A practitioner's guide to representing sex offenders

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2 INTRODUCTION

The original *Crimes Act* 1900 contained just 13 sexual offences under the heading of 'rape and similar offences' (ss66-81). Rape was punishable by death but proved only with the full knowledge of the offender and in no less circumstance than consent procured by threat and terror. The only Criminal offence that has survived in place for 115 years is that of bestiality (s79) and its attempt (s80).

With the passage of time, an awakening of social understanding of the evils of sexual predation and greater awareness of the needs of the victim and the community, our law books are now replete with sexual offences – you might lose count when you get to 80. Over the years the crime of rape, for instance, has gone through many different forms and has become known as sexual assault which encompasses a vast range of physical assault, knowledge of the offender and recognised impediments to free and voluntary consent. Our oldest offence, bestiality, originally carried with it the risk of 5 years imprisonment (and a kick from a horse) but now carries the risk of 14 years imprisonment (the kick is unchanged). The original section which made bestiality synonymous with the 'abominable crime of buggery… with mankind' was amended in 1984 by enlightened people who realised that there was a difference.

It is hoped, with this paper, that practitioners will be sufficiently aware of specific laws and issues relating to sexual offending to answer the following questions:

1. Why is my client offending?
2. What legislation applies or might apply to my client?
3. For historical offences, what were the offence provisions, maximum penalty and other relevant statutory issues?
4. Is my client eligible for a s32/33?
5. What advice needs to be given to my client about the publication of my client's name?
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3 SEXUAL OFFENDERS

3.1 PARAPHILIC DISORDERS (IE PT DSM CONDITIONS DIRECTLY LINKED TO SEXUAL OFFENDING)

The term Paraphilia is defined in the Diagnostic and Statistical Manual of Mental Disorders - Fifth Edition (DSM-V) as denoting any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners. A Paraphilic Disorder is a paraphilia that is currently causing distress or impairment to the individual or a paraphilia whose satisfaction has entailed personal harm, or risk of harm, to others. The paraphilias are grouped as:

3.1.1 Anomalous Activity Preferences

3.1.1.1 Courtship Disorders, which resemble distorted components of human courtship behaviour:

Voyeuristic Disorder - Over at least 6 months, a recurrent and intense sexual arousal from observing an unsuspecting person who is naked, in the process of disrobing, or engaging in sexual activity, as manifested by fantasies, urges or behaviours. The individual must have acted on the fantasy with a non-consenting person, or the fantasy causes clinically significant distress or impairment in life domains. The voyeur must be at least 18 years old. Specify if the disorder is in remission (5 year rule) and whether the individual is in a controlled environment (such as an institution).

Exhibitionistic Disorder - Over at least 6 months, a recurrent and intense sexual arousal from the exposure of one's genitals to an unsuspecting person as manifested by fantasies, urges or behaviours. The individual must have acted on the fantasy with a non-consenting person, or the fantasy causes clinically significant distress or impairment in life domains. Specify whether: sexually aroused by exposing genitals to prepubertal children; to physically mature targets; or both. Specify if the disorder is in remission (5 years rule) and whether the individual is in a controlled environment (such as an institution).

Frotteuristic Disorder - Over at least 6 months, a recurrent and intense sexual arousal from touching or rubbing against a non-consenting person, as manifested by fantasies, urges or behaviours. The individual must have acted on the fantasy with a non-consenting person, or the fantasy causes clinically significant distress or impairment in life domains. Specify if the disorder is in remission (5 year rule) and whether the individual is in a controlled environment (such as an institution).

3.1.1.2 Algolagnic disorders, which involve pain and suffering

Sexual Masochism Disorder - Over at least 6 months, a recurrent and intense sexual arousal from the act of being humiliated, beaten, bound or otherwise made to suffer, as manifested by fantasies, urges or behaviours. The individual must have acted on the fantasy with a non-consenting person, or the fantasy causes clinically significant distress or impairment in life domains. Specify if: with asphyxiophilia (sexual arousal by restriction of breathing). Specify if the disorder is in remission (5 year rule) and whether the individual is in a controlled environment (such as an institution).

Sexual Sadism Disorder - Over at least 6 months, a recurrent and intense sexual arousal from the physical or psychological suffering of another person, as manifested by fantasies, urges or behaviours. The individual must have acted on the fantasy with a non-consenting person, or the fantasy causes clinically significant distress or impairment in life domains. Specify if the disorder is in

remission (5 year rule) and whether the individual is in a controlled environment (such as an institution).

3.1.2 Anomalous Target Preferences

3.1.2.1 Directed at human beings:

Pedophilic Disorder - Over at least 6 months, a recurrent and intense sexually arousing fantasies, sexual urges or behaviours involving sexual activity with a prepubescent child or children (generally aged 13 or younger). The individual must have acted on the fantasy, or the fantasy causes clinically significant distress or impairment in life domains. The individual is at least age 16 years and at least 5 years older than the target of sexual interest. NOTE: do not include an individual in late adolescence involved in an ongoing sexual relationship with a 12 or 13 year old. Specify whether: Exclusive type (attracted only to children) or Nonexclusive. Specify if attracted to males, females or both. Specify if limited to incest. There is no remission rule with pedophilic disorder. This is because the condition is considered to be a relapsing condition. It is important to note that not all child sex offenders meet the diagnostic criteria for pedophilic disorder, and that the terms are by no means interchangeable.

3.1.2.2 Directed elsewhere

Fetishistic Disorder - Over at least 6 months, a recurrent and intense sexual arousal from either the use of non-living objects or a highly specific focus on non-genital body parts, as manifested by fantasies, urges or behaviours. The fantasy causes clinically significant distress or impairment in life domains. The fetish objects are not limited to articles or clothing used in cross-dressing or devices specifically designed for the purpose of tactile genital stimulation. Specify if the disorder is in remission (5 year rule) and whether the individual is in a controlled environment (such as an institution). Fetishism can become a criminal issue when the fetish object is the property of another person (for instance, a man who steals underwear from a clothesline) or is a not consenting party (a foot fetishist who takes photographic images of a woman's foot without her permission).

3.2 OTHER DISORDERS NOT LISTED WITH THE DSM-V

Other less prominent disorders are classified as: Other Specified Paraphilic Disorder, namely:

Hebephilia - Strong and persistent adult sexual interest in pubescent individuals. That is people with Tanner stage 2-3 features of physical development (typically ages 11-14 years)

Ephebophilia - Strong and persistent adult sexual interest to those in later adolescence (15-19 years). There is some controversy regarding whether this is actually a disorder.

Zoophilia - Sexual fixation on animals and the related: *Bestiality* - a sexual interest in cross species sexual activity between humans and other animals

Necrophilia - Sexual attraction towards corpses. May also be expanded to ***Thanatophilia*** - sexual interest in death.

Telephone scatalogia - recurrent intense urge to make obscene telephone calls.

3.3 OTHER MENTAL HEALTH ISSUES THAT MAY PLAY A ROLE IN THE EXPRESSION OF DISORDERED SEXUAL BEHAVIOUR (BUT NOT DIRECTLY LINKED TO SEXUAL OFFENDING).

