Group treatment is also not available for offenders who are assessed as being unable to participate due to mental and cognitive disabilities. This is standard with the operation of sex offender programs in other Australian jurisdictions. Unless additional resources are allocated to provide treatment for these offenders, it is unlikely that these offenders will be able to receive treatment.²¹⁹ Alternatively, the existing resource allocation will need to be stretched to accommodate these additional treatment needs (including diverting some resources from higher risk offenders). This would be contrary to the Risk, Needs, Responsivity principles.²²⁰

Further, research suggests that having a higher assessed static risk and being discharged without supervision (for example, parole) are two unique predictors of sexual recidivism.²²¹ Accordingly, the real issue appears to be the need to ensure that adequate mechanisms are in place for high-risk offenders who are likely to reoffend on release. This may include treatment in prison as well as the provision of treatment and supervision or other supports in the community. This appears to be a gap in the current treatment and supervision regime in Tasmania. There is no capacity to impose supervision or treatment on high-risk offenders following release into the community at the end of their sentence, if an offender does not apply for, or applies and does not receive, parole.²²² In addition, Tasmania does not have community based supports such as Circles of Support and Accountability, as exist in other jurisdictions. This model relies on community volunteers (aided by professional assistance) to assist offender's reintegration in the community without the involvement of the formal mechanisms of the criminal justice system. Evidence suggests that this model is successful in reducing recidivism rates for high-risk offenders.²²³

Offenders who are refused parole on the basis that they have not participated in treatment or offenders who do not want take part in treatment and choose not to apply for parole will be released unconditionally and without support at the end of their sentence. There is evidence that the tightening of parole decisions and conditions in Victoria has meant that more prisoners are being released directly into the community without parole.²²⁴ If this were to happen in Tasmania, it would be contrary to the yardstick of an evidence-based response to sexual recidivism, which would suggest that policy needs to resist creating a situation where high-risk offenders are released at the end of their sentence without supervision. In addition, there is limited incentive for offenders who are not eligible for parole or for offenders who choose not to apply for parole to take part in treatment in prison.²²⁵ This situation is not remedied by making treatment mandatory. While additional incentives (see Option 3 – new consequences for failure to participate in treatment) could be combined with mandatory treatment, research into the effectiveness and ethics of coerced treatment would suggest that caution should be adopted in decreasing the actuality and perception of voluntariness for offenders.²²⁶ Instead, as Birgden has recognised, 'the correctional system can engage legally offenders in rehabilitation by harnessing the law to increase therapeutic effects and decrease anti-therapeutic effects'.²²⁷

219 However, it is noted that additional funding has been obtained by the Tasmania Prison Service to provide case management for all sex offenders in prison, see [1.1], [5.1.1].

220 See [3.1.1].

221 See [3.2].

222 There is currently capacity for a court to combine a sentence of imprisonment with a probation order at the time of sentencing. This decision is not connected with an offender's participation in a prison-based treatment program. There is no power to impose a supervision requirement on the basis of the offender's risk as assessed approaching the time of release.

223 See [5.2.4].

224 Victorian Ombudsman, *Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria*, Report (2015) 18-19, 30-31.

225 The only incentive is the ability to be granted a three month remission. It has been noted that the remission scheme is to be reviewed.

226 See [3.2].

227 See Astrid Birgden, 'Consent Versus Coercion and Offender Rights and Community Rights in Sexual Offender Rehabilitation' (manuscript submitted for publication).

5.1.2 OPTION 2: RETAIN THE CURRENT POSITION THAT TREATMENT IS VOLUNTARY

There have been recent changes to the parole and remissions system in Tasmania introduced with a view to increasing participation in sex offender treatment in custody. As indicated at [1.3.1] and [4.1], there are already strong incentives for offenders to take part in treatment while in prison and evidence suggests that in recent years most sex offenders who are released on parole have participated in treatment.²²⁸ Accordingly, in view of the concerns that can be raised about the introduction of mandatory treatment, another approach would be to retain the status quo and to monitor and evaluate the effect of these changes on participation in sex offender treatment. The Prisoner Legal Service, SHE and SASS all expressed the view that treatment should remain voluntary.

This option could be supported on the basis that it may be more beneficial to utilise additional therapeutic methods of encouraging participation (such as pre-treatment or motivational programs) as a means of motivating offenders to participate in treatment, instead of making treatment mandatory (Option 1). Although there is need for more research, there are indications that there is value in running preparatory and denier programs as a means to encourage participation and completion of programs and ultimately lower recidivism rates. It appears that 'emerging evidence [indicates] that increasing readiness to engage in interventions has a positive effect on program completion and, in turn, on rehabilitative outcomes'.²²⁹ Research suggests that preparatory programs and communicating an offender's options may be more effective than focusing on the negative consequences that follow from non-participation and imposing severe sanctions as a means of coercion.²³⁰ There are preparatory programs offered in a number of other Australian jurisdictions but not in Tasmania.²³¹ SASS and SHE supported the utility of preparatory programs.

Other means of providing a more effective response to sex offenders may be the introduction of an individualised 'case management' approach to offenders while they are in prison and with a continued involvement following their release in the community.²³² This could involve pre-program preparation for those who are resistant to participation in group treatment or uncertain about participating in treatment and after treatment 'maintenance' work. This case management could involve regular meetings with the offender on a one-on-one basis as well as individual treatment as necessary. There would also be scope to facilitate reintegration support with Community Corrections. Such an approach accords with the literature that highlights the diversity of sex offenders and the need for treatment to be individualised to respond to the dynamic risk factors for the particular offender.²³³ It also reflects the 'continuity of care' approach that acknowledges the importance of dealing with the environment into which an offender is going to be released and reintegrating a sex offender in society as a means of reducing sexual offending.²³⁴ As the experts giving evidence at the Royal Commission into Institutional Responses to Child Sexual Abuse observed, it is important to recognise that treatment in prison is not an end in itself but only one way to assist an offender and that there is a need to focus on the community environment.²³⁵ In addition, individual case management potentially provides a solution to the need to allocate limited rehabilitation resources by 'ensuring that treatment remains proportionate to risk, is highly individualised, focuses only on those targets related to risk and does not spend time on targets and methods, which the evidence suggests have no relationship with recidivism'.²³⁶ This is crucial as treatment should be based on need and risk — not provided on an indiscriminate basis.

228 See [4.4.1].

229 Heseltine, Day and Sarre, above n 119, 14.

230 Day, Tucker and Howells, above n 6, 267.

231 See Appendix A.

232 A funding proposal for such a program was submitted and the government has allocated an additional \$300 000 for sex offender treatment. The importance of case management for offenders in prison was stressed in the Victorian Ombudsman report on rehabilitation in prison, Victorian Ombudsman, above n 224.

233 See [2.3].

234 See [5.2.4].

235 Evidence to Public Hearing – Criminal Justice Roundtable (Day 2 - Adult sex offender treatment programs), Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 21 April 2016, 40 (Stephen Smallbone); 41 (Jayson Ware); 52-54 (Stephen Wong); 56 (Henry Pharo); 54-55 (Melissa Braden).

