More, Longer, Tougher… Or Is It Finally Time For a Different Approach to the Post-sentence Management of Sex Offenders in Australia?

Lorana Bartels[*], Jamie Walvisch[***] and Kelly Richards[***]

ABSTRACT

The public desire to 'do something' about sex offenders has led juridictions around the world to introduce a range of post-sentence measures, such as sex offender registries, community notification and preventive detention. In Australia, the pace of legislative reform in this area has been particularly frenetic since 2016, with almost all jurisdictions enacting at least one substantive piece of legislation. This article analyses these recent reforms, arguing that while they have been extensive in number, they have not been extensive in nature: governments have simply sought to do more of the same, even though there is little evidence to suggest that this is likely to improve community safety.

By contrast, evaluations of some more innovative approaches that have been taken to managing sex offenders suggest that these approaches may be effective in assisting those offenders to reintegrate into communities and in reducing reoffending. The article discusses three of these approaches: Circles of Support and Accountability; Chaperone Programs; and Support and Awareness Groups. We suggest that, if governments are truly committed to the goal of enhancing community safety, approaches of this nature seem a better target for public investment.

[*] Professor, School of Law and Justice, University of Canberra; Adjunct Professor, Faculty of Law, University of Tasmania.
[**] Lecturer, Faculty of Law, Monash University.
[***]Senior Lecturer, Faculty of Law, School of Justice, Queensland University of Technology.

I INTRODUCTION

Few categories of offender invoke as strong a response from politicians and the community as sex offenders. This group of offenders is commonly portrayed as irredeemable; indeed, the notion that sex offenders cannot change has been identified as 'probably the most deeply entrenched belief about sex offenders'.[1] Public opinion on this topic exerts an unusual degree of influence over legislation and policy.[2] Public desire to 'do something' about sex offenders – especially those who offend against children[3] – to delay and/or follow their release from prison often stems from a small number of atypical, but high-profile, cases in which a child has been killed by a released sex offender,[4] such as the cases of Jacob Wetterling[5] and Megan Kanka[6] in the United States (US), Sarah Payne[7] in the United Kingdom (UK), and Masa Vukotic[8] in Australia.

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[1] Paul Fedoroff and Beverley Moran, 'Myths and Misconceptions About Sex Offenders' (1997) 6 *Canadian Journal of Human Sexuality* 263, 269, cited in Jo Thakker, 'Public Attitudes to Sex Offenders in New Zealand' (2012) 18 *Journal of Sexual Aggression* 149, 160.

[2] Stacey Katz Schiavone, Jill Levenson and Alissa Ackerman, 'Myths and Facts about Sexual Violence: Public Perceptions and Implications for Prevention' (2008) 15 *Journal of Criminal Justice and Popular Culture* 291; Justin Pickett, Christina Mancini and Daniel Mears, 'Vulnerable Victims, Monstrous Offenders, and Unmanageable Risk: Explaining Public Opinion on the Social Control of Sex Crime' (2013) 51 *Criminology* 729; Craig Harper and Andrew Harris, 'Applying Moral Foundations Theory to Understanding Public Views of Sexual Offending' (2017) 23 *Journal of Sexual Aggression* 111.

[3] Bernadette McSherry and Patrick Keyzer, *Sex Offenders and Preventive Detention: Policy, Politics and Practice* (Federstion Press, 2009) 1.

[4] Jenny Kitzinger, *Framing Abuse: Media Influence and Public Understanding of Sexual Violence Against Children* (Pluto Press, 2004).

[5] Jacob Wetterling was kidnapped and killed in 1989 at the age of 11. His death remained unsolved for nearly 30 years and gave rise to the Jacob Wetterling Act of 1994 (Jacob's Law), which requires states to track sex offenders by validating their place of residence every year for 10 years after their release into the community. Some sex offenders must validate their residence quarterly for the rest of their lives. For discussion, see Hazel Kemshall, 'The Historical Evolution of Sex Offender Risk Management' in Kieran McCartan and Hazel Kemshall (eds), *Contemporary Sex Offender Risk Management –Volume 1: Perceptions* (Palgrave Macmillan, 2017) 1, 3.

[6] Seven-year-old Megan Kanka was raped and murdered by her neighbor Jesse Timmendequas in 1994. Her murder led to the introduction of 'Megan's Law', which amended the Jacob Wetterling Act and requires law enforcement to disclose details about the location of registered sex offenders to the community. See Kemshall ibid, 8.

[7] Sarah Payne was abducted and killed at the age of eight in 2000. Her murder led to the creation of the child sex offender disclosure scheme in England and Wales (sometimes known as Sarah's Law). This allows anyone to ask the police if someone with access to a child has a record for child sexual offences.

[8] Seventeen-year-old Masa Vukotic was killed in Melbourne by Sean Price, a registered sex offender. He raped a woman after killing Vukotic, telling police he did so 'because he knew he would be going to jail forever': Melissa Iaria, 'Sean Price Laughs, Yawns and Repeatedly Makes Rude Gestures in Court', *News.com.au*, 30 September 2017 https://www.news.com.au/national/victoria/courts-law/sean-price-laughs-yawns-and-

In this context, various juridictions around the world have introduced a range of post-sentence measures for sex offenders, such as sex offender registries, community notification, preventive detention and residency restrictions.[9] Australian governments have not been immune from this trend and have implemented a significant number of legislative reforms in this area in recent years.

To date, however, there has been little thematic analysis about the nature of these reforms. Furthermore, although there has been extensive critique of the models adopted to manage sex offenders in the community, much of the literature on alternative models for dealing with sex offending has focused on the stages leading up to offenders' release from custody, rather than post-sentence management. In this article, we address these gaps. We do so firstly by analysing the legislative developments across Australia since 2016. We argue that these developments are unlikely to be effective in helping offenders reintegrate into communities, or in reducing the rate of reoffending, and that it would be preferable for governments to focus on some of more inclusive approaches to the post-sentence management of sex offenders that have been taken around the world. We outline three of these approaches – Circles of Support and Accountability; Chaperone Programs; and Support and Awareness Groups – and conclude by calling for more evidence-based approaches to managing this highly controversial cohort of offenders.

repeatedly-makes-rude-gestures-in-court/news-story/beab03ef92b22f2fdd9892c7f4d0cf6f. This case led to the so-called Harper Review, an inquiry into post-sentence detention and supervision in Victoria: see David Harper, Paul McMullen and Bernadette McSherry, *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) (2015).

[9] For a recent overview and critique in the intenrnational context, see Kemshall, n 5; John Pratt, 'Risk Control, Rights and Legitimacy in the Limited Liability State' (2017) 57 *British Journal of Criminology* 1322, 1331-1334.

II AUSTRALIAN SEX OFFENDING SCHEMES

In Australia, sexual offending is largely addressed by state and territory criminal laws and sentencing regimes. The federal government only has limited legislative authority in the criminal law arena, and federal sex offences generally relate to the misuse of telecommunication services, including the internet (for example, viewing child pornography), and the commission of child sexual offences outside Australia. There is considerable jurisdictional variation in the parameters and penalties of state- and territory-based sex offences. For example, in Victoria, the offence of 'rape' carries a maximum penalty of 25 years' imprisonment,[10] while the equivalent offence in New South Wales (NSW) ('sexual assault') carries a maximum penalty of 14 years' imprisonment.[11]

All states and territories except NSW and the Australian Capital Territory (ACT) have legislative provisions which allow judges to impose *indefinite* sentences on sex offenders at the time of sentencing. These provisions usually require a judge to find that the offender poses a (serious) danger to society.[12] However, legislation in Queensland permits judges to order the indefinite detention of sex offenders who are found to be incapable of exercising control over their sexual instincts,[13] while South Australia extends this to offenders who are unwilling to control their sexual instincts.[14]

All jurisdictions except Tasmania and the ACT also have legislative regimes that enable them to detain sex offenders beyond the expiration of a determinate sentence as a form of *preventive*