When there is an existing predisposition towards sexual offending some other mental health disorders and personality pathologies can contribute to the expression of that sexual behaviour by

way of disinhibition, disordered/chaotic behaviour, or emotional identification with children. These can include:

Psychotic mental illness - Major mental illness, such as Schizophrenia can create behavioural disinhibition, delusional beliefs and compromised judgement that can at times be a factor in the commission of sexual offences. In such instances, the offence dynamic may suggest a disorganised and impulsive approach to the offence, such as the absence of efforts to avoid detection (for instance, a sexual attack in front of witnesses.

The Neurodevelopmental & Neurocognitive Disorders - Intellectual Disability (Intellectual Developmental Disorder) can play a role in the expression of sexual offending when reasoning and judgement are impaired and there are deficits in adaptive functioning such as communication and social participation. This can contribute to misunderstanding of social behaviour (misattribution of a situation as sexual) or emotional identification with children (who may appear less threatening or be more intellectually congruent than the person's own cohort).

For neurocognitive disorders, when neuropsychological functioning is compromised, judgement and sexual self-regulation can be similarly impaired. Brain injuries (particularly to the right prefrontal cortex/fronto-orbital region) can impair the parts of the brain responsible for inhibition. Changes in sexual preoccupation, modesty and use of profanity are often observed. Whilst advancing age has a generally protective effect against sexual reoffending, neurocognitive disorders such as dementia can be associated with sexual disinhibition and can occasionally be a consideration in the event of a sexual offence.

Substance Use Disorder - Substance intoxication can disinhibit otherwise well-contained impulses, and reduces consequential thinking. For instance, a common theme in adult rapists is a pattern of angry, vengeful rumination whilst alcohol intoxication.

Antisocial Personality Disorder - This is defined as a pervasive pattern of disregard for and violation of the rights of others, occurring since age 15 years and evidenced by non-conformity, deceitfulness, impulsivity, irritability/aggressiveness/recklessness, irresponsibility, and lack of remorse. This can contribute to sexual offending by removing the normal process of moral consideration, self-restraint and social conformity that would otherwise dissuade a person from acting on a sexually abusive interest. In some cases of antisociality, the sexual offence was not driven by a specific paraphilic interest, but the simple opportunistic availability of the victim at a time of sexual arousal. In cases where there is a high level of antisociality (approaching psychopathy), as well as paraphilia (such as sadism or pedophilia), the prognosis is poor.

Borderline Personality Disorder - This is defined as a pervasive pattern of instability of interpersonal relationships, self-image, and affects, and marked impulsivity commencing by early adulthood, and evidenced by frantic fears of abandonment, unstable and intense polarised relationships, unstable self-image, recurrent suicidal/self-harming behaviour, affective instability, chronic feelings of emptiness and inappropriate intense anger. This disorder can be a feature in partner-related sexual violence, where the offender feels intense anger, sexual jealousy towards the partner and acts out on these feelings.

Other personality disorders - personality features that promote social inhibition, feelings of inadequacy and hypersensitivity to negative evaluation (Avoidant Personality Disorder) can play a role in an offender looking to children to have his needs met because they are seen as less threatening or judgemental. Narcissistic personality features of low empathy, interpersonal exploitation and entitlement can also contribute to scenarios of sexual offending.

3.4 NON-CLINICAL SEXUAL OFFENDERS.

It is important to note that a number of offenders will attract no diagnoses of paraphilia, mental illness or personality disorder. There is for instance, no diagnostic label for adult rapists, unless there is a sadistic element to the offences. There was a push to include "coercive sex disorder" in the most recent version of the DSM, however it did not make the final publication. Some offenders may offend on a transient deviant sexual interest, at a time of unusual high stress or other novel life-situation.

3.5 FEMALE OFFENDERS

Female sex offenders constitute a very small portion of known offenders. Official police and court information indicates that women constitute 4.6% of all sex offenders with figures ranging between 0.6% (NZ), 7.9% [2004] 1.46% [2006/7] (AUS) and 8.71 (US). Female sex offenders represent less than 1% of the prison population (Gannon, Hoare, Rose & Parrett, 2012). The recidivism rates for female sex offenders is very low, somewhere in the vicinity of 1-3% (Cortoni, Hanson & Coache, 2010). Female sex offenders are much more likely than males to have a co-offender (30% vs 2%) (Williams & Bierie, 2014). Non-sexual motives are more common and very few female sex offenders attract a diagnosis of paraphilia relative to men (ratio 1:30) (Able & Osborn, 2000).

3.6 JUVENILE OFFENDERS

Juvenile sexual offenders are qualitatively different to adult offenders. Juveniles are in flux, and there are so many changes in presentation, biochemistry, sexual behaviour and attitudes that any particular risk assessment can be quickly invalidated by the dynamic changes in the individual. There are no empirically validated risk assessment tools for this population. Only a longitudinal view can determine to what extent the sexual offences were a transient temporary phenomena versus a chronic relapsing condition. One often used tool is the Juvenile Sex Offender assessment Protocol - II (J-SOAP-II (Prentky & Righthand, 2003), which uses a range of actuarial markers to identify risk factors and treatment targets. The authors urge that regular re-assessment is required in order for any assessment to remain valid.

A number of large scales studies of adolescents charged with sexual offences in Australian and overseas studies have shown that these adolescents are far more likely to re-offend as adults in a non-sexual fashion (if they are to reoffend) than they are in a sexual fashion: suggesting that adolescent sexual offender is ‘more likely to stem from broader social deviance, rather than psychosexual disorder such as paedophilia’.[1]

3.7 CHILD PORNOGRAPHY VIEWERS

The mechanisms and psychology of child pornography viewing has changed considerably since the emergence of internet pornography. Prior to this technology, child pornography was difficult to access and would require the risk of talking personally to people to seek that material. Such was the effort and risk involved that a person who had child pornography in their possession was more likely

[1] Nisbet, I. ‘Adolescent sex offenders: A life sentence?,’ InPsych 2010: HTTPS://WWW.PSYCHOLOGY.ORG.AU/PUBLICATIONS/INPSYCH/2010/AUGUST/NISBET/

to have a fixed deviant sexual interest and more likely to have actual 'hands on" sexual offences. However, the ease by which users can access child abuse material has created a different market and the prior assumptions can no longer be supported. The act of accessing child pornography online is not a significant risk factor for committing "hands on" sex offences (Endrass et al, 2009).

Some differences between Internet and contact offenders (Webb, Craissati & Keen, 2007)

	Child Molesters	Child Pornographers
Physical abuse in childhood	25%	12%
Cohabiting relationships (> 1yr)	43%	25%
Use(d) Mental Health Service	25%	41%
Reoffending *	8%	1%
Reoffending with violence*	3%	0%
Breach of Supervision*	17%	0%
Drop out from treatment*	18%	4%

*at 18 month follow-up

3.7.1 Motivation and offence type

Understanding the dynamics of how the particular defendant sought, accessed, and maintained interest in child abuse material is important. For instance, were there one instance of a few child abuse images downloaded in a large zip file of more generic pornography (suggesting incidental use), this may be considered differently to a person who repeatedly and specifically sought child abuse material (suggesting fixed interest). However, some defendants will have tens of thousands of files (which they could never have time to view) as part of a compulsive hoarding practice, therefore pure volume of images is not a reliable indicator of deviancy. There may also be a commercial interest that does not include a motivation for sexual gratification. The heterogeneity of offence types and pathways to offending has prompted some theorists to propose typologies of online offending. Many typologies have been advanced.