236 Carter, 'above n 134, 124.

The importance of individualised case management was supported by SASS who wrote that it 'agreed with the rationale that individualised case management recognises the diversity of offender behaviour; and has the potential to incorporate a "continuity of care" approach that enhances community reintegration and reduces recidivism'. SASS expressed the view that there was a need for flexible, individualised programs and has suggested that sex offenders are provided with the option to commence treatment in prison and continue to participate in a community-based program upon release. One of SASS's main concerns was that sex offender treatment options should be made available to offenders who are imprisoned for less than nine-months and that 'offering no form of treatment to this cohort [was] unacceptable'. It proposed that the 'implementation of individualised case management approach ... that commences in prison and continues post-release would appear to be a reasonable alternative, and one that enables offenders who are incarcerated for less than 9 months to participate'. It is noted that this is the model for the sex offender programs that operate in the ACT.²³⁷ SASS indicated that it 'would welcome further exploration and consultation on the specific issue of individualised, integrated case management that commences in the prison setting and continues upon release into the community'.²³⁸

SHE's submission also emphasised the importance of individualised treatment and management programs and the need to focus on community re-entry and integration. In its submission, it stated that an 'individualised case management style that commences in prison and continues, following release, into the community is valuable and strongly advocated for'. SHE recommended that there be individual assessment and tailored programs specific to the offender, the inclusion of women in treatment programs, and the need to offer treatment of prisoners serving shorter prison sentences and to have more frequent follow up of offenders who refused to participate.

In addition to short-term prisoners, SASS also expressed concern that sex offenders may be excluded from treatment on the basis of their medical, psychological, and/or cognitive capacity. It recommended that 'any treatment interventions or programs offered to sex offenders in the prison setting should be tailored to accommodate different levels of functioning and ability'. Accordingly, SASS wished the Council to 'emphasis the importance of prison-based treatment and post-release case management programs that are able to accommodate medical, psychological and cognitive diversity'.

A feature of the individualised response to sex offenders that was highlighted in Professor Smallbone's response was the need for high quality individualised assessments that 'are needed to make sense of a person's offending and how further offending might best be prevented'. He wrote that:

By assessment I don't mean just scoring actuarial or other risk assessment instruments — I mean an assessment that pays attention to the context of the offending, and addresses the specific circumstances in which future risk may be increased or decreased. Risk assessment needs fundamentally to inform risk management. Personally, I think that if anything should be compulsory it should be for Corrections to hire experienced and skilled professionals and to make sure high quality assessments are conducted.

This was seen to be critical for the delivery of treatment and the allocation of resources, for as Professor Smallbone noted, 'good assessment should be able to inform decisions about whether treatment is necessary, and if so what it should involve'.

It is noted that additional funding has recently been made available to the prison to offer individual case management and assessment for sex offenders, and it may be that this will address these concerns.²³⁹

Alternatively, retention of the status quo (Option 2) could be combined with an increase in the severity of the consequences for non-compliance (Option 3).

237 See Appendix A.

238 SASS proposed that the 'exploration might include an independent evaluation of Community Based Sex Offender Case management and Interventions to date (including early achievements, challenges, and modifications), and scoping exercise as to how a fully integrated approach might work and which agencies or departments are well-positioned to deliver extended services'.

239 See [1.1].

5.1.3 OPTION 3: INTRODUCE NEW CONSEQUENCES FOR FAILURE TO PARTICIPATE IN TREATMENT (EITHER COMBINED WITH MANDATORY OR VOLUNTARY PARTICIPATION IN TREATMENT)

As discussed, it is the negative consequences that arise from the measures put in place to coerce participation in treatment rather than whether treatment is formally a mandatory or voluntary requirement that creates the legal pressure to participate in programs. Accordingly, an option to increase participation in sex offender treatment would be to increase the severity of the consequences that follow from non-participation or unsatisfactory participation in sex offender treatment. This could be done with the introduction of mandatory treatment (Option 1) or under the existing voluntary but coerced approach to treatment participation (Option 2).

Additional consequences could include:

- **making parole contingent on participation in sex offender treatment.** This approach would mean that the Parole Board would have no discretion in relation to releasing an offender on parole unless the offender had satisfactorily completed sex offender treatment. This is a stricter position than the current position (where non-participation is a relevant factor) and its utility involves weighing up the perceived value of treatment in prison compared with the value of supervision on parole. As noted above, the preferred situation is for an offender to have treatment in prison and then receive supervision (parole) in the community. The least desirable outcome is for an offender to be released from prison without treatment and without supervision on release. Policy makers should be cautious about adopting an approach that will potentially have this effect.

While some legal coercion is accepted as being necessary to encourage participation, this approach potentially undermines offender motivation and the effectiveness of treatment if offenders perceive that they are being unfairly coerced.²⁴⁰ Instead, it is suggested that the law can be used more effectively if legal coercion is implemented in a manner that preserves an offender's autonomy and self-determination — that is if offenders are treated as 'competent adults who are able to make choices rather than as incompetent subjects of paternalism'.²⁴¹

In this context, it should be noted that an offender released on parole is not released unconditionally but remains under 'sentence' and under supervision in the community.²⁴² This was acknowledged by the New South Wales Law Reform Commission, which has stated that it is to misconceive the nature of parole to suggest that parole is 'early release' because this 'creates the impression that an offender's sentence is finished when the offender is paroled. It is not. The parole period is an integral part of the sentence'.²⁴³ The purpose and importance of parole has been stressed by the *Harper Review*:

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.²⁴⁴

240 See [3.2].

241 This reflects therapeutic justice principles that hold that the law should seek to minimise anti-therapeutic effects, see discussion in Astrid Birgden, *Consent Versus Coercion and Offender Rights and Community Rights in Sexual Offender Rehabilitation* (manuscript submitted for publication). Birgden makes a distinction between legal coercion or coercive offer (an appropriate action) and psychological coercion or coercive threat (an inappropriate action). On this analysis, it can be argued that specifying that parole is contingent on participation is ethically inappropriate as it amounts to psychological coercion or a coercive threat, given that the offender's choice is limited to participation and possible release on parole or non-participation and no parole. In contrast, having participation in treatment a factor that is relevant to the Parole Board's decision, and allowing the offender to make a choice whether to participate with the possibility, but not promise of release, is not necessarily inappropriate given that the other factors ought to be considered by the board such as 'the level of risk of re-offending balanced against the need for community reintegration'. This would then be a legally voluntary choice that is offered by the board not clinicians/treatment providers.

242 See TLRI, above n 59, [5.3.10]-[5.3.11]; *Corrections Act 1997* (Tas) s 78.

243 New South Wales Law Reform Commission, *Parole*, Report 142 (2015) [2.11].

244 *Harper Review*, above n 91, 17.