[10] *Criminal Code 1958* (Vic) s 38.
[11] *Crimes Act 1900* (NSW) s 61I. For a recent comparison of sex offence sentencing schemes, see Tasmanian Sentencing Advisory Council, *Sex Offence Sentencing: Final Report* (2015).
[12] Tasmania Law Reform Institute, *A Comparative Review of National Legislation for the Indefinite Detention of 'Dangerous Criminals'* (Research Paper No 4, 2017).
[13] *Criminal Law Amendment Act 1945* (Qld) s 18.
[14] *Sentencing Act 2017* (SA) s 57.

detention.[15] The first jurisdiction to introduce such legislation was Queensland, with the passage of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld). After the constitutional validity of this legislation was upheld by the High Court of Australia in *Fardon v Attorney-General (Qld)*,[16] the Northern Territory, NSW, Western Australia, Victoria and South Australia in turn passed similar legislation.[17]

These laws continue to operate, despite a finding by the United Nations Human Rights Committee (UNHRC) in 2010 that the preventive detention regimes in Queensland and NSW breach the prohibition on arbitrary detention contained in Articles 9, 14 and 15 of the *International Covenant on Civil and Political Rights*.[18] As Freckelton and Keyzer observed in respect of these decisions, although Australian governments are under no legal obligation to comply with the decisions of the UNHRC, 'deliberate non-compliance…can only lower Australia's standing and credibility in the international community.[19] In response, the Australian Government filed a five-page document in 2011, rejecting the UNHRC's view that there were less restrictive means available to achieve the purposes of the NSW and Queensland legislation other than detention in prison.[20]

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[15] For discussion, see Patrick Keyzer and Bernadette McSherry, 'The Preventive Detention of Sex Offenders: Law and Practice' (2015) 38 *University of NSW Law Journal* 792; Tamara Tulich, 'Post-Sentence Preventive Detention and Extended Supervision of High Risk Offenders in New South Wales' (2015) 38 *University of NSW Law Journal* 823.

[16] (2004) 223 CLR 575. For detailed discussion of Fardon's case, see McSherry and Keyzer (2009), n 3, 44-46; Patrick Keyzer, 'The United Nations Human Rights Committee's Views about the Legitimate Parameters of the Preventive Detention of Serious Sex Offenders' (2010) 34 *Criminal Law Journal* 283; Bernadette McSherry, 'Throwing Away the Key: The Ethics of Risk Assessment for Preventive Detention Schemes' (2014) 21 *Psychiatry, Psychology and Law* 779.

[17] See *Serious Sex Offenders Act 2003* (NT); *Crimes (High Risk Offenders) Act 2006* (NSW); *Dangerous Sexual Offenders Act 2006* (WA); *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic); *Criminal Law (High Risk Offenders) Act 2015* (SA) respectively.

[18] United Nations Human Rights Committee (UNHRC), *Views: Communication No 1629/2007*, 98th sess, UN Doc CCPR/C/98/C/1629/2007 (10 May 2010) 8 ('*Fardon v Australia*'); UNHRC, *Views: Communication No 1635/2007*, 98th sess, UN Doc CCPR/C/98/D/1635/2007 (10 May 2010) ('*Tillman v Australia*'), cited in Tasmanian Law Reform Institute, n 12.

[19] Ian Freckelton and Patrick Keyzer, 'Indefinite Detention of Sex offenders and Human Rights: The Intervention of the Human Rights Committee of the United Nations' (2010) 17 *Psychiatry Psychology and Law* 345, 354. See also McSherry and Keyzer (2009), n 3, 47-49; Keyzer (2010), n 16; McSherry (2014), n 16.

[20] Australian Government, *Response of the Australian Government to the Views of the Committee in Communication No. 1635/2007 Tillman v Australia and Communication No. 1629/2007 Fardon v Australia*

Keyzer and McSherry conducted interviews with 86 Australian psychiatrists, psychologists, social workers, lawyers, former corrective services officials and police officers on their experience with post-sentence detention schemes.[21] Their findings revealed a range of issues, including the observation that the introduction of such schemes were a 'populist response to a perceived problem' which 'focuses on the wrong end of prevention'; in fact, five interviewees suggested that the post-detention scheme 'actually makes the risk of sex offending worse for the community'.[22] In spite of this, as at 30 June 2017, there were 89 people subject to post-sentence detention in Australian prisons,[23] compared with 72 in June 2015[24] (the first year such data were available).

All Australian states and territories also have sex offender registers, which require specified offenders to inform the police of their location and other personal details for a certain period of time following their release into the community.[25] For example, in the ACT, offenders listed on the Child Sex Offenders Register must report annually to police and must notify the registry of any change of address, name, employment details, car registration and internet service provider. Depending on the type and number of offences committed, the reporting period may be eight years, 15 years or for life.[26] While the information contained in these registers is generally kept confidential, Western Australia allows members of the public to access the

(Communication to the Human Rights Committee, 2011). For comment, see McSherry (2014), n 16; Keyzer and McSherry (2015), n 15; Darren O'Donovan and Patrick Keyzer, '"Visions of a Distant Millennium"? The Effectiveness of the UN Human Rights Petition System' in Patrick Keyzer, Vesselin Popovski and Charles Sampford (eds), *Access to International Justice* (Routledge, 2015) 148; Bernadette McSherry, 'Containment versus Rehabilitation: Managing High-Risk Offenders with Complex Needs' in Claire Spivakovsky, Kate Seear and Adrian Carter (eds) *Critical Perspectives on Coercive Interventions: Law, Medicine and Society* (Routledge, 2018) 199.

[21] Patrick Keyzer and Bernadette McSherry, 'The Preventive Detention of "Dangerous" Sex Offenders in Australia: Perspectives at the Coalface' (2013) 2 *International Journal of Criminology and Sociology* 296; Keyzer and McSherry (2015), n 15.

[22] Keyzer and McSherry (2013), ibid, 298.

[23] Australian Bureau of Statistics, 'Prisoners in Australia, 2017' (Cat No. 4517.0, 2017) Table 1.

[24] Australian Bureau of Statistics, 'Prisoners in Australia, 2015' (Cat No. 4517.0, 2015) Table 1.

[25] See Australian Institute of Family Studies, *Offender Registration Legislation in Each Australian State and Territory* https://aifs.gov.au/cfca/offender-registration-legislation-each-australian-state-and-territory. See also Kemshall, n 5, 4.

[26] See *Crimes (Child Sex Offenders) Act 2005* (ACT).

details of people on the register.[27] There have been indications that other jurisdictions may soon follow suit in this regard,[28] although recent research by the Australian Institute of Criminology indicates that public registers do not reduce recidivism and, despite having strong public support, appear to have little effect on levels of fear in the community.[29]

III RECENT LEGISLATIVE DEVELOPMENTS

The Australian approach to the post-sentence management of sex offenders has changed significantly over the past 15 years. Since 2003, every jurisdiction has passed legislation that has specifically targeted this group of offenders, including through the creation of sex offender registries and allowing for indefinite and post-sentence detention. The pace of legislative reform has been particularly frenetic since 2016, with almost all jurisdictions enacting at least one substantive piece of legislation in this area.

Victoria has been the most active jurisdiction in this regard, amending its sex offender registration scheme twice (passing the *Sex Offenders Registration Amendment Act 2016* (Vic) in April 2016 and the *Sex Offenders Registration Amendment (Miscellaneous) Act 2017* (Vic) in June 2017) and its detention and supervision framework four times (passing the *Serious Sex Offenders (Detention and Supervision) Amendment (Community Safety) Act 2016* (Vic), *Corrections Legislation Miscellaneous Amendment Act 2017* (Vic), *Serious Sex Offenders (Detention and Supervision) Amendment (Governance) Act 2017* (Vic) and *Serious Offenders*

[27] Courtney Trenwith, 'Sex Offender Register Ready', *The West* (online), 8 March 2012, http://www.watoday.com.au/wa-news/sex-offender-register-ready-in-july-20120308-1unf1.html.
[28] ABC News, 'Sex Offenders Register with Images Proposed For Victoria if Coalition Wins November Election', 12 February 2017, http://www.abc.net.au/news/2018-02-12/public-register-for-sex-offenders-victoria-under-coalition-plan/9421458.
[29] Sarah Napier et al, 'What Impact do Public Sex Offender Registries Have on Community Safety?' (Trends and Issues in Crime and Criminal Justice No 550, Australian Institute of Criminology, 2018). For discussion of sex offender registers in the international context, see also Paul Farrington, *Circles of Support and Accountability: The Role of Social Support in Preventing Sexual Offender Recidivism* (Unpublished Doctorate in Forensic Psychology Practice Thesis, University of Birmingham, 2015) 18-21; Kemshall, n 5; Kieran McCartan, Hazel Kemshall, and James Hoggett, 'Reframing the Sex Offender Register and Disclosure: From Monitoring and Control to Desistance and Prevention' Kieran McCartan and Hazel Kemshall (eds), *Contemporary Sex Offender Risk Management – Volume 2: Responses* (Palgrave Macmillan, 2017) 205.