As an example, the typology of offenders as proposed by Krone (2004) includes the following nine types: browser, private fantasy, trawler, non-secure collector, secure collector, groomer, physical abuser, producer, and distributor. A *browser* is an individual who unintentionally stumbles across child pornography. This individual saves the content for access to it at a later time. An individual who has a *private fantasy* of having sex with a child has not directly committed an offense. However, if that private fantasy escalates to a representation of that fantasy by possessing child pornography for private use, then an offense has been made. A *trawler* is an individual that aggressively searches for child pornography. In the trawler's case, the individual uses minimal security precautions. A no*n-secure-collector* actively purchases or exchanges child pornography through sources available online

that generally do not enforce security dimensions. The primary difference in a non-secure collector is that there is an elevated level of networking between offenders, such as seen in p2p networks. The *secure-collector* utilizes security precautions in the collection process of child pornography. These collectors only seek pornographic material of children within secure networks. Aside of encryption mechanisms in place, some groups have minimum requirements that must be achieved before the individual can receive access to that site. Some sites require submission of thousands of pictures before access is granted. However, individuals identified as secure-collectors are enticed to such groups due to the massive collections available once access is granted. The *groomer* is an individual that has contacted a child online with the intent of the relationship escalating to a sexual relationship, either via cybersex or physical sex. The *physical abuser* is aggressively involved in abusing children and using child pornography as an avenue to supplement their sexual yearning. The physical abuse may be recorded for the physical abusers' purposes alone; it is not their intention to distribute the recorded physical abuse of children. The *producer* is responsible for recording sexual abuse of children and providing those images to other child pornography users. The *distributor* is responsible for distribution of child pornography at any one of the other levels. The distributor's interests may not be in looking at child pornography; their interests may be for purely financial gain.

The type of images accessed can provide insight into the level of deviancy and social/moral boundaries the individual is willing to cross.

4 PARTICULAR ISSUES REPRESENTING SEX OFFENDERS

4.1 HISTORIC OFFENCES

Perhaps more than any other offence, sexual offences are regularly being prosecuted despite having occurred many years or decades ago. Not only does this create multiple forensic difficulties for practitioners, there is hardly a sexual offence that has not changed in definition and/or penalty over the past ten years.

Practitioners must be skilled in locating the relevant legislation at the time of the alleged offending. The NSW Legislation website contains a point-in-time function for the *Crimes Act* but only goes back so far as 1975: Crimes Act Historic Versions. Austlii also has a point-in-time service (http://portsea.austlii.edu.au/pit/xml/nsw/act/) which goes back to 22 March 2002 for the *Crimes Act*: *Austlii Crimes Act 1900 Point-in-Time.* The Legal Aid NSW Library also has many historical 'Practices' which can be requested for particular dates.

Putting these services aside, the only reliable way to reconstruct past legislation is to use the 'Historic notes' which appear at the end of NSW Legislation. To find the legislative provisions at a particular point in time the following steps need to be followed:

	Step	Example
1	Find the provision in the 'Table of Amendments' section of the historic notes	Example- **61C** (Sexual assault category 2 - inflicting ABH etc with intent to have sexual intercourse)
2	Note the history of Amendments	**Ins 1981 No 42, Sch 1 (4). Am 1987 No 184, Sch 2 (2). Rep 1989 No 198, Sch 1 (2).** *Which means it was inserted by Act 42 of 1981, Amended by Act 184 of 1987 and repealed by Act 198 of 1989.*

3	Go to the 'Table of Amending Instruments' in the Historic notes and identify each amending instrument (an Act). This will also tell you the date of assent to the bill commencement date of the provision.	**1981 No 42:** Crimes (Sexual Assault) Amendment Act 1981. Assented to 15.5.1981. Date of commencement of Sch 1, 14.7.1981, sec 2 (2) and GG No 91 of 26.6.1981, p 3392. **1987 No 184**: Crimes (Personal and Family Violence) Amendment Act 1987. Assented to 4.12.1987. Date of commencement, Sch 3 (6) excepted, 21.2.1988, sec 2 and GG No 33 of 19.2.1988, p 930 (Sch 3 (6) was not commenced and was repealed by the Crimes (Child Victim Evidence) Amendment Act 1990 No 49). **1989 No 198:** Crimes (Amendment) Act 1989. Assented to 21.12.1989. Date of commencement, 17.3.1991, sec 2 and GG No 37 of 1.3.1991, p 1692. *You now know that the provision commenced on 14 July 1981 and was repealed from 17 March 1989.*
4	You can then find the amending instrument by 'googling it.' This usually takes you to an Austlii PDF.	**1981 No 42:** http://www.austlii.edu.au/au/legis/nsw/num_act/caaa1981n42351.pdf **1987 No 184**: http://www5.austlii.edu.au/au/legis/nsw/num_act/cafvaa1987n184434.pdf **1998 No 198:** http://www5.austlii.edu.au/au/legis/nsw/num_act/ca1989n198189.pdf *You will see in the first Act the entire provision as it was inserted. The second act shows you that 'in company' provisions were added. The third shows the repeal.* Not only the section will be relevant – often surrounding sections are equally important machinery provisions (definitions, statutes of limitation etc, alternate charges). Inserting and repealing legislation also often reveals what offences the legislature was replacing with the provisions or replacing the provisions with.
5	Obtain the second reading speeches. By going to http://www.parliament.nsw.gov.au/hansard and using the search functions.	**1981 No 42:** http://www.parliament.nsw.gov.au/Prod/parlment/hanstrans.nsf/V3ByKey/LA19810326/$file/463LA045.PDF **1987 No 184**: http://www.parliament.nsw.gov.au/prod/parlment/hanstrans.nsf/V3ByKey/LA19871117/$file/483LA104.pdf **1998 No 198:** http://www.parliament.nsw.gov.au/Prod/parlment/hanstrans.nsf/V3ByKey/LC19891208/$file/492LC094.PDF

The Public Defenders have also made this task a little easier with a table setting out **Sex Offences – Sexual Offences and Maximum Penalties.**[2]

Practitioners should be careful to read historical offence provisions in their legislative context. Surrounding machinery provisions may provide time limits for commencing proceedings, definitions and defences that may not otherwise be apparent. We haven't prepared an exhaustive list but quite a number of historic offences had a time limit in which proceedings could commence – particularly if the victim was over 14. These limits were often written into the offence provisions. A few of them are explored by the High Court in *Saraswati v The Queen* [1991] HCA 21; (1991) CLR 1. Today's *Criminal Procedure Act* (Schedule 1) should be considered when determining jurisdiction, not its historical analogues. The jurisdiction for the prosecution of certain offences will depend upon the age of the victim.

4.2 SS32 AND 33 OF THE MENTAL HEALTH (FORENSIC PROVISIONS) ACT 1990

The Mental Health (Forensic Provisions) Act 1990 recognises that in some instances, matters brought into the criminal jurisdiction are better managed as a mental health issue in summary prosecutions.

Most sex offenders in the Local Court, whilst being disordered, will be ineligible for a s32 on the threshold question which requires them to be: developmentally disabled, suffering from a mental illness, or suffering from a condition for which treatment is available in a mental health facility (not being a mentally ill person).