Parole is considered to address the rehabilitation of the offender and facilitate community protection by allowing reintegration and supervised release during transition from custody to unsupervised release. This allows for 'the protective effects of reintegration support, the deterrent effects of parole supervision and the threat of return to custody upon revocation'.²⁴⁵ Parole also provides for risk management by identifying and targeting high-risk offenders for more intensive intervention before and after release on parole.²⁴⁶

- **making participation and engagement with the sex offender treatment relevant to the assessment of an offender's risk to the community for detention and supervision legislation.** In the Council's previous consideration of sentencing for sex offences, the Council recommended the introduction of supervision and detention orders based on the unacceptable risk posed by the offender at the time of release.²⁴⁷ It is the Council's understanding that such legislation will be introduced and this legislation could make explicit that participation and engagement with sex offender treatment is relevant to the assessment of the offender's risk to the community (as applies in other jurisdictions).²⁴⁸ This needs to be explained to offenders upon their entry to prison along with information about the treatment options available. This reflects the findings of the *Harper Review*, where it was recommended that offenders who are identified as being eligible for post sentence detention or supervision (under the criteria) should be notified at the earliest opportunity of their eligibility and their options for intensive rehabilitation and treatment.²⁴⁹ This approach was suggested to ensure that offenders were 'provided with an incentive to engage in opportunities for intensive rehabilitation and treatment pathways ... and will put them on notice of the ramifications for electing not to so engage'.²⁵⁰ The Panel expressed the view that these offenders 'must while in prison be provided with incentives and opportunities to engage with treatment and management carefully tailored to their individual circumstances'.²⁵¹ It considered that the potential to be released without supervision or detention at the end of the sentence provided a strong incentive to engage with the proposed interventions.²⁵²

5.2 COMMUNITY-BASED TREATMENT

5.2.1 TREATMENT AS A CONDITION OF A COMMUNITY-BASED SENTENCING ORDER

As discussed at [4.3], there does not appear to be any need for specific legislative reform as there are sufficient legal mechanisms for the court to direct a sentenced offender to treatment in the community. In its proposal to introduce a CCO (a new sanction to accompany the phasing out of suspended sentences) the Council has recommended that these powers be enhanced.²⁵³

5.2.2 TREATMENT AS A CONDITION OF A PAROLE ORDER

Similarly, there does not appear to be any need for legislative reform as the Parole Board already has the power to order participation in rehabilitation and treatment as a condition for sex offenders released on parole.

5.2.3 HIGH-RISK OFFENDERS

In contrast, a clear gap in Tasmania's legal response to sex offenders is the inability to impose supervision or treatment on high-risk offenders who are released without parole either at the end of their sentence or following the discharge of a dangerous criminal declaration. SASS also agreed that there was a gap in response to high-risk sex offenders.

245 New South Wales Law Reform Commission, above n 243, [2.17].

246 Ibid [2.12]-[2.33].

247 TSAC, above n 101, Recommendation 13.

248 See [1.3.2].

249 *Harper Review*, above n 91, Recommendation 5.

250 Ibid 76.

251 Ibid 3.

252 Ibid.

253 See TSAC, above n 53, [7.6].

In relation to dangerous criminals, the absence of community-based treatment and supervision has prevented offenders from satisfying the court that their dangerous criminal status should be discharged.²⁵⁴ This contrasts with the position in other jurisdictions where there is provision for supervision and reintegration into the community on the discharge from indefinite detention.²⁵⁵ While it may be tempting to suggest that these offenders should simply never be released, schemes that allow for the continued detention of an offender for community protection must be carefully constrained. This is on the basis that the person is being detained not for crimes that they have committed but for crimes that they may commit.²⁵⁶ Although it may not be popular to view sex offenders as having human rights, a fundamental component of human rights law is that they attach to all people and that 'sex offenders need to be treated as human beings who are legitimately part of the moral and political community'.²⁵⁷ Consistent with this position is a requirement that an offender should be subject to the least restrictive alternative, so that 'if community protection can be enhanced by the control, care and treatment of an offender *in the community*, then this should always be preferable to detaining that offender'.²⁵⁸ Further, continued detention is an unnecessarily expensive response to the supervision and treatment needs of an offender who could appropriately be supervised and treated in the community.

A related problem is the lack of supervision in the community for high-risk sex offenders who have not been declared a dangerous criminal at the time of sentencing and who will be released unconditionally at the end of their sentence. This concern was stressed by SASS, which reiterated its earlier submission made in response to the *Corrections Amendment (Treatment of Sex Offenders) Bill 2015* (Tas):

Smallbone and McHugh [...] highlight the importance of post-release supervision, which, in the Queensland context, may take the form of either 'standard' supervision (for example parole) or 'more stringent supervision and monitoring provisions of the Dangerous Prisoners (Sexual Offenders) Act (DPSOA)'. In their study, the authors found that being released without supervision was one of the two factors that were 'significantly and uniquely related to sexual recidivism'.

As has been noted, the Council has previously recommended the introduction of supervision and detention orders based on the unacceptable risk posed by the offender at the time of release.²⁵⁹ While the Council acknowledges the criticisms that can be directed at such schemes, the Council's view was that a preventative detention scheme would address concerns in relation to the very small number of high-risk serious sex offenders who, approaching the time of release, present an unacceptable risk of reoffending. This has been discussed at [1.3.2] and, as noted, models for supervision and detention orders exist in several jurisdictions. A significant review of the Victorian scheme was recently released and this could serve as a guide in the development of the Tasmanian legislation.²⁶⁰ This approach was supported by SASS. Importantly, there were four features identified in the review as 'pillars' to underpin the advice of the *Harper Review Panel*: (1) early intervention and continuity of care to reduce the risk of serious interpersonal harm; (2) targeting the greatest likelihood of serious interpersonal harm; (3) independent and rigorous oversight; and (4) responsive inter-agency service delivery and intensive case management.²⁶¹ The *Harper Review Panel* was also concerned to stress that while it was accepted that a preventive detention or supervision regime was 'accepted as a necessary element in the protective armoury which democratic constituents demand from their lawmakers', it was necessary that the use of preventative detention and post-sentence supervision should be strictly confined.²⁶²

254 *Bell v Director of Public Prosecutions* [2011] TASSC 61, [23].

255 *Sentencing Act 1991* (Vic) s 18M; *Penalties and Sentences Act 1992* (Qld) ss 172, 173–174, *Sentencing Act 1995* (WA) s 101; *Sentence Administration Act 2003* (WA) Part 3.

256 *Harper Review*, above n 91, 5.

257 Astrid Birgden and Heather Cucolo, 'The Treatment of Sex Offenders: Evidence, Ethics and Human Rights' (2011) 23 *Sexual Abuse: Journal of Research and Treatment* 295, 297, 308.

258 VSAC, *High-Risk Offenders: Post Sentence Supervision and Detention*, Final Report (2007) 79.

259 TSAC, above n 101, Recommendation 13.

260 See the *Harper Review*, above n 91.

261 *Ibid.* See discussion at 3-4.

262 *Ibid.* 5.

5.2.4 TREATMENT REQUIREMENTS IN THE COMMUNITY

As has been discussed, there is no group treatment available in Tasmania for sex offenders in the community. It is also not feasible to implement a group treatment program in Tasmania due to its geographical size. This does not mean that an effective response to sex offenders in the community cannot be created. All sex offenders under the supervision of community corrections are actively case managed and individual treatment is available if this is a requirement of a parole or court order. This reflects the need for community-based treatment for sex offenders who have been released from prison to be individualised and targeted and not a repeat of the group rehabilitation program in prison.²⁶³ It also reflects research literature that suggests that offenders who are provided with community aftercare are less likely to reoffend.²⁶⁴

It appears that considerable work has been done in regard to the management of sex offenders in the community (either on release from prison or for offenders sentenced to a community based order). However, it is noted that this program is still in its early stages and that it is resource intensive. There is still scope for additional funding that would allow for the appointment of a dedicated psychologist to oversee and support the case management conducted by probation officers.²⁶⁵ There is also scope to improve the links between treatment services at Risdon and Community Corrections to provide for the transition of an offender from custody to the community, including a continuity of treatment services. This was recognised as being vital in the evidence given to the Royal Commission into Institutional Responses to Child Sexual Abuse at the Criminal Justice Roundtable on Adult Sex Offender Treatment Programs.²⁶⁶ The transition from imprisonment to parole and post-sentence detention or supervision, including pathways to unrestricted freedom was also identified in the *Harper Review* as being important as a means of reducing recidivism.²⁶⁷ Professor Smallbone also noted the 'crucial role that Community Corrections plays, particularly for higher-risk offenders' in risk management. He wrote that 'paying attention to the transition from prison to community living is very important'.