Act 2018 (Vic) in May 2016, August 2017, October 2017 and June 2018 respectively). The most recent reform (the enactment of the *Serious Offenders Act 2018* (Vic)) gave effect to the recommendations of the Harper review,[30] repealing the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic).[31] Its aims include:

> to provide for enhanced protection of the community by requiring offenders who have served custodial sentences for certain serious sex offences or certain serious violence offences and who present an unacceptable risk of harm to the community to be subject to ongoing detention or supervision.[32]

Over this same period:

- NSW passed the *Crimes (High Risk Offenders) Amendment Act 2017* (NSW) (October 2017) and *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018* (NSW) (June 2018);
- Queensland passed the *Serious and Organised Crime Legislation Amendment Act 2016* (December 2016)*; Corrective Services (Parole Board) and Other Legislation Amendment Act 2017* (Qld) (May 2017); and *Child Protection (Offender Reporting) and Other Legislation Amendment Act 2017* (Qld) (May 2017);
- Western Australia passed the *Dangerous Sexual Offenders Legislation Amendment Act 2016* (WA) (June 2016); *Sentencing Legislation Amendment Act 2016* (WA)

[30] See Harper, Mullen and McSherry, n 8; Serious Offenders Bill 2018 (Vic) Explanatory Memorandum, 1.
[31] In light of the Government's intention to repeal the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) in 2018, it is to be wondered why they felt it necessary to amend that Act twice in late 2017. This appears to be another instance of governmentd wanting to be seen to be 'doing something' in this area.
[32] *Serious Offenders Act 2018* (Vic) s 1. For discussion of the issues associated with the risk assessment tools used on sex offenders, see McSherrry (2014), n 16. See also McSherry and Keyzer (2009), n 3, 19-39; Robin Wilson and Jeffrey Sandler, 'Assessment of Risk to Sexually Reoffend: What Do We Really Know?' in Kieran McCartan and Hazel Kemshall (eds), *Contemporary Sex Offender Risk Management – Volume 2: Responses* (Palgrave Macmillan, 2017) 33; Joanne Hulley, 'Desistance from Sexual Offending and Risk Management' in Kieran McCartan and Hazel Kemshall (eds), *Contemporary Sex Offender Risk Management – Volume 2: Responses* (Palgrave Macmillan, 2017) 175.

(November 2016); and *Dangerous Sexual Offenders Legislation Amendment Act 2017* (WA) (December 2017);

- Tasmania passsed the *Corrections Amendment (Treatment of Sex Offenders) Act 2016* (Tas) (April 2016); and *Community Protection (Offender Reporting) Amendment Act 2016* (Tas) (December 2016);
- the ACT passed the *Crimes (Serious and Organised Crime) Legislation Amendment Act 2016* (ACT) (August 2016); and *Crimes Legislation Amendment Act 2017 (No 2)* (ACT) (April 2017); and
- the Commonwealth Government introduced the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017 (Cth). This Bill passed the House of Representatives and was introduced in the Senate in October 2017, but has not yet been debated in the Senate.

It is not possible to comprehensively detail the numerous measures that have been implemented during this frenzy of reform. However, our analysis of the relevant legislative reforms between January 2016 and November 2018[33] has revealed six inter-related categories into which these reforms fall, namely, amendments that: widen the carceral net; extend the duration of supervision orders; restrict offenders' liberty; increase the consequences of breach; change the objectives of the post-sentence management framework; and change the governance of post-sentence management schemes. These are discussed in turn below.

[33] This analysis considers reforms to each jurisdiction's legislation in respect of its *Crimes Act* (or equivalent), *Sentencing Act* (or equivalent), legislation governing parole and offender registration and, where applicable, post-sentence supervision schemes. It does not extend to legislation implementing the national redress scheme proposed by the Royal Commission into Institutional Responses to Child Sexual Abuse or civil liability for sexual abuse.

A *Net-Widening Reforms*

The first (and most prevalent) category of reforms are those which have broadened the scope of the post-sentence management schemes. Many of these reforms have been targeted at sex offender registers, which have been expanded in three ways. First, the number of registrable offences has been increased. For example, in Queensland, the *Serious and Organised Crime Legislation Amendment Act 2016* (Qld) added new sex offences (administering or encouraging use of a child exploitation material website or distributing information about avoiding detection) to the Queensland sex offence register. Secondly, the circumstances in which offenders must be registered have been widened. For example, the *Serious Sex Offenders (Detention and Supervision) Amendment (Community Safety) Act 2016* (Vic) introduced a provision that requires Victorian courts that make, confirm or renew supervision or detention orders to also make sex offender registration orders in respect of any offenders not already subject to such orders.[34] Thirdly, the registers have been expanded to cover offenders who have been registered in other jurisdictions.[35]

Similar net-widening reforms have been implemented in relation to post-sentence supervision and detention schemes. For example, the *Crimes (High Risk Offenders) Amendment Act 2017* (NSW) expanded the scope of the NSW scheme by: allowing a supervision or detention order to be made if an offender poses a risk of committing *either* a serious violent offence *or* a serious sexual offence; and enabling the scheme to apply to offenders serving sentences for Commonwealth sex offences. In an even starker example of net-widening, the *Dangerous Sexual Offenders Legislation Amendment Act 2016* (WA) gave courts the power to make a supervision or detention order under the *Dangerous Sexual Offenders Act 2006* (WA) even where the relevant offender has been found not mentally fit to stand trial or, if charged with an

[34] This requirement has been maintained in the *Serious Sex Offenders Act 2018* (Vic) s 341.
[35] See eg *Crimes (Serious and Organised Crime) Legislation Amendment Act 2016* (ACT).

offence, would be likely to be found not mentally fit to stand trial. In this context, McSherry's recent work on 'containment' and 'control'[36] is particularly relevant; as she has observed, this approach offends human rights and well-established legal principles, such as proportionality. This is especially compounded in respect of those who are mentally ill and/or cognitively impaired.

Another way in which post-sentence management schemes have been expanded is by creating new types of post-sentence orders. For example, the *Sentencing Legislation Amendment Act 2016* (WA) introduced a new two-year post-sentence supervision order to 'enable the supervision of seriously violent criminals beyond the completion of their sentence'.[37] While not specifically aimed at sex offenders, the definition of 'serious violent offender' includes eight sexual offences.[38] In addition, where a court is sentencing an offender to imprisonment for an indictable offence that involved serious violence, or that resulted in serious harm to or the death of another person (including a sexual offence), the court may declare the offence to be a 'serious violent offence' (making the offender eligible for a post-sentence supervision order).[39] Importantly, when introducing these reforms, the Attorney-General indicated that they were not intended to replace the existing provisions relating to dangerous sexual offenders.[40] Consequently, sex offenders who commit a serious violent offence may *also* be subject to a continuing detention order or supervision order under the *Dangerous Sexual Offenders Act 2006* (WA).