Generally speaking, personality disorders do not fit into any of these categories. Paraphilic disorders are also insufficient. Whilst within the act "mental illness" refers to more serious psychotic or mood disturbance, the term "mental condition for which treatment is available in a mental health facility" could be argued to apply to any number of disorders such as anxiety disorders, trauma disorders, less severe forms of depression, dissociative disorders (but depending upon the nature of the condition, there may not be a cogent link between it and the offending which would argue in favour of discharge).

Developmentally disabled or people with a mental illness, however, who happen to be charged with sexual offences should have no difficulty meeting this threshold.[3]

Certain illnesses that may be causally linked to sexual offending such as brain disease (like dementia/Alzheimer's) and brain injury can be more complicated because, while 'mental conditions' it is not safe to assume that there is 'treatment available in a mental health facility.' Experts will need to be asked to comment specifically on this aspect of the threshold question and the author questions whether 'confinement' for a degenerative brain disease would meet this criteria. Should a client be excluded from the s32 scheme for this reason, practitioners should give careful consideration to whether the client is fit to meet the charges (which may result in a discharge).

Section 33 depends upon the person having a mental illness and being mentally ill. Even bizarre behaviour such as masturbating in public or a financial planner mutilating guinea pigs, killing rabbits and mutilating their genetalia will not immediately lead to a conclusion that the person is mentally

[2] http://www.publicdefenders.nsw.gov.au/Pages/public_defenders_research/Sentencing%20Tables/public_defenders_sexoffencespenaltiestable.aspx

[3] Mental Illness is defined in the *Mental Health Act* 2007 at s4. It is prerequisite for being 'Mentally ill' but is not mentally ill: s14.

ill.[4] And while it is not the legal or medical test, practitioners should look for signs of acute mental illness or florid state and apply under s33 early – it may lead to the best treatment and forensic outcome as the s33 test incorporates a broad discretion and does not require a balancing of public interest and treatment like s32 – even in sexual cases.

4.3 Closed Courts, Suppression and Non-Publication

The potential for publication and publicity should be spoken about with all sexual offenders prior to attending court. The powers of a court to make a closed court, suppression and non-publication orders are primarily contained in the *Court Suppression and Non-publication Orders Act* 2010.[5] A number of other statutes and common law (depending on the jurisdiction of the court) also make these orders possible or mandatory.

Sex offenders do well to keep their names out of the media and off the internet. Practitioners must advise them of their rights and the risks of exposure in every case as failure to do so may be incompetent. That said, it is unlikely an offender's name will be protected for the sake of the offenders' name.

The Act provides a number of grounds for making a suppression or non-publication order. One of which is:

> *8(1)(d) the order is necessary to avid causing distress or embarrassment to **a party** to or witness in criminal proceedings involving and offence of a **sexual nature** (including an act of indecency).*

However, to quell the excitement of the inmates on protection at Parklea, s6 of the Act reinforces:

> *In deciding whether to make a suppression order or non-publication order, a court must take into account that a primary objective of the administration of justice is to safeguard the public interest in open justice.*

Suppression and non-publication orders are sought by application and interim orders can be put into place. One risk, which often deters would-be stealth mode offenders from applying, is that the act gives 'news media organisations' a right of standing in relation to the making of the order.

It might be presumed that s8(1)(d) did not consider the accused or offender as its primary beneficiary but witnesses and victims.

An accused person might have a much better chance of a suppression order up until conviction if it can be shown that it is necessary to 'prevent prejudice to the proper administration of justice (s8(1)(a))'. These types of orders can be initiated by the court, prosecution, or accused and made either under this act or under the courts inherent or implied powers for the conduct of proceedings.

4.3.1 Other relevant provisions

Section 15A of the *Children (Criminal Proceedings) Act* 1987 will prohibit the publishing of an accused child's name except in a number of circumstances (15B-F), particularly: an order of the court

[4] http://www.smh.com.au/news/national/dead-rabbits-man-charged-with-bestiality/2005/08/12/1123353482292.html

[5] See JIRS Criminal Trial Courts Bench Book, 'Closed court, suppression and non-publication orders,' from [1-349]: http://www.judcom.nsw.gov.au/publications/benchbks/criminal/closed_court_and_non-publication_orders.html

after conviction for a serious children's indictable offence or the consent of a person who is above the age of 16.

Section 578A of the *Crimes Act 1900* prohibits publishing 'any matter which identifies the complainant in ***prescribed sexual offence*** (defined by the *Criminal Procedure Act 1986* at s4) proceedings or any matter which is likely to lead to the identification of the complainant.' This can often lead to the suppression of the accused's name where their relationship with the complainant is such that it cannot be stated without identifying the complainant. The section provides provisions for dispensing with the requirement after considering the views of the complainant.

The *Criminal Procedure Act 1986* sets out a number of provision in relation to 'closing the court' in prescribed sexual offences. Section 291 of requires complainant evidence in prescribed sexual offence matters to be heard in camera. S291A allows other parts of such proceedings to be heard in camera, and s291B sets out that incest offences are also to be heard in camera.

5 SENTENCING ADVOCACY

The following section hopes to touch upon a number of sentencing issues peculiar to representing sexual offenders. It does not set out to cover the raft of sexual offences, objective and subjective features.

The JIRS Sentencing Bench Book provides comprehensive starting points for sentencing principle in relation to most offences:

> Sexual Offences against Children from [17-400][6]
>
> Sexual Assault from [20-600][7]

'Sentencing Law NSW' by Bellanto, Roser and Veltro and available on various Lexis Nexis services has an excellent section on 'General Principles, Comparative sentences and penalties in relation to sexual offences.'

The Public Defenders provide comparative sentence table for commonly encountered current and repealed offences.[8]

5.1 OBJECTIVE AND STATUTORY FEATURES

It has long been recognised that a sentencing court must assess the objective gravity of each offence that comes before it for sentence (recently *RJB v R* [2015] NSWCCA 93 [25] – [28] per Hidden J). In sexual matters, in particular, where all offences are generally serious, it is incumbent upon the sentencing judge to 'form and record his assessment of where, on the relevant scale of seriousness, the particular offence lies:' *R v Gebrail* (unreported, 18/11/94, NSWCCA). The assessment of the seriousness of a particular offence falls largely to the judge's instinctive synthesis of all objective features in the case.

5.1.1 Standard Non-Parole Periods.

Standard non-parole periods suffer from a complicated history of judicial interpretation and legislative amendment.[9] They remain, however, an important objective consideration for offences to which they apply.