SHE identified the need for additional resources to be made available for treatment in the community. It stated that 'limiting treatment to therapy in prison is missing the importance of assisting the offender to develop and practice skills in their normal life and family environment to prevent harm to others and reduce recidivism'. Accordingly, it recommended an increased focus on the provision of community-based treatments for sex offenders exiting prison. It also recommended an increase in funding and resources towards psychological and social support services for sex offenders both exiting prison and who may self-refer, particularly in the north and north west of Tasmania.

Research literature also indicates the need to assist an offender develop a pro-social network as part of the transition from custody to the community or from extended supervision to unconditional release. This is explained by Braden and her colleagues:

Research findings from the offender rehabilitation and desistance literature are clear that for sex offenders to learn to live offence-free lives in the community, they require pro-social support networks. 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.²⁶⁸

There is a need to address the social reintegration of sex offenders as a means of reducing recidivism. Sex offenders are typically subject to community abhorrence and ostracism and such rejection can lead to decreases in social support, loss of family ties, loss of civic identity and increased psychological effect — all which have been identified as being risk factors for sexual recidivism.²⁶⁹ This reflects '[c]ontemporary theories of offender rehabilitation and desistance from sexual offending [which] emphasise the importance of social support in offender treatment and

263 Evidence to Public Hearing – Criminal Justice Roundtable (Day 2 - Adult sex offender treatment programs), Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 21 April 2016, 54-55 (Melissa Braden).

264 See [3.2]. See also Robert McGrath, Georgia Cumming, Joy Livingston and Stephen Hoke, 'Outcome of a Treatment Program for Adult Sex Offenders: From Prison to Community' (2003) 18 *Journal of Interpersonal Violence* 3, 13; Robin Wilson, Lynn Stewart, Tania Stirpe, Marianne Barrett and Janice Cripps, 'Community-based Sex Offender Management: Combining Parole Supervision and Treatment to Reduce Recidivism' (2000) 42 *Canadian Journal of Criminology* 177, 186.

265 Information provided by Amy Washington, 26 May 2016.

266 See [5.1.2].

267 *Harper Review*, above n 91, 110, 180. See also Victorian Ombudsman, above n 224, 102-128.

268 Melissa Braden, Svenja Göbbels, Gwenda Willis, Tony Ward, Maria Costellos and Joseph Mollica, 'Creating Social Capital and Reducing Harm: Corrections Victoria Support and Awareness Groups' (2012) 4 *Sexual Abuse in Australia and New Zealand* 36, 40 (references omitted).

269 Monica Robbers, 'Lifers On the Outside: Sex Offenders and Disintegrative Shaming' (2009) 53 *International Journal of Offender Therapy and Comparative Criminology* 5, 24.

the cessation of offending, respectively'.²⁷⁰ The difficulties confronted by sex offenders in re-integrating in society on release from prison are seen in the recent community furore that arose about the Freedom Centre's use of a property to house sex offenders in small rural Tasmanian community.²⁷¹

In Tasmania, offenders on parole have access to a community support group that aims to support the offender on release in the community. However, it appears that there is potential for development of the program to achieve greater effectiveness. On occasion, the main support people identified by the offender may not be ideal and Community Corrections have not placed a large reliance on the support group as yet. Nor is it available for offenders who are released into the community at the end of their sentence (rather than on parole).

Initiatives have been introduced in other jurisdictions to provide pro-social support as an important aspect of sex offender treatment and supervision (Circles of Support and Accountability (COSA) and the Support and Awareness Group (SAAG)) and these approaches may provide models for the future refinement of the program in Tasmania.

COSA are a well-known framework (originating in Canada and adopted in the United States, Scotland, England, and New Zealand)²⁷² that rely on community volunteers who are trained and 'form a support group around the "core member" (sex offender) and assist him or her reintegrate into the community while ensuring that risk factors are appropriately managed and that offenders are accountable for their actions'.²⁷³ An outer circle of professionals provide support to the community volunteers. COSA are 'designed specifically for community reintegration of high risk sex offenders' and balance reintegrative support with community surveillance.²⁷⁴ There is research evidence to indicate the potential of COSA to prevent sexual recidivism and general recidivism.²⁷⁵ Canadian studies have shown a significant reduction in sexual recidivism when comparing matched samples of high-risk sexual offenders who were involved with COSA with high-risk sexual offenders who were not involved — the initial study showed a 70% reduction and the follow up study showed an 83% reduction in sexual recidivism.²⁷⁶ Research undertaken in the United Kingdom showed similar success.²⁷⁷ It is also argued that in addition to being empirically supported, the COSA model is ethically defensible as it is aligned with the good lives model and is based on restorative justice principles.²⁷⁸ A pilot COSA program has begun in South Australia with a grant of \$40 000 from the Department of Corrections.²⁷⁹

Another model that has been introduced in Victoria, the SAGG, aims to 'create transitions to better lives by building protective social bonds around offenders; ones that will help them gradually reintegrate into the community'.²⁸⁰ This service delivery model was developed to address the needs of moderate-high and high-risk sex offenders to transition between prison and the community.²⁸¹ It aims to assist offenders to develop a social network to

270 Braden, et al, above n 268, 37.

271 See Jennifer Crawley, 'Anguish in a Town Torn Apart Over Presence of Convicted Sex Offenders', *The Mercury* (online), 19 March 2016 <<http://www.themercury.com.au/news/tasmania/anguish-in-a-town-torn-apart-over-presence-of-convicted-sex-offenders/news-story/63659ab1df419be8c58df54b71379e32>>; Matthew Denholm, 'Rehousing Sex-Offenders Bad Enough, But a Village of Them is too Much: Community', *The Australian* (online), 28 March 2016 <<http://www.theaustralian.com.au/news/nation/rehousing-sexoffenders-bad-enough-but-a-village-of-them-is-too-much-community/news-story/38974aab72f3467a507cf3ad80f3e4b>>.

272 *Harper Review*, above n 91, 142; Jim van Rensburg, 'Preparing Core Members of Circles of Support and Accountability in New Zealand' (2014) 2 *Practice – The New Zealand Corrections Journal* 35.

273 Braden, et al, above n 269, 38. See also Mechthild Höing, Stefan Bogaerts and Bas Vogelvang, 'Circles of Support and Accountability: How and Why They Work for Sex Offenders' (2013) 13 *Journal of Forensic Psychological Practice* 267; Robin Wilson, 'Circles of Support and Accountability' <<http://www.robinwilson.com/circles.shtml>>.