Victoria has also introduced a new order, a 'prohibition order', under the *Sex Offenders Registration Amendment Act 2016* (Vic). This order was created to allow police to monitor

[36] McSherry (2018), n 20. See also Bernadette McSherry, 'Preventive Justice, Risk of Harm and Mental Health Law' in Tamara Tulich et al (eds), *Regulating Preventive Justice: Principle, Policy and Paradox* (Routledge, 2017) 61; Pratt, n 9.
[37] Michael Mischin, 'New Sentencing Laws Pass Parliament' (Media Release, 17 November 2016).
[38] See *Sentence Administration Act 2003* (WA) Schedule 4.
[39] *Sentencing Act 1995* (WA) s 97A.
[40] Western Australia, *Parliamentary Debates*, Legislative Council, 14 September 2016, 2 (Michael Mischin).

registered sex offenders who are not otherwise subject to supervision, but who 'are behaving in a way that is of concern to the police or child protection authorities'.[41] The Chief Commissioner of Police is empowered to apply for such an order, which the court may make if satisfied that, having regard to the nature and pattern of the person's conduct, s/he poses a risk to the safety of one or more persons or of the community, and making the order will reduce that risk.[42] In this context, it is relevant to note that the professionals interviewed by Keyzer and McSherry expressed concerns in respect of '[w]asted expenditure on overly draconian and insufficiently discriminating post-release monitoring'.[43]

It is important to note that, while the vast majority of reforms in this area have expanded the coverage of post-sentence management schemes, there have been recent reforms in NSW and Victoria that have restricted the scope of offender registration schemes. Specifically, NSW introduced a limited discretion for courts sentencing a child for a sexual offence against another child to order that the child should not be listed on the Child Protection Register.[44] Victoria has created a process to allow certain 18- or 19-year-old offenders to apply for a 'registration exemption order', which prevents them from being automatically registered on the sex offender register.[45] In addition, the Chief Commissioner of Police has a new power to suspend a sex offender's reporting obligations where s/he poses a low risk (as opposed to *no* risk) to the community. Both of these changes seek to ensure that the sex offender registration scheme is 'targeted at offenders who pose a risk to the sexual safety of the community and is not resulting

[41] Victoria, *Parliamentary Debates*, Legislative Assembly, 24 February 2016, 570 (Robin Scott).
[42] See *Sex Offenders Registration Act 2004* (Vic) ss 66E(1), 66I(1).
[43] Keyzer and McSherry (2015), n 15, 822.
[44] NSW, *Parliamentary Debates*, Legislative Assembly, 6 June 2018, 8 (Mark Speakman). See *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018* (NSW) Sch 2, cl 6. At the time of writing, this legislation had not yet come into effect.
[45] *Sex Offenders Registration Amendment (Miscellaneous) Act 2017* (Vic).

in the inappropriate and unnecessary registration of other persons'.[46] It should be emphasised, however, that these are rare exceptions to the general net-widening trend.

B *Duration-Extending Reforms*

The second category of reforms which have recently been implemented are those which have extended the period of time for which offenders are managed beyond the expiry of their sentences. The clearest example of this type of reform can be found in the *Dangerous Sexual Offenders Legislation Amendment Act 2016* (WA), which extended the duration of supervision orders in two ways: it empowered courts to make further supervision orders upon the expiry of existing supervision orders, thereby increasing the total period for which an offender can be supervised; and it extended the duration of supervision orders imposed on offenders who are sentenced to terms of imprisonment for any offence. The Act also made reviews of continuing detention orders biennial, rather than annual. This is likely to result in some (if not many) offenders subject to the *Dangerous Sexual Offenders Act 2006* (WA) being detained for an additional year.

To even more far-reaching effect, an Opposition Bill entitled Protecting Queenslanders from Violent and Child Sex Offenders Amendment Bill 2018 (Qld) was introduced to the Queensland Parliament in September 2018. If implemented, the Bill would introduce 'an indeterminate supervision order in which an offender, who is convicted of two or more sexual offences, will, by operation of law and without specific order, be subject to an indeterminate supervision order'. [47] In addition, if a supervision order ceases, a repeat offender will be subject to an indeterminate supervision order by operation of law, including the requirement that the

[46] Sex Offenders Registration Amendment (Miscellaneous) Bill 2017 (Vic) Explanatory Memorandum, 1.
[47] Queensland, *Parliamentary Debates*, Legislative Assembly, 19 September 2018, 2597 (David Janetski).

person 'at least be GPS monitored until they die'.[48] The bill has been referred to the Legal Affairs and Community Safety Committee, which is due to report in March 2019.

C *Liberty-Restricting Reforms*

The third category of reforms are those which have imposed greater restrictions on the liberty of sex offenders subject to post-sentence supervision. This type of reform has been achieved using four different mechanisms. First, police and corrections officers have been given greater powers when dealing with offenders. For example:

- the *Serious Sex Offenders (Detention and Supervision) Amendment (Community Safety) Act 2016* (Vic):
    - extended the entry, search and seizure powers of supervision officers, community corrections officers and police officers;
    - reduced the threshold trigger for carrying out a residential search from 'reasonable belief' to 'reasonable suspicion';
    - made it an offence for an offender to fail to comply with a direction to assist the relevant authorities without reasonable excuse;
    - limited the liability of officers for any injury or damage caused by the use of force; and
    - extended the maximum period during which an offender may be detained by police from 10 to 72 hours;[49]

[48] Ibid 2598. For discussion of GPS monitoring of sex offenders, see Lorana Bartels and Marietta Martinovic, 'Electronic Monitoring: The Experience in Australia' (2017) 9 *European Journal of Probation* 80. See also Keyzer and McSherry (2015), n 15, 817-819; Kemshall, n 5, 12.

[49] All of these reforms, as well as the other reforms made to the (now repealed) *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) that are outlined in the remainder of this article, have now been incorporated in the *Serious Offenders Act 2018* (Vic).

- the *Corrections Legislation Miscellaneous Amendment Act 2017* (Vic) provided corrections and police officers with powers to examine, seize, and delete inappropriate material on electronic devices;
- the *Child Protection (Offender Reporting) and Other Legislation Amendment Act 2017* (Qld) gave police additional powers to fingerprint registered sex offenders, and introduced new powers in relation to the use of electronic devices;
- the *Community Protection (Offender Reporting) Amendment Act 2016* (Tas) empowered the police to take blood, saliva, DNA, hair and/or nail samples from registered sex offenders and to detain them for this purpose; and
- the *Crimes Legislation Amendment Act 2017 (No 2)* (ACT) enabled police officers to apply for an immediate entry and search warrant to investigate a registrable offender's breach or likely breach of a prohibition order.

The second mechanism used to limit the liberty of managed sex offenders is to impose more restrictive conditions on them. A clear example of this type of reform is provided by the *Community Protection (Offender Reporting) Amendment Act 2016* (Tas), which imposed greater restrictions on registered sex offenders. This Act has empowered Tasmanian magistrates to make a 'community protection order' to prohibit or restrict the movement or conduct of reportable offenders on the sex offender register. This Act also extended the reporting obligations imposed on offenders travelling into or out of Tasmania.

The *Serious Sex Offenders (Detention and Supervision) Amendment (Community Safety) Act 2016* (Vic) also imposed greater restrictions on supervised sex offenders, by introducing new core conditions to be imposed on all supervision orders; empowering courts to impose new suggested and discretionary conditions relating to violent offences and conduct; and creating a new class of conditions known as 'restrictive conditions'. The Victorian supervision regime

was further tightened with the passage of the *Corrections Legislation Miscellaneous Amendment Act 2017* (Vic), which has given courts 'more power to update the core conditions of supervision orders including to prohibit serious sex offenders from committing violent offences or engaging in violent offending and violent conduct'.[50] This Act also provided courts with new powers to manage offenders' electronic devices.

The third liberty-restricting mechanism is the enactment of reforms likely to result in greater levels of detention. For example, the NSW Parliament has reformed its post-sentence management scheme to ensure that, where offenders cannot be safely managed in the community on an extended supervision order, they are instead subject to continued detention in a correctional centre.[51] Similarly, the Western Australian Parliament reformed its *Dangerous Sexual Offenders Act 2006* to provide that courts hearing applications for continuing detention orders *must* make such orders if they find that the offender is a serious danger to the community. In addition, courts are now required to impose a detention order if they are not satisfied that the offender will substantially comply with all of the standard conditions included in a supervision order, with offenders required to prove, on the balance of probabilities, that they will comply with the relevant conditions.[52] It is also worth noting that the Western Australian Parliament has also recently introduced a presumption against bail for dangerous sexual offenders charged with breaching their supervision order.[53] This will lead to longer and additional periods of incarceration for sex offenders subject to post-sentence management.