Currently, the following sexual offences carry standard non-parole periods:[10]

[6] http://www.judcom.nsw.gov.au/publications/benchbks/sentencing/sexual_offences_against_children.html
[7] http://www.judcom.nsw.gov.au/publications/benchbks/sentencing/sexual_assault.html
[8] http://www.publicdefenders.nsw.gov.au/Pages/public_defenders_research/Sentencing%20Tables/public_defenders_sent_tables.aspx
[9] See the following paper regarding post Muldrock amendments to SNPPS by Hugh Donnelly: http://www.criminalcle.net.au/attachments/Standard_NonParole_paper__Hugh_Donnelly.pdf
[10] *Crimes (Sentencing Procedure) Act* 1999 table: http://www.legislation.nsw.gov.au/fragview/inforce/act+92+1999+pt.4-div.1a-inc.1+0+N?tocnav=y

Sect	Offence	Standard Non-Parole Period
61I	Sexual assault	7 years
61J	Aggravated sexual assault	10 years
61JA	Aggravated sexual assault in company	15 years
61M(1)	Aggravated indecent assault	5 years (increased in
61M(2)	Aggravated indecent assault on person under 16	8 years (increased from 5 by the *Crimes (Sentencing Procedure) Amendment Act* 2007 and said to be retrospective: *R v GSH* [2009] NSWCCA 214 at [46].
66A	Sexual intercourse, child under 10 years.	15 years

Standard non-parole periods do not apply to an offender who was under the age of 18 at the time of the offence. (s54D(3) *Crimes (Sentencing Procedure) Act 1999*).

The following standard non-parole periods commenced from 29/6/2015 and are not retrospective:

Section 66B of the *Crimes Act 1900* (attempt, or assault with intent, to have sexual intercourse with a child under 10 years)	10 years
Section 66C (1) of the *Crimes Act 1900* (sexual intercourse with a child 10–14 years)	7 years
Section 66C (2) of the *Crimes Act 1900* (aggravated sexual intercourse with a child 10–14 years)	9 years
Section 66C (4) of the *Crimes Act 1900* (aggravated sexual intercourse with a child 14–16 years)	5 years
Section 66EB (2) of the *Crimes Act 1900* (procure a child under 14 years for unlawful sexual activity)	6 years
Section 66EB (2) of the *Crimes Act 1900* (procure a child 14–16 years for unlawful sexual activity)	5 years
Section 66EB (2A) of the *Crimes Act 1900* (meet a child under 14 years following grooming)	6 years
Section 66EB (2A) of the *Crimes Act 1900* (meet a child 14–16 years following grooming)	5 years
Section 66EB (3) of the *Crimes Act 1900* (groom a child under 14 years for unlawful sexual activity)	5 years
Section 66EB (3) of the *Crimes Act 1900* (groom a child 14–16 years for unlawful sexual activity)	4 years
Section 91D (1) of the *Crimes Act 1900* (induce a child under 14 years to participate in child prostitution)	6 years
Section 91E (1) of the *Crimes Act 1900* (obtain benefit from child prostitution, child under 14 years)	6 years
Section 91G (1) of the *Crimes Act 1900* (use a child under 14 years for child abuse material purposes)	6 years

5.1.2 The offence was committed in the home of the victim or any other person.

The common law has long recognised that a person is entitled to safety in their own home. Recently, parliament saw fit to insert s21A(2)(eb) into the *Crimes (Sentencing Procedure) Act* 1995, with effect from 1 January 2008, making it specifically an aggravating factor that an offence was committed in the home of the victim (or other person).

A number of authorities have limited this circumstance of aggravation to situations where the offender is an intruder in the home. In *Ingham v R* [2011] NSWCCA 88 at 111 the court stated:

> *There is a clear line of authority in this Court that s 21A(2)(eb) Crimes (Sentencing Procedure) Act 1999 does not operate to aggravate an offence in the present circumstances [where the offender was lawfully on the premises]. In R v Comert (2004) NSWCCA 125 Hidden and Hislop JJ said that in the circumstances of that case where a husband had assaulted his wife it was not further aggravated by the fact that the assault was perpetrated in the matrimonial home. The remarks of Dunford J in R v Preston unreported 9 April 1997 NSWCCA are to similar effect. It will be an aggravating circumstances when a victim is assaulted in his or her own home by an unauthorised intruder. However, it is otherwise when the offender is lawfully on the premises. See EK v R [2010] NSWCCA 199 at [79] (per R A Hulme J, McClellan CJ at CL and Simpson J agreeing).*

More recently, however, Wilson J in *Aktar v R* [2015] NSWCCA 123 see [43] – [68] has questioned whether s21A(2)(eb) was inserted to confirm the common law position or to depart from it:

> *It seems clear that the legislature intended to recognise the additional distress occasioned to a victim (and consequently the additional criminality of the offence) when the home – a place of safety and refuge – is sullied by the commission within it of a crime. The destruction of a victim's sense of security and repose at home is the same whether the offender was lawfully present or not. The right of all citizens to be free from attack or other crime in their own home, regardless of the basis upon which the offender was present, must be recognised and protected.*

The majority did not adopt her honours reasoning, however, indicating that the issue needed to be fully argued.

5.1.3 Good Character

The *Crimes (Sentencing Procedure) Act* 1999 at section 21(A)(5A) creates a special rule for ***child sexual offences*** under which the good character or lack of previous convictions of an offender is not to be taken into account as a mitigating factor if the court is satisfied that the factor concerned was of assistance to the offender in the commission of the offence.

"child sexual offence" means:

> (a) an offence against section 61I, 61J, 61JA, 61K, 61M, 61N, 61O or 66F of the *Crimes Act 1900* where the person against whom the offence was committed was then under the age of 16 years, or
>
> (b) an offence against section 66A, 66B, 66C, 66D, 66EA, 66EB, 91D, 91E, 91F, 91G or 91H of the *Crimes Act 1900* , or
>
> (c) an offence against section 80D or 80E of the *Crimes Act 1900* where the person against whom the offence was committed was then under the age of 16 years, or

(d) an offence against section 91J, 91K or 91L of the *Crimes Act 1900* where the person who was being observed or filmed as referred to in those sections was then under the age of 16 years, or

(e) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in any of the above paragraphs.

5.1.4 Mandatory requirements for supervision and other prohibitions to be disregarded in sentencing

Section 24A(1) of the *Crimes (Sentencing Procedure) Act* 1999 operates to prohibit a court from taking into account, as a mitigating factor, that an offender:

(a) has or may become a registrable person under the *Child Protection (Offenders Registration) Act 2000* as a consequence of the offence, or

(b) has or may become the subject of an order under the *Child Protection (Offenders Prohibition Orders) Act 2004* , or

(c) as a consequence of being convicted of the offence, has become a disqualified person within the meaning of the *Child Protection (Working with Children) Act 2012* , or

(d) has or may become the subject of an order under the *Crimes (High Risk Offenders) Act 2006* (whether as a high risk sex offender or as a high risk violent offender).

Each of these factors are discussed below.

5.2 Psychological and Psychiatric Assessments

Psychological and Psychiatric assessment tools might be broken down into:

- *Attitude inventories* - Designed to measure what the person thinks and believes.
- *Risk assessment tools* (Static/Actuarial, Structured static-dynamic)
- *Diagnostic* - screening for mental illness and personality disorder, - MMPI, MCMI, PAI, these tools test for mental illness, such as psychotic illness, depression, anxiety, Post Traumatic Stress Disorder (PTSD) as well as personality pathology, such as Antisocial Personality Disorder,
- *Feigning/Malingering* (TOMM)
- *Functioning* - intellectual functioning (WAIS, WASI), neuropsychological functioning (WMS)

5.3 Risk Assessments

The innate complexity of human behaviour and the low base rate of recidivism mean that risk of sexual re-offending cannot be predicted with certainty. However, by examination of static and dynamic factors identified in the empirical literature as having an association with recidivism, we can estimate which risk group a person shares common features with, and propose which aspects of the person's functioning might contribute to episodes of offending.