274 Information provided by Astrid Birgden. See further, Wilson, above 273.

275 Höing, Bogaerts and Vogelvang, above n 273, 269.

276 Andrew Bates, Dominic Williams, Chris Wilson and Robin Wilson, 'Circles South East: The First 10 Years 2002-2102' (2014) 58 *International Journal of Therapeutic Comparative Criminology* 861, 863 citing Robin Wilson, Franca Cortoni and Andrew McWhinnie, 'Circles of support and accountability: A Canadian National Replication of Outcome Findings' (2009) 21 *Sexual Abuse: A Journal of Research & Treatment* 412; Robin Wilson, Janice Picheca and Michelle Prinzo, 'Evaluating the Effectiveness of Professionally-facilitated Volunteerism in the Community-based Management of High Risk Sexual Offenders: Part Two – A Comparison of Recidivism Rates' (2007) 46 *Howard Journal of Criminal Justice* 327.

277 Bates et al, above n 276, 861.

278 Information provided by Astrid Birgden. See Wilson, Cortoni and McWhinnie, above n 276, 415-416; Robin Wilson and Andrew McWhinnie, 'Circles of Support and Accountability: An Innovative Approach to Community-based Risk Management for High-risk Sexual Offenders' in Martine Herzog-Evans (ed), *Transnational Criminology Manual* (Wolf Legal Publishing, 2010) 241.

279 Tierney Bonini, 'Circle of Support: The People Who Volunteer to Spend Time with Paedophiles', *ABC News* (online), 3 August 2016 <<http://www.abc.net.au/news/2016-08-03/cosa-volunteers-the-people-who-hang-out-with-paedophiles/7648518>>. See also Evidence to Public Hearing – Criminal Justice Roundtable (Day 2 - Adult sex offender treatment programs), Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 21 April 2016, 23 (Vanessa Swan).

280 Braden et al, above n 268, 40.

281 *Ibid* 38.

address the needs of offenders who have 'been marginalised and disenfranchised from community supports'.²⁸² The process of developing a support group for an offender begins about half way through treatment and initially involves an offender identifying possible support people. Offenders who are not able to identify support people are assisted to 'reconnect with family and friends and/or consider how they might develop a supportive network'.²⁸³ Offenders without any personal support network are aided 'to identify professional agencies that can support them on release — for example, housing and chaplaincy services'.²⁸⁴ The SAAG program does not rely on volunteers and still involves state intervention as it is serviced and managed by Corrections Victoria under the supervision of the SAAG coordinator. Positive features of the SAAG model which have been identified are that: (1) it assists offenders to view 'themselves and their actions in constructive ways' to 'to counter views of others that they are inherently unchangeable and dangerous'; (2) it assists 'individuals to live in ways that reflect their strengths ... and are calibrated to their particular environment'; and (3) it can assist with 'housing, work, health, relationships, leisure and safety in ways that are directly responsive to their abilities and interests, and to the unique nature of their social environment'.²⁸⁵

SASS expressed the view that 'options for a pro-social model of support to compliment post-release treatment and/or supervision arrangements should be considered by policymakers'. SASS considered that the Victorian model may be useful in Tasmania, given that it did not rely on volunteers as these may be difficult to obtain given Tasmania's relatively small population. However, SASS believed 'that both the Circles of Support and Accountability (COXA) and SAAG models are worthy of further exploration'.

Additional government responses to reduce sexual offending, other than the implementation of mandatory treatment, were identified in SHE's submission. These were:

- **early intervention in the youth justice system.** SHE noted that a considerable proportion of sexual offending commenced in adolescence and, accordingly, it was important that there be an 'increase in programs directed at offenders in the youth justice system to allow early intervention and education around healthy relationships, sexual behaviours and early disclosures of dysfunctional behaviour'. It identified the Prevention Project Dunkfield model (operating in Germany) as a possible model.
- **prevention programs not associated with the criminal justice system.** SHE highlighted the need for the community response to sexual offending to extend beyond the criminal justice system and identified the need for early intervention treatment and prevention programs not associated with the criminal justice system as integral. It identified the Prevention Project Dunkfield model (operating in Germany) as a possible model.
- **the creation of specialised courts to deal with sex offences.**

It is noted that further consideration of these proposals was beyond the scope of this paper.

282 Ibid.

283 Ibid 39.

284 Ibid 39.

285 Ibid 40.

Appendix A

Summary of prisons-based sex offender treatment programs

Jurisdiction	Program title	Details
New South Wales ²⁸⁶		<p>For custodial programs, eligibility for participation is subject to the following requirements:</p> <ul style="list-style-type: none"> offender consents to undertake treatment; there is sufficient time to complete the treatment prior to their earliest release date or sentence expiry date; offender's history indicates that they are able to function effectively within a treatment program without risk to self or others. <p>Community based programs are provided for high risk sexual offenders who have successfully completed sex offender treatment in custody, usually as a condition of parole.</p>
	Preparatory Program for Sexual Offenders (PREP)	<p>A preparatory program for male sexual offenders in custody aimed at increasing motivation and/or readiness to participate in a sex offender treatment program. This is not a treatment program or a prerequisite for other treatment programs. It is for offenders who wish to participate in treatment ('already motivated') and also for those who are not sure about treatment ('ambivalent') but want to know more.</p> <p>It is run in an open group format, with 1 to 2 sessions per week for up to 12–14 sessions.</p>
	Custody-Based Intensive Treatment (CUBIT)	<p>For moderate to high risk/needs male sexual offenders. This is a residential therapy treatment program offered as a 6–10 month program with three sessions per week. It is offered towards the end of an offender's sentence.</p> <p>It is delivered in an open (rolling) group therapy format.</p> <p>The offender needs to consent to being Special Management Area Placement (SMAP) status for the duration of their time in treatment.</p>
	CUBIT Outreach (CORE)	<p>For low-moderate to moderate-high risk male sexual offenders. This is a prison based non-residential therapy program. The duration is 6 to 8 months with 2 sessions per week.</p> <p>The offender has a C (Minimum) security classification. The offender needs to consent to being SMAP status for the duration of their time in treatment.</p>
	Custody-Based Maintenance	<p>For male sexual offenders who have completed CSNSW Sex Offenders Programs in custody.</p>
	Self-Regulation Program: Sexual Offenders (SRP:SO)	<p>For male sex offenders identified as having an intellectual disability or other cognitive impairment and have limited adaptive skills in the goal environment. It is offered to moderate and high-risk sexual offenders within a designed self-contained Additional Support Unit setting and comprises a 12–18 month program with 3 sessions per week.</p>
	Denier Program	<p>For men convicted of a sexual offence who categorically deny the offence or maintain that they were wrongfully accused or falsely identified. This is a 6-month program consisting of 2 sessions per week.</p> <p>The offender has a C (Minimum) security classification. The offender needs to consent to being SMAP status for the duration of their time in treatment.</p>

286 Information obtained from Jayson Ware, Corrective Services, NSW; Corrective Services NSW, *Sex Offender and Violent Offender Therapeutic Programs* (24 April 2015) New South Wales Department of Justice <<http://www.correctiveservices.justice.nsw.gov.au/Pages/CorrectiveServices/programs/sex-and-violent-offender-therapeutic-programs/sex-and-violent-offender-therapeutic-programs.aspx>>.