The fourth mechanism that governments have used to restrict the liberty of sex offenders is somewhat indirect: it involves excluding sex offenders from the scope of orders that are available to other offenders. For example, in 2017 the NSW Parliament introduced a new

[50] Victoria, *Parliamentary Debates*, Legislative Assembly, 10 May 2017, 1176 (Lisa Neville).
[51] See *Crimes (High Risk Offenders) Amendment Act 2017* (NSW).
[52] See *Dangerous Sexual Offenders Legislation Amendment Act 2016* (WA).
[53] See *Dangerous Sexual Offenders Legislation Amendment Act 2017* (WA).

'reintegration home detention order' to 'provide a step down between custody and parole for eligible and suitable offenders to assist them with reintegration into the community'.[54] This order (which is yet to come into effect) will provide offenders with 'opportunities to link with employment, training and community-based services and to re-establish family and social support networks while under more intense supervision than they would experience on parole'.[55] However, the reintegration home detention order will *not* be available for offenders serving a sentence for child sex offences or serious sex offences.[56] This is likely to result in sex offenders spending longer in custody, or returning to custody sooner due to a lack of support upon release.

D *Consequence-Increasing Reforms*

The fourth category of reforms are those which have increased the punitive consequences imposed upon individuals who fail to comply with the post-sentence management framework. One way in which this has been done is by requiring courts to impose mandatory sentences upon offenders who breach the conditions of their orders. For example, the *Serious Sex Offenders (Detention and Supervision) Amendment (Community Safety) Act 2016* (Vic) required courts to impose a minimum term of 12 months' imprisonment (with a non-parole period of at least six months) if satisfied beyond reasonable doubt that an offender intentionally or recklessly failed to comply with a restrictive condition, unless a special reason exists not to do so (for example, if the offender was young or had a mental illness). A similar measure can be found in the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017 (Cth). If passed, this legislation will require Commonwealth offenders to serve a period of time in custody if their parole order is revoked.

[54] NSW, *Parliamentary Debates*, Legislative Assembly, 11 October 2017, 1 (David Elliott).
[55] Ibid 3.
[56] *Parole Legislation Amendment Act 2017* (NSW) s 124.

Keyzer and McSherry have suggested that reimprisonment for minor breach is particularly concerning because of the possibility of a disproportionate infringement on human rights.[57]

The Victorian Government has also heightened the consequences for offenders who fail to meet their reporting obligations under the *Sex Offenders Registration Act 2004* (Vic). In particular, it has authorised the Chief Commissioner of Police to publish the personal details of registered sex offenders who fail to report and who cannot be located.[58] While the enacting legislation did not limit the use of this power, it has been stated that it is only 'intended for use as a last resort, after other measures have been exhausted'.[59]

E *Objective-Reframing Reforms*

The fifth category of reforms are those which have reframed the key objectives of the post-sentence management framework. These have taken two main forms. First, some legislation has explicitly identified community protection as a key objective in this context. For example, the *Serious Sex Offenders (Detention and Supervision) Amendment (Community Safety) Act 2016* (Vic) made safety and protection of the community paramount in any decision under the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic),[60] while the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017 (Cth) (if implemented) will make community safety a relevant factor to be considered in revoking the parole of a relevant Commonwealth offender without notice.

Secondly, some Acts have emphasised the importance of protecting victims of sexual offences. For example, the *Dangerous Sexual Offenders Legislation Amendment Act 2016* (WA) reframed the objectives of the *Dangerous Sexual Offenders Act 2006* (WA) to ensure the

[57] Keyzer and McSherry (2015), n 15, 821.
[58] See *Sex Offenders Registration Amendment Act 2016* (Vic).
[59] Victoria, *Parliamentary Debates*, Legislative Assembly, 24 February 2016, 571 (Robin Scott).
[60] This remains the case under the *Serious Offenders Act 2018* (Vic).

adequate protection of victims. This Act also introduced other victim-protective measures, including allowing victims of serious sexual assaults to make written victim submissions that the court may have regard to in certain circumstances, and enabling a court to make it a condition of a supervision order that the offender not 'make public' any information or opinion about the victim. Similarly, the *Crimes (High Risk Offenders) Amendment Act 2017* (NSW) amended the *Crimes (High Risk Offenders) Act 2006* (NSW) to ensure that victims have greater flexibility in having their voices heard when the Supreme Court is considering an application for post-sentence supervision or detention of the person who offended against them.

F *Governance Reforms*

The final category of reforms which have been implemented relate to the governance of post-sentence management schemes. For example, in May 2017 the Queensland Government changed the composition of its parole boards,[61] implementing Recommendations 45 and 46 of the Sofronoff review of Queensland's parole system.[62] Under the new system, a differently constituted parole board is required to make decisions in relation to prisoners incarcerated for serious sexual (and violent) offences than is required for other prisoners.

By contrast, the Victorian Government has stripped the Victorian Adult Parole Board of its post-sentence detention and supervision functions, instead providing oversight of the post-sentence management scheme to a new independent statutory body (the 'Post Sentence Authority').[63] According to the Special Minister of State, this reform constitutes a 'a further step in strengthening the post-sentence scheme'[64] and

[61] See *Corrective Services (Parole Board) and Other Legislation Amendment Act 2017* (Qld).
[62] Walter Sofronoff, *Queensland: Parole System Review, Final Report* (Department of Justice and Attorney-General, 2016). For comment, see Arie Freiberg et al, 'Parole, Politics and Penal Policy' (2018) *Queensland University of Technology Law Review* 1. DOI: 10.5204/qutlr.v18i1.742.
[63] See *Serious Sex Offenders (Detention and Supervision) Amendment (Governance) Act 2017* (Vic); Serious Offenders Bill 2018 (Vic) Pt 20.
[64] Victoria, *Parliamentary Debates*, Legislative Assembly, 29 September 2017, 4952 (Gavin Jennings).

> ensur[es] that the post-sentence detention and supervision system is supported by an independent, rigorous and accountable governance framework that can effectively seek to achieve and promote community protection. It is also about promoting shared responsibility and a whole-of-government approach to the delivery of services required to reduce the likelihood of reoffending and better protect the community.[65]

These governance reforms were considered to be 'the most significant reforms to the post-sentence scheme' since its enactment in 2009.[66]

IV INNOVATIVE APPROACHES TO THE POST-SENTENCE MANAGEMENT OF SEX OFFENDERS

The previous section provided an overview of the plethora of legislative reforms recently introduced around Australia regarding the post-sentence management of sex offenders and in particular the key themes that emerged from the swathe of reforms. It can be seen from this overview that these reforms have, with few exceptions, involved legislatures expanding the existing system. Rather than trying something different, the approach taken to date has simply been to capture *more* offenders within the scheme, manage them for *longer*, impose *greater restrictions* on their liberty and *increase the consequences* of breaching their obligations. Even where the governance system has been entirely overhauled (as in Victoria), this has not been done with a view to implementing anything new, but rather to *strengthening* the existing approach.

While these types of reform may make sense to governments that want to be seen to be 'doing something' to make the community safer, there is no evidence to suggest that simply doing more of the same is likely to achieve this goal. By contrast, evaluations of some more

[65] Ibid 4948.
[66] Ibid.

innovative approaches that have been taken to the post-sentence management of sex offenders[67] suggest that such approaches may be effective in assisting those offenders to reintegrate into communities and in reducing reoffending. Three of these approaches – Circles of Support and Accountability; Chaperone Programs; and Support and Awareness Groups – are discussed below.[68]

A *Circles of Support and Accountability*

Circles of Support and Accountability (CoSA) are perhaps the best-known (and certainly the best-established) of these measures. CoSA involve groups of trained community volunteers who support (usually child) sex offenders (known as 'core members') after their release from prison.[69] Offenders' participation is voluntary and only available after the entire sentence has been completed.[70] CoSA have two objectives: to support the reintegration of offenders into the community and to reduce the sexual victimisation of children. Since their emergence in Canada

[67] For an overview of innovative responses to sex offenders across and outside the justice system, see Kathleen Daly, *Conventional and Innovative Justice Responses to Sexual Violence* (ACCSA Issues Paper No 12, Australian Institute of Family Studies, 2011); Centre for Innovative Justice, *Innovative Justice Responses to Sexual Offending* (RMIT University, 2014).