Corrective Services NSW are primarily concerned with Risk, Needs and Responsivity, as drawn from the "What Works" literature (Andrews & Bonta, 1998). The basic message is that reductions in offending behaviour can be achieved by directing therapeutic resources to offenders more likely to reoffend (risk), with therapeutic goals established as directly related to offending (needs) in a delivery mode that complements the learning style of the individual (responsivity).

5.3.1 Static-99R

Requests for pre-sentence reports in sentencing for sexual offences often result in the production of a risk assessment by a CSNSW Psychologist. These assessments are also used in relation to treatment formulation and other clinical goals, parole proceedings and proceedings for High Risk Offender Orders which are discussed below. Defence reports tendered on sentence might also include a risk assessment.

The Static-99R (Harris, Phenix, Hanson, & Thornton, 2003; Helmus, Babchishin, Hanson, & Thornton, 2009) is an instrument designed to assist in the prediction of sexual recidivism for individuals charged with or convicted of a sexual offence. The Static-99R consists of 10 items, and produces estimates of future risk based on a number of risk factors present in any one individual. The total score (obtained by summing all the items) ranges from -3 to 12.

Question Number	**Risk Factor**	**Codes**	**Score**	**Rationale**
1	Prior Sex Offences (S9901)	Charges Convictions None None 1-2 1 3-5 2-3 6+ 4+	 0 1 2 3	
2	Prior sentencing dates (excluding index) (S9902)	3 or less 4 or more	0 1	
3	Any convictions for non-contact sex offences (S9903)	 No Yes	 0 1	
4	Index non-sexual violence- Any convictions (S9904)	No Yes	0 1	
5	Prior non-sexual violence – Any convictions (S9905)	No Yes	0 1	-
6	Any unrelated victims (S9906)	No Yes	0 1	
7	Any stranger victims (S9907)	No Yes	0 1	
8	Any male victims (S9908)	No Yes	0 1	
9	Young (S9909)	Aged 18 to 34.9 Aged 35 to 39.9 Aged 40 to 59.9 Aged 60 or older	1 0 -1 -3	
10	Ever lived with lover for at least two years? (S9910)	Yes No	0 1	
	Total Score	**Add up scores from individual risk factors**		

Static 99-R SCORE	ABSOLUTE RISK		RELATIVE RISK				
	Sexual recidivism range (%)		Observed percentages			Relative risk ratio†	Relative risk category
	5 years*	10 years**	Below	Same	Higher		
-3	1.2 – 2.2	3.2 – 4.2	0	2.7	97.3	0.19	LOW
-2	1.6 – 3.0	4.2 – 5.5	2.7	3.0	94.3	0.26	
-1	2.1 – 5.4	5.4 – 9.8	5.7	7.9	86.4	0.37	
0	2.8 – 7.2	7.0 – 12.5	13.6	10.3	76.1	0.52	
1	3.8 – 9.4	9.0 – 15.7	23.9	15.7	60.4	0.79	
2	5.0 – 12.2	11.5 – 19.7	39.6	17.5	42.9	1.00	MODERATE-LOW
3	6.6 – 15.8	14.5 – 24.3	57.1	17.2	25.7	1.39	
4	8.7 – 20.1	18.2 – 29.6	74.3	10.7	15.0	1.94	MODERATE-HIGH
5	11.4 – 25.2	22.6 – 35.5	85.0	7.4	7.6	2.70	
6	14.7 – 31.2	27.6 – 41.9	92.4	3.6	4.0	3.77	HIGH
7	18.8 – 37.9	33.3 – 48.6	96.0	2.5	1.5	5.25	
8	23.7 – 45.0	39.6 – 55.3	98.5	1.2	0.3	7.32	
9	29.5 – 52.4	53.1 – 61.9	99.7	0.28	0.02	-	
10+	51.6 – 59.7	59.7 – 68.0	99.98	0.02	0	-	

* with fixed 5-year follow-up data, *k*=23, *n*=5,760

** with 10 year follow-up data, *k*=11, *n*=1,642

§ *k*=4, *n*= 2,011

† *k*=8, *n*= 4,037

[adapted from Phenix, A., Helmus, L. & Hanson, R.K. (2012). STATIC-99R & STATIC-2002R Evaluators' WORKBOOK: www.Static99.org]

The Static-99R measures its accuracy using the Receiver Operator Characteristic (ROC) or Area Under the Curve (AUC), a form of Signal Detection Theory, which is a statistical method of weighing true positive predictions against false positive predictions. The Static-99R has a ROC somewhere in the vicinity of .72, which is moderate predictive accuracy. This means that there is a 72% chance that a randomly picked recidivist will have a higher score than a randomly picked non-recidivist. Whilst the absolute figures for recidivism are a useful heuristic in keeping us mindful of the base rates of reoffending, the real value in the Static-99 is guiding our estimation of relative risk. That is, comparative to other sexual offenders.

5.3.2 The use of the Static-99 and psychological risk assessment in the legal jurisdiction

The Static-99R was originally developed as a tool to guide treatment suitability and institutional case management. The tool has always had its' critics, particularly when it became relied on to determine matters such as whether a person should be released to parole. The use of the Static-99 has come

under fire for its statistical properties (Coyle, 2011). The main criticisms have been when the Static-99 is misreported. For example, when an assessor reports the reoffending rates in the comparative sample as a percentage of the individual's risk. Another criticism is when the Static-99 is reported in isolation without reference to other tools or consideration of dynamic factors. Both of these practices can be misleading and provide an impression to the reader of the infallibility of the Static-99R or oversell its cogency in predicting behaviour. It is also worth noting that the tool predicts sexual offending but not type of sexual offending. Therefore, for preventative detention cases where a high risk of "serious" offending is the benchmark, this must be accounted for.

In *Director of Public Prosecutions for Western Australia v Mangolamara* (2007) 169 A Crim R 379, Hasluck J rejected psychiatric evidence based on the Static-99, the Sexual Violence Risk-20 (Boer, Hart, Kropp and Webster, 1997) and the Risk of Sexual Violence Protocol (Hart et al, 2003). He stated at [165]:

> *I am of the view… that little weight should be given to those parts of the reports concerning the assessment tools. In my view, the evidence in question does not conform to long-established rules concerning expert evidence. The research data and methods underlying the assessment tools are assumed to be correct but this has not been established by the evidence. It has not been made clear to me whether the context for which the categories of assessment reflected in the relevant texts or manuals were devised is that of treatment and intervention or that of sentencing.*

In *Director of Public Prosecutions (WA) v GTR* [2007] WASC 318 at [111]-[112], McKechnie J suggested that none of the actuarial instruments should be used for preventive detention or supervision:

> *I cannot attribute significant weight to the expert psychiatric opinions as to risk. I accept that the use of one or more predictive models, with or without a clinical interview and appraisal, may be helpful in determining a counselling regime or a management strategy for an offender… Within that context there is usefulness in the models to aid the offender's rehabilitation, to customise a course of treatment or therapy, and to plan for the offender's release to the community…However, an application under the [Dangerous Sexual Offenders Act] requires more intense scrutiny. The respondent's liberty may be removed or curtailed because of a prediction which a judge is required to make as to future offending… While opinions based on the present predictive models may be suitable for management purposes, they lack cogency for the purposes of the [Dangerous Sexual Offenders Act] that little weight can be attributed to the results of assessments that rely on them.*

NSW Courts have not dealt directly with the proper use of risk assessment tools such as the Static-99 in sentencing.