Jurisdiction	Program title	Details
Victoria ²⁸⁷		<p>The Specialised Offender Assessment and Treatment Service (SOATS) assessing new referrals to determine each offender's risk of sexual reoffending and recommended intervention pathway, which may include, but is not limited to participation in SOATS intervention programs.</p> <p>SOATS specialised assessments are prioritised to occur within 30 months of a prisoner's Earliest Eligibility Date so treatment can be targeted closer to their release date.</p> <p>SOATS group-based programs are designed to address the treatment needs of adult males convicted of a sexual and/or violent offence. Individuals who meet the following criteria are recommended to participate:</p> <ul style="list-style-type: none"> assessed as being suitable for SOATS group-based intervention relevant to their treatment needs; ready, willing and able to undertake their recommended program; and at an appropriate point in their sentence to participate in their recommended program based on their individual needs and responsibility, and have sufficient time remaining to complete the program. <p>Informed consent forms are signed and returned prior to commencement of treatment participation.</p> <p>Some programs are delivered in a 'closed' group format where all participants commence and finish at the same time and others are delivered in a 'rolling' group format.</p>
	Better Lives Program (BLP)	<p>An offence specific, Cognitive Behavioural Therapy (CBT)-based sexual offending treatment program that runs between 72–150 hours over 3–6 months depending on risk level.</p> <p>It is aimed at moderate-low, moderate-high and high risk of sexual reoffending.</p>
	Treatment Readiness	<p>A preparatory program for sexual offenders intended to be delivered at the commencement of the treatment phase (ie prior to BLP) that aims to increase treatment readiness. It runs for 20 hours over 6 weeks.</p> <p>It is aimed at moderate-high and high-risk of sexual reoffending for sexual offenders identified as having motivational or other responsivity issues.</p>
	New Directions Program	<p>An offence specific treatment program adapted for sexual offenders with a cognitive impairment. The program is CBT-based and incorporates Dialectical Behaviour Therapy (DBT) concepts. It runs for 200–240 hours over 10 to 12 months.</p> <p>It is aimed at offenders assessed as having a moderate-low, moderate-high and high-risk of sexual reoffending for prisoners with an intellectual disability or lower intellectual functions (including, but not limited to borderline intellectual functioning) and/or confirmed acquired brain injury with significant impairment with associated difficulty engaging in, and benefitting therapeutically from a mainstream program.</p>
	Positive Lives, Useful Skills (PLUS) Program	<p>An offence-related, DBT-based treatment program adapted for sexual offending with a cognitive impairment. It runs for 30 hours over 20 weeks.</p> <p>It is aimed at offenders assessed as having a moderate-low, moderate-high and high risk of sexual reoffending for prisoners with an intellectual disability or lower intellectual functions (including, but not limited to borderline intellectual functioning) and/or confirmed acquired brain injury with significant impairment with associated difficulty engaging in, and benefitting therapeutically from a mainstream program.</p>

287 Information received from Victoria State Government, Justice and Regulation, *Suite of Interventions for Sexual Offenders in Custody*.

Jurisdiction	Program title	Details
	Social Problem Solving and Offence Related Thinking (SPORT) Program	An offence-related program for prisoners convicted of sexual/violent/general offences who have a cognitive impairment that aims to enhance decision-making and problem-solving skills. It runs for 14–21 hours over 10–12 weeks. It is aimed at offenders assessed as having a moderate-low, moderate-high and high risk of sexual reoffending for prisoners with an intellectual disability or lower intellectual functions (including, but not limited to borderline intellectual functioning) and/or confirmed acquired brain injury with significant impairment with associated difficulty engaging in, and benefitting therapeutically from a mainstream program.
	Individual Interventions	Offence specific and/or offence-related sexual offending treatment for sexual offenders, including those with a cognitive impairment. It is aimed at sexual offenders: <ul style="list-style-type: none"> • classified as Special Category or Major offender; • subject to a post-sentence Detention order; • high risk sexual offenders with responsivity issues for whom standard SOATS group-based treatment is not considered appropriate; • moderate-high or high-risk sexual and violent offenders with lower intellectual functions (including, but not limited to borderline intellectual functioning and/or confirmed acquired brain injury with significant impairment) for whom standard SOATS group-based treatment is not considered appropriate.
South Australia ²⁸⁸		<p>Offenders sentenced for sexual offending are referred for a specialist assessment, which focuses on their risk of sexual recidivism.</p> <p>All offenders referred for a specialist sexual offending assessment are administered the STATIC-99R (revised 2003), an actuarial risk assessment tool tailored to the prediction of further sexual reoffending. This tool considers historical and demographic factors and offenders are coded either Low, Moderate-low, Moderate-high or High-risk based on this screening assessment.</p> <p>Offenders assessed as either Moderate-low, Moderate-high or High-risk on the STATIC-99R (revised 2003) are referred for further assessment of their risk of sexual offending, specifically focusing on dynamic risk factors using the STABLE-2007 (revised 2012).</p> <p>Offenders assessed as Low-risk of sexual reoffending on either the STATIC-99R or STABLE-2007 are referred for alternative treatment with an agency partner (Owenia House) which is operated by SA Health.</p> <p>Offenders assessed as Moderate-low, Moderate-high, High or Very high-risk using the STATIC-STABLE combined score are considered eligible for treatment in the SBC. Offenders assessed at this risk level who also have cognitive, intellectual and/or neuropsychological issues identified which would affect their ability to fully participate in the SBC are considered for the SBC-Me.</p> <p>The offender is advised that if they refuse to be assessed (with the STABLE-2007) or, once found to be eligible, refuse to consent to participate in the program, this will be noted in a pre-treatment minute and provided to the Parole Board for their consideration.</p> <p>If the offender consents to engage in treatment and subsequently chooses to cease their participation at some point throughout the program, or refuses to meaningfully participate in the program, they can be removed from the SBC and are advised that their failure to participate in the program is noted in a termination minute and is provided to the Parole Board for consideration.</p>

288 Information received from Gene Mercer, Department of Correctional Services, South Australia.

Jurisdiction	Program title	Details
		<p>For those that complete the SBC, a post-treatment report is provided to the Parole Board which includes an assessment of their current risk level, detailed strategies to enact for the offender to avoid relapse, referrals for further intervention pathways and any changes to the offender's risk profile after engaging in treatment.</p> <p>The Parole Board can, and do, refuse to consider opportunities for offenders' release to the community on Parole until they are satisfied that the offender has made efforts to meaningfully engage in rehabilitation.</p> <p>The rate of refusal to engage in treatment (either SBC or SBC-Me) once found suitable is very low for sexual offenders. There is generally enough extraneous motivation (primarily, the prospect of parole release) for offenders to engage thoughtfully in the rehabilitation being offered to them by DCS SA. It should be noted that there are also some offenders who have high levels of internal motivation to engage in the SBC and SBC-Me.</p>
	Sexual Behaviour Clinic (SBC)	Group-based cognitive behavioural intervention. It runs for between 6–9 months.
	Sexual Behaviour Clinic-Me (SBC- Me)	<p>Psychotherapeutic treatment program for adult male offenders with a mild to borderline level of intellectual functioning.</p> <p>Run twice weekly for approximately 14 months.</p>
Western Australia ²⁸⁹		All sex offenders of adult or child victims serving an effective sentence of greater than 6 months are assessed for their treatment needs. The exclusion criteria for a program typically include unstable or unmanaged mental health conditions, medical conditions, lack of capacity to understand program content, significant language barriers, if appealing conviction or if refuse to participate.
	Intensive Sex Offending Treatment Program	High-risk male sex offenders.
	Medium Intensity Sex Offender Treatment Program	Medium risk male sex offenders.
	Good Roads Aboriginal Sex Offender Program	Aboriginal men.
	Sex Offending Deniers Program	Aimed at those who categorically deny committing sexual offences.
	Sex Offending Intellectual Disabled Program	Aimed at intellectually disabled male sex offenders.
Australian Capital Territory ²⁹⁰	Adult Sex Offender Program (ASOP)	<p>Participation in programs is voluntary.</p> <p>Open-ended therapeutic group-based intervention program. Male offenders with at least 12 months remaining on a sentence and/or a good behaviour bond are eligible. It is noted that participants can start this program in custody and continue it in the community. The program duration is usually 240 hours and it is estimated that most offenders will take approximately 1 year to complete the program.</p>