[68] This paper is focused on alternatives that involve the community in sex offenders' reintegration. However, the option of sex offender reentry courts, such as the New York Sex Offense Courts, should also be considered in the Australian context. The Centre for Innovative Justice has suggested that sex offenders are 'more likely to reintegrate and less likely to reoffend if their release is underpinned by therapeutic practices such as supervision, links to support services and intensive case management': ibid 83.

[69] Robin Wilson, Janice Picheca and Michelle Prinzo, *Circles of Support and Accountability: An Evaluation of the Pilot Project in South-Central Ontario* (Correctional Service of Canada, 2005); Stacey Hannem and Michael Petrunik, 'Circles of Support and Accountability: A Community Justice Initiative for the Reintegration of High Risk Sex Offenders' (2007) 10 *Contemporary Justice Review* 153. For background on the history of CoSA, see *Kelly Richards,* 'Is It Time for Australia to Adopt Circles of Support and Accountability (COSA)?' (2011) 22 *Current Issues in Criminal Justice* 483, 484.

[70] Daly, n 67.

in 1994,[71] CoSA have been established across Canada and in parts of the US,[72] the UK,[73] parts of Western Europe[74] and New Zealand.[75] As set out below, research demonstrates that CoSA are associated with reduced reoffending and a range of other benefits for core members, as well as benefits for volunteers. In addition, a cost-benefit analysis identified a benefit-cost ratio of 1.04, although it was suggested that the full extent of the cost to society might amount to five to 10 times the tangible costs, thereby substantially increases estimated cost savings related to CoSA.[76]

In 2014, the Centre for Innovative Justice, led by former Victorian Attorney-General Rob Hulls, recommended that Australian governments review the benefits of CoSA and 'implement pilot programs as an additional strategy for reducing reoffending and supporting offender

[71] Correctional Service Canada, *Circles of Support and Accountability: A Guide to Training Potential Volunteers* (2002); Stacey Hannem and Michael Petrunik, 'Canada's Circles of Support and Accountability: A Community Justice Initiative for High-Risk Sex Offenders' (2004) 66 *Corrections Today* 98.
[72] Kathryn Fox, *Circles of Support and Accountability: Final Report Prepared for the State of Vermont Department of Corrections* (University of Vermont, 2013); Jill Anne Chouinard and Christine Riddick, *An Evaluation of the Circles of Support and Accountability Demonstration Project: Final Report* (University of Regina, 2014); Kathryn Fox, 'Restoring the Social: Offender Reintegration in a Risky World' (2014) 38 *International Journal of Offender Therapy and Comparative Criminology* 235; Kathryn Fox, 'Theorizing Community Integration as Desistance-Promotion' (2015) 42 *Criminal Justice and Behavior* 82; Kathryn Fox, 'Civic Commitment: Promoting Desistance Through Community Integration' (2016) 18 *Punishment & Society* 68; Kathryn Fox, 'Contextualising the Policy and Pragmatics of Reintegrating Sex Offenders' (2017) 29 *Sexual Abuse* 28.
[73] Mike Nellis, 'Circles of Support and Accountability for Sex Offenders in England and Wales: Their Origins and Implementation Between 1999-2005' (2009) 7 *British Journal of Community Justice* 23; Kieran McCartan et al, *Circles of Support and Accountability (CoSA): A Case File Review of Two Pilots* (UK Ministry of Justice, 2014); Terry Thomas, David Thompson and Susanne Karstedt, *Assessing the Impact of Circles of Support and Accountability on the Reintegration of Adults Convicted of Sexual Offences in the Community* (University of Leeds, 2014); Kieran McCartan, *Circles of Support and Accountability Social Impact Evaluation: Final Report* (University of the West of England, 2016).
[74] Mechtild Höing, Stefan Bogaerts and Bas Vogelvang, 'Circles of Support and Accountability: How and Why They Work for Sex Offenders' (2013) 13 *Journal of Forensic Psychology Practice* 267; Mechtild Höing, Stefan Bogaerts and Bas Vogelvang, 'Helping Sex Offenders to Desist Offending: The Gains and Drains for CoSA Volunteers – A Review of the Literature' (2016) 28 *Sexual Abuse* 364; Mechtild Höing, Stefan Bogaerts and Bas Vogelvang, 'Volunteers in Circles of Support and Accountability: Job Demands, Job Resources, and Outcomes' (2017) 29 *Sexual Abuse* 541; Mechtild Höing, Bas Vogelvang and Stefan Bogaerts, '"I Am a Different Man Now" – Sex Offenders in Circles of Support and Accountability: A Prospective Study' (2017) 61 *International Journal of Offender Therapy and Comparative Criminology* 751.
[75] Giulia Lowe, Gwenda Willis and Kerry Gibson, 'You Do What? A Qualitative Investigation Into the Motivation to Volunteer With Circles of Support and Accountability' (2017) *Sexual Abuse* 1. DOI: 10.1177/1079063217729157.
[76] Ian Elliott and Anthony Beech, 'A UK Cost-benefit Analysis of Circles of Support and Accountability Interventions' (2012) 25 *Sexual Abuse* 211.

reintegration'.[77] In 2015, a small CoSA pilot program was established in South Australia.[78] Initially funded by a small grant from the South Australian Department of Corrections, the program is run by non-government organisation the Offenders' Aid and Rehabilitation Services of South Australia (OARS).[79] This program is currently the subject of a preliminary evaluation funded by the Australian National Organisation for Women's Safety (ANROWS).[80]

CoSA programs are based on the premise that providing core members – who must readily agree to participate in the scheme – with a circle of community volunteers who offer practical assistance and accountability will help them to lead offence-free lives in the community. As Almond, Bates and Wilson put it, '[t]he role of the COSA is to develop interpersonal contact between the core member and the wider community in order to generate the kind of social capital that militates against future offending'.[81] The process 'focus[es] on support … positive social influences … help with cognitive and other problem solving, and [reducing] social isolation and feelings of loneliness and rejection'.[82] Richards has observed that CoSA 'break down that secrecy so the offender is not able to live alone and behave as they please'.[83] This stands in sharp contrast to the observations of interviewees in Keyzer and McSherry's research

[77] Centre for Innovative Justice, n 67, Recommendation 30.
[78] Kelly Richards, 'Born this Way? A Qualitative Examination of Public Perceptions of the Causes of Pedophilia and Sexual Offending Against Children' (2018) 39 *Deviant Behavior* 835; Kelly Richards and Kieran McCartan, 'Public Views About Reintegrating Child Sex Offenders via Circles of Support and Accountability (COSA): A Qualitative Analysis' (2018) 39 *Deviant Behavior* 400.
[79] Elise Worthington, 'Controversial Paedophile Support Program to Launch in South Australia in a National First', *ABC News* (online) 19 March 2015, http://www.abc.net.au/news/2015-03-18/controversial-paedophile-support-program-launches-in-australia/6330022.
[80] The second author is the Principal Chief Investigator on this evaluation.
[81] Paul Almond, Andrew Bates and Christopher Wilson, 'Circles of Support and Accountability: Criminal Justice Volunteers as the "Deliberative Public"' (2015) 13 *British Journal of Community Justice* 25, 27.
[82] Robin Wilson, Franca Cortoni and Andrew McWhinnie, 'Circles of Support and Accountability: A Canadian Replication of Outcome Findings' (2009) 21 *Sexual Abuse* 412, 426. See also Farrington, n 29.
[83] Kelly Richards, quoted in 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.

that post-detention schemes '"drive offenders further underground" and encourage them to "be more manipulative and deviant"'.[84]

The research on CoSA suggests that this approach can be effective in reducing reoffending and reintegrating core members into the community. Duwe's[85] randomised controlled trial (RCT) of Minnesota Department of Corrections' CoSA program ('MnCOSA') randomly assigned offenders who indicated a desire to participate in CoSA into either a CoSA (n = 31) or control group (n = 31; total n = 62) and measured the reoffending rates of the two groups for an average period of two years. Significant reductions in rearrests, reincarceration for technical violations and reincarceration generally were found among the CoSA participants, compared with the control group. However, significant differences in relation to sexual recidivism were not demonstrated.