In Kumar v R [2011] NSWCCA 139 the court accepted a psychological opinion applying static actuarial, individual dynamic and stable risk assessments determining that the offender had a low risk of committing further similar offences and commented at [31]:

> *It is sufficient to say that it is based upon a widely accepted methodology that, with all its inherent shortcomings, gives rise to conclusions significantly more useful than a mere hunch or uninformed intuition. Of course, statistical analyses are scarcely prescriptive of the actual risk in an individual case. Nevertheless, they can usefully inform the consideration of the risk of re-offending by an individual.*

The court in that matter sentenced the applicant on the basis that he was a 'low risk of re-offending' and reduced the emphasis that needed to be placed on 'personal deterrence' [34].

A number of cases have expressed a need for caution in approaching the Static-99 (particularly where it is not supported by other evidence). In *Corby v R* [2010] NSWCCA 146 the court noted at [91]:

> *An assessment of the risk of reoffending by reference to the Static-99 test only must be approached with caution. It is a common tool in risk assessment of sex offenders, although it forms only part of the process:* DCU v State Parole Authority of New South Wales *[2006] NSWSC 526 at [80]. A complete process of risk assessment involves a combination of static (historical and non-changeable) factors and dynamic (changeable) risk factors:* Lee v State Parole Authority of New South Wales *[2006] NSWSC 1225 at [26], [45]. To the extent that risk assessment is relevant to sentence and the protection of the community, it is appropriate to have regard to all the evidence…*

In *SGJ v R; KU v R* [2008] NSWCCA 258 the Court made the following reference to the Static 99:

> [there was evidence of] *an actuarial tool developed in Canada and the United Kingdom, called Static 99, which can be used to make a prediction as to the risk of sexual recidivism. The prediction must be approached with caution. Within the psychiatric profession there is some controversy concerning its accuracy, although it is generally thought useful.* [55]

5.3.3 Structured Dynamic risk assessment tools

These are tools that combine the known dynamic (changeable) variables associated with risk and allow the assessor to consider them in a structured way. A number of tools are available. The Risk of Sexual Violence Protocol (RSVP) (Hart, Kropp, Laws, Klaver, Logan & Watt, 2003) is one such structure dynamic tool. It requires that the offender be considered against 22 factors:

1. Chronicity of Sexual Violence
2. Diversity of Sexual Violence
3. Escalation of Sexual Violence
4. Physical Coercion in Sexual Violence
5. Psychological Coercion in Sexual Violence
6. Extreme Minimization or Denial of Sexual Violence
7. Attitudes that Support or Condone Sexual Violence
8. Problems with Self-Awareness
9. Problems with Stress or Coping
10. Problems Resulting from Child Abuse
11. Sexual Deviance
12. Psychopathic Personality Disorder
13. Major Mental Illness

14. Problems with Substance Use
15. Violent or Suicidal Ideation
16. Problems with Intimate Relationships
17. Problems with Non-Intimate Relationships
18. Problems with Employment
19. Non-Sexual Criminality
20. Problems with Planning
21. Problems with Treatment
22. Problems with Supervision

These factors are then considered in terms of how they interplay to contribute to risk. This is known as formulation. The value in such tools is not that they may arrive a quantitative figure, but that they invite the reader into a more complex and less reductionist view of risk. When the assessment processes is undertaken properly, the conclusions should be able to articulate a hypothesis including: Under (*specify circumstances and scenario*), this person is at (*specify risk estimate*) of (*particular behaviours*) against (*specify target person*). The assessment should also identify the protective factors that will assist the person to desist from offending.

5.4 Sentencing for Historical Offences

The leading authority in relation to sentencing for historical offenses is *R v MJR* (2002) 54 NSWLR 368 in which the CCA was constituted by five justices in order to determine differing view as to the approach to be taken in a case where the offender is being sentenced a long time after the offences were committed. The issue to be decided was whether the sentencing court should take into account the sentencing practice as it was at the date of offending or whether it should sentence according to the practice at the time of sentencing. [11]

The court in *MJR* determined that where there was accurate statistical or other objective material indicating what the practice was at a particular time, then that practice should be followed. Where, however, there was no accurate objective material, an earlier decision of *Moon* [2000] 117 A Crim R 497 at 511 [70], [71] Howie J set out the relevant practice:

> *The nature of the criminal conduct proscribed by an offence and the maximum penalty applicable to the offence are crucially important factors in the synthesis which leads to the determination of the sentence to be imposed upon the particular offender for the particular crime committed. Even after taking into account the subjective features of the offender and all the other matters relevant to sentencing, such as individual and general deterrence, the sentence imposed should reflect the objective seriousness of the offence: ..... , and be proportional to the criminality involved in the offence committed:.....*
> *Whether the sentence to be imposed meets these criteria will be determined principally by a consideration of the nature of the criminal conduct as viewed against the maximum penalty prescribed for the offence.*

[11] As discussed in A J B v R [2007] NSWCCA 51 from [11].

> *When sentencing an offender for offences committed many years earlier and where no sentencing range current at the time of offending can be established, the Court will by approaching the sentencing task in this way effectively sentence the offender in accordance with the policy of the legislature current at the time of offending and consistently with the approach adopted by sentencing courts at that time.*

The court may also be assisted in determining sentencing practice by prior and subsequent changes to the relevant offence provision and the reasons given for those changes (as may be found in *Hansard)*.

The courts have warned against relying upon 'complete conjecture' or bare assertion as to the sentencing practice at a particular point in history: *A J B v R* [2007] NSWCCA 51 at [14]. It should also not be thought that a sentencing practice can be derived by a court by reliance upon a 'modest sample of cases' of 'broadly similar sexual offences': *Dousha v R* [2008] NSWCCA 263 [41] – [42].

Sentences of imprisonments for offences which pre-date the *Crimes (Sentencing Procedure) Act* 1999 attract a special consideration. While any sentence passed since the commencement of that act must comply with its provisions in relation to fixing a non-parole period (s44), the court is entitled to consider the parole provisions at the time of the offending. This may lead to a finding of special circumstances to 'take account of the sentencing regime as it applied when all of the offences were committed' *RL v R* [2015] NSWCCA 106.

5.5 Particular Sentencing Options

Intensive Correction Orders. Section 66(1) of the *Crimes (Sentencing Procedure) Act 1999* provides that an Intensive Correction Order cannot be made in respect of a sentence of imprisonment for a ***prescribed sexual offence*** (or an aggregate sentence involving one such offence). A ***prescribed sexual offence*** is defined by s66(2) as:

> (a) an offence under Division 10 or 10A of Part 3 of the *Crimes Act 1900*, being:
>
> (i) an offence the victim of which is a person under the age of 16 years, or
>
> (ii) an offence the victim of which is a person of any age and the elements of which include sexual intercourse (as defined by section 61H of that Act), or
>
> (b) an offence that includes the commission of, or an intention to commit, an offence referred to in paragraph (a), or
>
> (c) an offence that, at the time it was committed, was a prescribed sexual offence within the meaning of this definition, or
>
> (d) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a), (b) or (c).