Jurisdiction	Program title	Details
Queensland ²⁹¹		Participation in all programs is voluntary. Assessments are conducted using Static 99 and Stable 2007 and then offenders offered a place on the preparatory programs even if they deny their offending. Offenders will not be offered placement in any other program if they continue to deny offending.
	Getting Started: Preparatory	Readiness program 33-44 hours.
	Crossroads: High Intensity	This runs for 9 to 12 months over 300–350 hours. This is a rolling program. It is for male sexual offenders who have been assessed as having a high risk of reoffending. This has also been adapted for use with Indigenous participants in order to be responsive to the cultural needs of the offender population.
	New Directions: Medium Intensity	This ranges from 76–180 hours but can be extended if required. It is an intensive intervention program for male sexual offenders who have been assessed as having a low to medium risk of reoffending. This has also been adapted for use with Indigenous participants in order to be responsive to the cultural needs of the offender population.
	Changing our stories	Indigenous sexual offending program is designed for males who have been convicted of a sexual offence and sentenced to over 12 months imprisonment. It ranges from 78–350 hours depending on level of risk and treatment needs.
	Staying on Track: Maintenance	This is a maintenance program targeted at offenders who have previously successfully completed an intensive sexual offending program. An individual is expected to attend for between 18–26 hours depending on their individual needs. This is once a week for 12 weeks but can stay on the program for longer or can repeat the program.
	Inclusion: Intellectually and Socially Low Function Sexual Offender	This targets cognitively impaired sex offenders.

289 Information obtained from, Evidence to Public Hearing – Criminal Justice Roundtable (Day 2 - Adult sex offender treatment programs), Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 21 April 2016, 19-20 (Leigh Sanderson).

290 Information received from Gail Robertson, Department of Corrective Services, ACT.

291 Information received from Aleisha Reader, Queensland Corrective Services and from, Evidence to Public Hearing – Criminal Justice Roundtable (Day 2 - Adult sex offender treatment programs), Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 21 April 2016, 18-19 (Ashley Phelan).

Jurisdiction	Program title	Details
Northern Territory ²⁹²		<p>The eligibility criteria for each program:</p> <ul style="list-style-type: none"> • A clinical assessment is undertaken incorporating the STATIC-99, VRS-SO, Three Predictor Model; • Then if required a specialised assessment will be undertaken being the VRS-SO pre- and post-program for the SOTP and the SOTP/RSVP – the RSVP will be undertaken whilst participants attend the program in order to develop a risk management plan. <p>In addition to the formal programs, some individual interventions are available if required.</p> <p>All programs are voluntary and consent is required.</p> <p>The client would be encouraged to attend the program based on information that would be given to him by the clinician – eg. 1. that the Parole Board would expect the prisoner to address his offending behaviour whilst in prison, if he chooses not to it is unlikely that he will be granted parole; 2. That if the prisoner refuses assessment/treatment he is unlikely to be allowed to obtain a lower prison security rating.</p>
	Sex offender Treatment Program (SOTP)	6 months duration (with potential for Maintenance/Through care program if required).
	SOTP/RSVP program	3 months duration for low to moderate-low risk sex offenders.
New Zealand ²⁹³		<p>There is no mandatory treatment for sex offenders.</p> <p>Participation is relevant to release on parole.</p>
	Child Sex Offender treatment program	An intensive program delivered in a Special Treatment Unit for child sex offenders.
	Psychological treatment	One-on-one treatment primarily deals with high-risk sexual and violent offenders.
	Adult Sex Offender Treatment	An intensive program delivered in a Special Treatment Unit for male prisoners who have a high risk of reoffending and convictions for sexual offences against adults.
England and Wales ²⁹⁴		<p>Consent required for all programs.</p> <p>Participation is relevant to release on parole and risk classification.</p>
	Sex Offender Treatment Program (SOTP) Core	<p>Core helps offenders develop understanding of how and why they have committed sexual offences. The main focus is to help the offender develop meaningful life goals and practice new thinking and behavioural skills that will lead him away from offending. Aims to meet treatment needs of low deviance offenders and act as starting point for high-risk offenders.</p> <p>Consists of around 85 two-hour sessions of group-based therapy.</p>

292 Information received from Barbara Simpson, Department of Correctional Services, NT.

293 Information obtained from Department of Corrections, New Zealand.

294 Information obtained from Justice (UK), *Offender Behaviour Programmes* <<https://www.justice.gov.uk/offenders/before-after-release/obp>>; Laura Brampton, *Working with Sexual Offenders: The Training and Support Needs of SOTP Facilitators*, (PhD Thesis, Birmingham Law School, 2010).

Jurisdiction	Program title	Details
	SOTP Extended	This targets high and very high-risk men who have successfully met the treatment targets of the Core program.
	SOTP Rolling Program	This can be completed as an alternative to the Core program if an offender is assessed as low risk. It usually comprises 45 to 60 sessions.
	SOTP Becoming New Me	This is adapted for those who have social or learning difficulties.
	SOTP Better Lives Booster	This is designed to boost sexual offenders' learning from other SOTPs and provide additional opportunities to practice personally relevant skills. It can be run in two forms – a low intensity (one session per week) form that helps to maintain change in long term prisoners and a high intensity, pre-release program which is particularly focused on preparation for transition into the community.
	SOTP Adapted Better Lives Booster	This is aimed at those who have completed the Adapted SOTP. Shares the same aims as the Core version but the treatment delivery methods are different to accommodate different learning styles and abilities. A low intensity version is for long-term prisoners and a high intensity version is for those who are in the last year of their sentence, preparing them for release.
Canada ²⁹⁵		Program participation is voluntary. Participation is relevant to release on parole.
	High Intensity National Sex Offender Program	This targets men who have been assessed as having a high risk of reoffending sexually. The program consists of 75 group sessions and up to 7 individual sessions. Each session is 2 to 2.5 hours long.
	Moderate Intensity National Sex Offender Program	This targets men who have been assessed as having a moderate risk of reoffending sexually. The program consists of 55 group sessions and up to 6 individual sessions. Each session is 2 to 2.5 hours long.
	National Sex Offender Maintenance Program	This targets men who have completed one of the other national Sex Offender Programs. The program helps them maintain the skills they were taught in the initial program. It also helps them to continue to manage their risk. The program deals with high-risk situations and self-management. It consists of 12 group sessions. These can be repeated if necessary. Individual sessions are offered as required.
	Tupiq Program	This is for Inuit men who have been assessed as having a moderate or high-risk of reoffending sexually. The program consists of 129 group sessions and individual sessions as required. Each session is 2.5 hours long.
	Women's Sex Offender Program	This targets women who have offended sexually. These women have been assessed as having a moderate or high-risk of reoffending. Women who have a moderate risk of reoffending take this program. Those with a high risk of reoffending take it along with a moderate intensity program. The program consists of 59 group sessions and 7 individual sessions. Each session is 2 hours long.