More recently, however, in an update of the MnCOSA RCT, Duwe was able to demonstrate statistically significant differences between core members and the control group.[86] In this update, Duwe replicated the original methodology of the RCT, this time comparing 50 core members with 50 sex offenders who were not assigned a CoSA and measuring the recidivism of the two groups over an average of six years. Duwe found a statistically significant difference in sexual recidivism between the groups, with only one core member being rearrested for a new sexual offence (2% of the total number of core members), compared with seven in the control group (14% of the total cohort). The rate of rearrest for a new sexual offence for core members was accordingly one-seventh the rate of the control group. In addition, no CoSA core members (0%) were reconvicted of a new sexual offence, compared with four from the control

[84] Keyzer and McSherry (2013), n 21, 298.
[85] Grant Duwe, 'Can Circles of Support and Accountability (COSA) Work in the United States? Preliminary Results From a Randomized Experiment in Minnesota' (2013) 25 *Sexual Abuse* 143.
[86] Grant Duwe, 'Can Circles of Support and Accountability Significantly Reduce Sexual Recidivism? Results from a Randomized Controlled Trial in Minnesota' (2018) *Journal of Experimental Criminology* 1. DOI: https://doi.org/10.1007/s11292-018-9325-7.

group (8%). As all four of these offenders were subsequently sentenced to prison, the figures for reincarceration in relation to a new sexual offence correspond with their offending rates (0% for core members and 8% for the control group). This study provides both the most rigorous and the most promising evaluation of CoSA to date: it is 'the strongest evidence to date the CoSA model can be effective in reducing sexual recidivism'.[87]

Duwe's findings support other research using quasi-experimental designs that have likewise produced promising findings about the efficacy of CoSA. For example, Wilson, Picheca and Prinzo's[88] evaluation of the CoSA pilot in Ontario, Canada, matched 60 high-risk sex offenders who participated in CoSA with 60 high-risk offenders who did not participate and found that levels of recidivism among CoSA participants were statistically significantly lower than for the control group. In 2009, Wilson, Cortoni and McWhinnie[89] replicated this study, using data from CoSA programs across Canada and matching 44 CoSA participants with 44 offenders who did not participate in a CoSA. This follow-up study again found that, in comparison with the matched group of offenders, CoSA core members had significantly lower rates of sexual, violent and general recidivism.

Due to the difficulties in measuring recidivism, a number of studies have instead sought to measure the impact of CoSA on a range of psychosocial outcomes for core members, such as social connectedness and employment. It has been well-established that many psychosocial factors (eg housing, relationships) are related to sexual recidivism; these are therefore also vital to document. Clarke, Brown and Vollm's[90] overview of the existing research on the capacity

[87] Ibid.
[88] Wilson, Picheca and Prinzo, n 69.
[89] Wilson, Cortoni and McWhinnie, n 82. In the UK context, see also Andrew Bates et al, 'Circles South East: The First 10 Years 2002-2012' (2014) 58 *International Journal of Offender Therapy and Comparative Criminology* 861.
[90] Martin Clarke, Susan Brown and Birgit Vollm, 'Circles of Support and Accountability for Sex Offenders: A Systematic Review of Outcomes' (2017) 29 *Sexual Abuse* 466.

of CoSA to address psychosocial deficits found that a number of studies quantify improvements in core members' relationships;[91] employment;[92] education;[93] housing;[94] health;[95] prosocial attitudes;[96] participation in prosocial activities;[97] emotional regulation;[98] and self-esteem.[99]

In addition, volunteers who have participated in CoSA have reported positive outcomes from the experience, such as an increased sense of community, the development of emotional bonds with others and increased self-worth,[100] as well as the perception that the the program made the community safer.[101] More recent research with volunteers was positive overall, but also identified some of the challenges experienced by volunteers, such as dealing with core members' unrealistic boundaries ands concerns about their behaviour.[102] Importantly, though, this research identified the role CoSA can play in changing opinions towards sexual offenders, with one volunteer noting that CoSA 'is a way of monitoring and challenging perceptions by acting in (an) accepting (way towards) the individual', while another commended CoSA's ability to change 'society's attitude towards offenders which enables opportunities for these individuals to change and be accepted back into the community'.[103]

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[91] Andrew Bates et al, 'Ever-Increasing Circles: A Descriptive Study of Hampshire and Thames Valley Circles of Support and Accountability 2002-09' (2012) 183 *Journal of Sexual Aggression* 355.
[92] Ibid; McCartan et al, n 73; Martin Clarke, Leah Warwick and Birgit Vollm, 'Circles of Support and Accountability: The Characteristics of Core Members in England and Wales' (2017) 27 *Criminal Behaviour and Mental Health* 191.
[93] Bates et al (2012), n 91; McCartan et al, n 73.
[94] Andrew Bates, Rebekah Saunders and Christopher Wilson, 'Doing Something About It: A Follow-Up Study of Sex Offenders Participating in Thames Valley Circles of Support and Accountability' (2007) 5 *British Journal of Community Justice* 19; Clarke, Warwick and Vollm, n 92.
[95] Bates et al (2012), n 91.
[96] Ibid.
[97] McCartan et al, n 73.
[98] Höing, Vogelvang and Bogaerts, n 74.
[99] Ibid.
[100] Wilson, Picheca and Prinzo, n 69.
[101] Robin Wilson et al, 'Circles of Support and Accountability: Engaging Community Volunteers in the Management of High-risk Sexual Offenders' (2007) 46 *Howard Journal of Criminal Justice* 1.
[102] Farrington, n 29.
[103] Ibid 101.

B *Chaperone Programs*

A second innovative approach to the reintegration and management of convicted sex offenders is the use of chaperone programs. These programs are currently available in parts of the US, although their nature varies according to location.[104] They involve the identification and training of offenders' family members or significant others, who agree to accompany the offender during public outings on a voluntary basis.[105] Chaperones also undertake training to help them identify the signs of relapse and intervene if necessary (including reporting breaches to authorities). Chaperones must usually be aged 21 or older; possess the cognitive capacity to undertake training and the role itself; have no prior accusation, charge or conviction relating to a sexual offence; not use drugs or alcohol; and acknowledge in writing that the offence did actually take place. Offenders seeking one or more chaperones must: acknowledge their responsibility for the offending; pass a polygraph test; take part in testing to identify their sexual interest and arousal patterns; abstain from using alcohol or drugs; and agree to safety plans for any event that they wish to attend.

Chaperones provide an important link between offenders and their treatment teams and are required to report any suspicious behaviour to the treatment team. In contrast to CoSA, offenders can have a chaperone program imposed on them as part of their conditions of release; that is, they are not voluntary for offenders. Furthermore, while CoSA seek to support offender desistance and reintegration by facilitating the development of non-offending identitites among core members,[106] chaperone programs have the less sophisticated aim of preventing an offender from reoffending by accompanying them on public outings.

[104] Madison Farrell, *The Efficacy of Chaperone Programs in Supervision of Sex Offenders* (Unpublished PhD Thesis, Regent University, 2009).
[105] Ibid.
[106] Fox (2015), n 72.

Very little has been documented about chaperone programs. Indeed, we could locate only one study after a thorough search of relevant databases. Farrell's[107] study compared the high-risk behaviours (drug and alcohol use; use of pornography and exposure to children reported during an offender's two most recent polygraphs) and recidivism (defined as sexually deviant behaviour reported during an offender's two most recent polygraphs) of two groups: 79 male adult sex offenders who had one or more chaperones during the post-release period and 79 male adult sex offenders who were in a relationship with a significant other but did not have a trained chaperone. Participants in the study were engaged in outpatient treatment programs in one of three cities in South Carolina. Offenders in the chaperone group fared better on both measures. Participation in high-risk behaviours was far more frequent among the non-chaperone group, with 64 breaches (11 instances of drug usage; 26 instances of alcohol usage; 11 instances of exposure to pornography; and 16 instances of exposure to children). Among the chaperone group, 38 breaches were identified (6 instances of drug usage; 17 instances of alcohol usage; 6 instances of exposure to pornography; and 9 instances of exposure to children). The difference between the groups was statistically significant. In relation to recidivism, two chaperoned offenders self-reported engaging in sexually deviant behaviour, compared with nine from the non-chaperone group. Again, this difference was statistically significant.

Farrell's research has a number of limitations that should be borne in mind. No testing of the two groups was reported in the study and it is therefore unknown whether the two groups really only differed in relation to the presence or absence of a trained chaperone. It is unclear what time period the groups were followed for post-release and thus whether the perceived difference in reoffending (and other risky behaviour) would have remained over a longer

[107] Farrell, n 104.

period. Recidivism was operationalised in binary (and thus rather blunt) terms and no indication was given as to the severity or frequency of recidivism by those who reoffended. Furthermore, as Farrell acknowledged, self-report can be a problematic way to capture recidivism. Despite these limitations, Farrell's study provides promising evidence about the efficacy of chaperone programs. As she argued, it provides support for previous research by 'suggesting that offenders receiving support from family or significant others when released from prison are less likely to take part in the behaviours that originally contributed to their imprisonment'.[108] While further research on chaperone programs is required, these preliminary findings have important implications for the release of sex offenders into the community and therapeutic practice with such offenders.

C *Support and Awareness Groups*

Corrections Victoria has implemented the use of Support and Awareness Groups (SAAGs). These groups use a sex offender's existing support network to foster prosocial support and promote effective reintegration following prison.[109] SAAGs aim to assist offenders to implement and achieve healthy lifestyle goals and manage their risk factors once in the community.[110]

Members of a SAAG are identified by the offender during treatment and may include spouses, other family members, colleagues, friends, neighbours and respected community members with whom they have an existing supportive relationship. Those without appropriate support persons are assisted to build connections with professionals, such as community or faith-based organisations.[111] SAAG members work with the offender and the offender's treatment provider

[108] Ibid 48.
[109] Melissa Braden et al, 'Creating Social Capital and Reducing Harm: Corrections Victoria Support and Awareness Groups' (2012) 4 *Sexual Abuse in Australia and New Zealand* 36.
[110] Ibid.
[111] Ibid.

to identify strategies to manage the offender's risk and support them to reintegrate into the community.

There are some similarities between SAAGs and CoSA, as noted by Braden in evidence to the Royal Commission into Institutional Responses to Child Sexual Abuse:

> [Through SAAGs] you are actually creating a protective group for that offender post being in the community similar to the COSA…that support and awareness group continues with them into part of their parole reporting requirements and maintains an extra protective factor whilst they're in the community.[112]

However, unlike CoSA, the support provided by SAAGs does not take place in a structured manner through weekly meetings. Instead, it is provided on a less formal basis.

While SAAGs were still in operation in Victoria at the end of 2017, no formal evaluation has been undertaken to date.[113] Further research is clearly required to demonstrate the efficacy of this approach, but its underlying premise is consistent with CoSA and chaperone programs. As such, it is potentially of great value in a paradigm that generally seeks to demonise sex offenders, rather than to implement mechanisms that support their reintegration into the community and help to develop prosocial behaviours.

V CONCLUSION

McSherry and Keyzer have acknowledged that public concern about the release of sex offenders is justified and governments should be doing everything they can to reduce their risk of reoffending, but described the efforts to do this as 'problematic'.[114] As Kemshall has noted,

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[112] Melissa Braden, *Public Hearing of the Royal Commission into Institutional Responses to Child Sexual Abuse, 21 April 2016*, 24.
[113] Personal Communication, Belinda Ellis, Manager, Sexual Offender Assessment and Treatment Services, Corrections Victoria, 21 December 2017.
[114] McSherry and Keyzer (2009), n 3, 110.

sex offender management has been underpinned by an overriding concern with public protection, which has often resulted in a divergence between evidence and policy-making, leading on occasion to policy-led evidence. Indeed, ['p]rotection and prevention have become increasingly meshed, so the former can be delivered only through ever-increasing levels of the latter'. [115] Furthermore, there will be an ongoing demand for 'protection' 'while we continue to see "monsters"'.[116]

According to Daly, '[n]o offence is as politicised as sexual violence – the emotions, scandal, blame and shame associated with it are hard to deal with in a rational way'.[117] As illustrations of some irrational measures taken by Australian legislatures in recent years, this paper has detailed examples of legislative reform in Australia in respect of the management of sex offenders beyond the expiration of their sentences. These reforms were shown to fall within six broad categories, namely, widening the carceral net; extending the duration of post-sentence management of sex offenders; further restricting their liberty; increasing the consequences of breaches; reframing the objectives of such regimes to increase the focus on community safety and victims; and providing increased governance for such regimes. We argue that while these reforms have been extensive in number, they have not been extensive in nature: governments have simply sought to do more of the same, uncritically adopting a stance of more, longer and tougher, even though there is little evidence to suggest that this is likely to improve community safety. Indeed, 'the broader evidence on punitive strategies shows that they deepen social and economic inequalities and can entrench social problems, including re-offending'.[118]

[115] Kemshall, n 5, 20.
[116] Ibid. See also Hulley, n 32, 190-193.
[117] Kathleen Daly, quoted in Anne Suskind, 'Rethinking the Justice Response to Sexual Violence' (2011) 49(9) *New South Wales (NSW) Law Society Journal* 17, 18.
[118] Daly, n 67, 25.

By contrast, it seems likely that some of the more inclusive measures that have been taken to the post-sentence management of sex offenders, including CoSA, chaperone programs and SAAGs, may be more effective at helping sex offenders reintegrate into communities and reducing reoffending, by promoting a model that focuses on support and inclusion, rather than exclusion and setting offenders up to fail. To this end, a barrister with experience with the NSW post-detention scheme commented on the need for 'interventions – whether therapeutic, medical or otherwise – to genuinely help these people reintegrate into the community and minimise their risk'.[119] This aligns with Richards' comment, in the context of CoSA, that '[a]lmost all these offenders will be released. They will be coming to live alongside us in our communities and in our neighbourhoods so the alternative is to bury our heads in the sand and cross our fingers that these men [don't] re-offend'.[120]

The call for more inclusive approaches is also consistent with Keyzer and McSherry's finding that there was support amongst those working in the area for programs 'to assist offenders in developing community ties, acquiring community support and developing healthy adult relationships',[121] with an emphasis on the 'importance of "whole of lifestyle" concerns, such as community connections, post-imprisonment relationships and employment opportunities'.[122]

One of Keyzer and McSherry's interviewees acknowledged that '[i]t is difficult…to sell "rehabilitative and helpful responses to politicians when you're talking about sex offenders"'.[123] The developments discussed in this paper are clearly part of a broader trend in crime, justice, punishment and control. For example, Pratt has recently commented on the

[119] Keyzer and McSherry (2013), n 21, 299.
[120] Richards, quoted in Bonini, n 83.
[121] Keyzer and McSherry (2015), n 15, 810.
[122] Ibid 811.
[123] Keyzer and McSherry (2013), n 21, 302.

broad reach of risk management, with 'attempts to control risk belong[ing] to a separate channel of development from the law and order concerns of recent decades and its moralistic punitiveness', constituting a 'response to issues of uncertainty and insecurity rather than order'.[124] Nevertheless, if governments are truly committed to the goal of enhancing community safety, more innovative approaches seem a better target for public investment. Involving the community in promoting offenders' reintegration may also provide a means of minimising underlying fears and insecurities about the 'monsters' in our midst. The CoSA pilot in South Australia and the use of SAAGs in Victoria appear to be tentative and low-profile steps in the right direction, although further research on their impacts is required. In addition, politicians and policy-makers need to reframe the rhetoric around the post-sentence management of sex offenders and adopt measures that have been proven to be effective or at least show promise, rather than continuing to endorse measures that are unlikely to promote – and which may even reduce – community safety.

[124] Pratt, n 9, 1322.