295 Information obtained from Correctional Services Canada, *National Sex Offender Programs*, (24 April 2014) <<http://www.csc-scc.gc.ca/correctional-process/002001-2008-eng.shtml>>.

Appendix B

Summary of community-based sex offender treatment programs

Jurisdiction	Program title	Details
New South Wales ²⁹⁶		Consent is necessary for participation in programs.
	Community-based Treatment Program	This is for low-moderate risk/needs sexual offenders. This may include offenders sentenced to a community-based order or offenders who were sentenced to imprisonment but were unable to participate in a sex offender treatment program while in prison.
	Community-based Maintenance Program	This is offered to offenders who are at moderate or high risk of reoffending who have completed CSNSW Sex Offender Programs in prison. Attending is usually a condition of release on parole.
	Community-based Risk Management	High-risk offenders who are not suitable to participate in a moderate intensity treatment group. Individual treatment.
Victoria ²⁹⁷		Consent is necessary for participation but consequences for failure to participate.
	Better Lives Program (BLP)	Moderate-low, Moderate-high and High risk of sexual reoffending for 72–150 hours (6 to 9 months depending on level of risk).
	Crossroads: A Dialectical Behaviour Therapy-Informed Skills Program	Moderate-high and High risk offenders subject to a Supervision Order, or classified as a Major Offender. Offenders having a diagnosis of a personality disorder or significant traits of personality disorder, and assessed dynamic risk factors relating to problems in coping, emotion regulation problems, lack of distress tolerance skills, interpersonal issues, and a lack of self-awareness. One program cycle is 21 sessions (each group session 2.5 hours) but clients are expected to participate in at least two cycles.
	New Directions Program	Moderate-low, Moderate-high and High risk of sexual reoffending. Offenders with lower intellectual functioning (including, but not limited to, intellectual disability and borderline intellectual functioning) and/or confirmed acquired brain injury with significant impairment. This is up to 200–240 hours (10 to 12 month).
	Maintaining Change (MC)	Individuals who have successfully completed BLP either in the community or in custody and is for 20 hours.
	Individual Intervention	This is provided for sexual offenders subject to a Supervision Order, or who are classified as a Major Offender. High risk sexual offenders with responsivity issues for whom standard SOATS group-based treatment is not considered appropriate Moderate-high or High risk sexual or violent offenders with lower intellectual functioning (including, but not limited to, intellectual disability, borderline intellectual functioning, and/or confirmed acquired brain injury with significant impairment) for whom standard SOATS group-based treatment is not considered appropriate.

296 Information obtained from Jayson Ware, Corrective Services, NSW; Corrective Services NSW, *Sex Offender and Violent Offender Therapeutic Programs* (24 April 2015) New South Wales Department of Justice, <<http://www.correctiveservices.justice.nsw.gov.au/Pages/CorrectiveServices/programs/sex-and-violent-offender-therapeutic-programs/sex-and-violent-offender-therapeutic-programs.aspx>>.

297 Information received from Victoria State Government, Justice and Regulation, *Suite of Interventions for Sexual Offenders in Custody*.

Jurisdiction	Program title	Details
South Australia ²⁹⁸		Run by Forensic Mental Health Service (SA Health) through Owenia House. Participation is voluntary but often a condition of a parole order or suspended sentence bond.
	Sex Offender Treatment (shorter format)	This is a 12 week program for offenders on parole.
	Sex offender Treatment	This is offered to sex offenders sentenced to a community-based order or who have had their sentence suspended (note Owenia House also conducts programs for sex offenders in prison who are found to be low risk).
Western Australia ²⁹⁹	Community-based Maintenance Program	Designed to maintain the treatment gains of high-needs sex offenders in the community.
	CBI Sex Offender Program	
Australian Capital Territory ³⁰⁰		Provided at Eclipse House. Participation is voluntary.
	Adult Sex Offender Program	Note it is possible to transfer from prison-based to community-based programs (known as 'rolling programs'). Aimed at adult male sex offenders with at least 12 months remaining on good behaviour order.
Queensland ³⁰¹		Participation is voluntary.
	Medium Intensity Sexual Offender Programme	
	Sexual Offending Maintenance	
Northern Territory ³⁰²		Participation is voluntary.
	Individual assessment/treatment	Assessment/treatment for offenders on parole or community based orders.
	Maintenance/Through-care (proposed)	Group program in the community for sex offenders who have completed treatment in prison.

298 Information received from Gene Mercer, Department of Correctional Services, South Australia.

299 Information obtained from, Evidence to Public Hearing – Criminal Justice Roundtable (Day 2 - Adult sex offender treatment programs), Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 21 April 2016, 19-20 (Leigh Sanderson).

300 Information received from Gail Robertson, Department of Corrective Services, ACT.

301 Information received from Aleisha Reader, Queensland Corrective Services and from Evidence to Public Hearing – Criminal Justice Roundtable (Day 2 - Adult sex offender treatment programs), Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 21 April 2016, 18-19 (Ashley Phelan).

302 Information received from Barbara Simpson, Department of Correctional Services, NT.

Appendix C

Coerced treatment in Tasmania

Path to coerced/mandatory treatment	Benefit for compliance?	Penalty for non-compliance?
<p>Probation order (May be combined with suspended sentence). A court may order an offender be released into the community under the supervision of Corrective Services officers. Such an order may require the offender to submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer (<i>Sentencing Act 1997</i> (Tas) s 37(2)(d)).</p>	Allows the offender to be in the community under supervision.	If the probation order is breached, the court may (among other options) re-sentence for the original offence but must take into account the extent of the offender's compliance with the order ((<i>Sentencing Act 1997</i> (Tas) s 42(6), (9))).
<p>Suspended sentence A court may impose a suspended sentence with a condition that the offender submit to the supervision of a probation officer and the court may impose a treatment condition (as above) ((<i>Sentencing Act 1997</i> (Tas) s 24(2)(b), (5))).</p>	Allows the offender to be in the community under supervision.	If a suspended sentence is breached by a failure to comply with the conditions of a suspended sentence, the court may activate the sentence ((<i>Sentencing Act 1997</i> (Tas) s 27(4E))).
<p>Remission Remissions are reductions in the length of prison sentences.</p>	Successful participation means that an offender can apply for remission in sentence.	Failure to participate or unsatisfactory participation means that an offender is ineligible for a remission in sentence (<i>Corrections Regulations 2008</i> (Tas) r 22(4)).
<p>Application for parole Parole is a form of early supervised release.</p>	Successful participation is factor taken into account in making an order for release on parole.	Failure to participate or unsatisfactory participation is a factor taken into account in refusing an order for release on parole (<i>Corrections Act 1997</i> (Tas) s 70(4)(kb)).
<p>Parole order The Parole Board may release an offender into the community from prison on a parole order. The parole order can be subject to terms and conditions as the Parole Board considers necessary (<i>Corrections Act 1997</i> (Tas) s 72(5)).</p>	Allows the offender to be released into the community to serve a period of a sentence of imprisonment.	Parole may be revoked and the offender will be required to serve unexpired portion of imprisonment (<i>Corrections Act 1997</i> (Tas) s 79(5)).

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