Home Detention. Home detention is not available for sexual assaults of adults or children or sexual offences involving children (s76 *Crimes (Sentencing Procedure) Act* 1999). It is also not available to offenders who has, at any time, been convicted of sexual assaults of adults or children or sexual offences involving children (s77).

Drug Court. A person is not eligible for the Drug Court if they are charged with sexual assault (s5 *Drug Court Act 1998).* A history of sexual offending may also result in a person being found 'not appropriate' for inclusion in the drug court programme.

Compulsory Drug Treatment Centre. A person will not be an eligible convicted offender for inclusion in the Compulsory Drug Treatment Centre if they have been convicted of the sexual assault of an adult or child or a sexual offence involving a child (s5A *Drug Court Act* 1998).

5.6 Victim Impact Statements

Division 2 of Part 3 of the *Crimes (Sentencing Procedure) Act 1995* (ss26 – 30A) provides for victim impact statements (VIS) to be given in certain sentencing proceedings.[12]

There are specific limitations on when and where Division 2 VIS can be given (reference to the Industrial Relations Commission omitted):

An offence dealt with on indictment in the Supreme Court or, on indictment or summarily in the District court, and is:	(a) an offence that results in the death of, or actual physical bodily harm to, any person, or (b) an offence that involves an act of actual or threatened violence, or (c) an offence for which a higher maximum penalty may be imposed if the offence results in the death of, or actual physical bodily harm to, any person than may be imposed if the offence does not have that result, or (d) a prescribed sexual offence.
An offence being dealt with by the Local Court, if it is:	(a) an offence that results in the death of any person, or (b) an offence for which a higher maximum penalty may be imposed if the offence results in the death of any person than may be imposed if the offence does not have that result, or (c) an offence that is referred to in Table 1 of Schedule 1 to the *Criminal Procedure Act 1986* and that: (i) results in actual physical bodily harm to any person, or (ii) involves an act of actual or threatened violence, or (d) a prescribed sexual offence that is referred to in Table 1 of Schedule 1 to the *Criminal Procedure Act 1986*.

[12] For more detail, see the JIRS Sentencing Bench Book from [12-790] http://www.judcom.nsw.gov.au/publications/benchbks/sentencing/victims.html; for an interesting read on the use of VIS in Child Sexual Assault Cases see R. Shackel, 'Victim Impact Statements in Child Sexual Assault Cases: A restorative Role or Restrained Rhetoric?' *UNSW Law Journal* Vol 34(1), 2011 at 211 – 249.

Prescribed sexual offences are set out in the *Criminal Procedure Act 1986* at s3:

> (a) an offence under section 61B, 61C, 61D, 61E, 61I, 61J, 61JA, 61K, 61L, 61M, 61N, 61O, 63, 65, 65A, 66, 66A, 66B, 66C, 66D, 66EA, 66EB, 66F, 67, 68, 71, 72, 72A, 73, 74, 76, 76A, 78A, 78B, 78H, 78I, 78K, 78L, 78M, 78N, 78O, 78Q, 79, 80, 80A, 80D, 80E, 81, 81A, 81B, 86, 87, 89, 90, 90A, 91, 91A, 91B, 91D, 91E, 91F or 91G of the *Crimes Act 1900*, or
>
> (b) an offence that, at the time it was committed, was a prescribed sexual offence for the purposes of this Act or the *Crimes Act 1900*, or
>
> (c) an offence that includes the commission of, or an intention to commit, an offence referred to in paragraph (a) or (b), or
>
> (d) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a), (b) or (c).

A VIS may be given by the primary victim of the offence, or if the victim has died, it may be given by a family member (see definitions s26). Since 1 July 2014 the court can take into account the harm done to these family members.[13]

5.6.1 VIS as Evidence

The legislation provides little guidance to a court as to how victim impact statements are to be taken into account, and there is little consensus: *R v Tuala* [2015] NSWCCA 8*. Tuala* at [51] to [76] sets out the various authorities for the use to which a VIS can be put.

The balance of authorities, culminating in *Tuala,* suggest that a victim impact statement is not generally an appropriate medium to prove material or aggravating facts. In that case, Wilson J indicated that where a VIS '*tends to be confirmatory of other evidence… or where it attests to the harm of the kind that might be expected of the offence in question, there is little difficulty with acceptance of its contents.'*

The most common aggravating factor relevant to a VIS is s21A(2)(g) where the prosecution must establish that 'the injury, emotional harm, loss or damage caused by the offence was substantial'. *Tuala*, in the circumstances where the VIS was the only evidence, '*considerable caution must be exercised before the victim impact statement can be used to establish an aggravating factor to the requisite standard*' [Per Wilson J at 81]. Her Honour did note, however, that it behoved upon defence counsel to raise the issue of how the evidence in the VIS should be limited [at 78].

Care must be taken to avoid the following situation:

a. A VIS should not generally attach a report (*R v King* [2009] NSWCCA 117 at [177]).
b. The VIS should not refer to harm caused by uncharged acts or the existence of uncharged offences: *R v H* [2005] NSWCCA 282 at [56] and *PWB v R* [2011] NSWCCA 84.
c. The VIS should not provide evidence for a more serious offence: *De Simoni*.
d. The VIS should not traverse an agreed set of facts.

[13] See JIRS Special Bulletin 7 – June 2014:
http://www.judcom.nsw.gov.au/publications/benchbks/sentencing/special_bulletin_07.html

It is useful to note that Prosecution Guideline 19 indicates:

> *ODPP Lawyers and Crown Prosecutors should ensure that a victim impact statement complies with the legislation - especially that it does not contain material that is offensive, threatening or harassing. Such material and other inadmissible material (eg. allegations of further criminal conduct not charged) is to be deleted before a statement is tendered.*

6 TREATMENT

6.1 TREATMENT AVAILABLE IN THE COMMUNITY

Sex offender treatment in the community is split between that offered by Corrective Services NSW and that offered in the private sector.

6.1.1 Corrective Services NSW (CSNSW)

CSNSW offers mostly group-based treatments for convicted sexual offenders who are serving community based parole or supervised bond. They will not extend any offer of treatment to persons not currently subject to supervision. Programs are mostly facilitated from Forensic Psychology Services based on Wentworth Avenue, Surry Hills. Regional areas have few services. The treatment programs that may be available include:

Prep Program - Prep is a preparatory program designed to increase the motivation and self-belief in the participant to enable them to better participate in a full treatment program. Prep uses a "motivational interviewing" format in a group setting and the program usually takes 6 to 8 weeks. It is usually facilitated by psychologists but can be facilitated by other trained personnel.

Treatment Low-Moderate Risk and Needs - This group program is facilitated by psychologists and is designed to meet the treatment needs of offenders who have been assessed to have a risk and needs profile in the low to moderate range. Weekly group sessions are used to cover a structured agenda where insight is developed into the processes by which the individual came to offend after which these insights are used to create a risk management plan. The program may take up to one year to complete.

Community Maintenance Program - This is less structured and more open-ended program designed to assist offenders to generalise treatment gains in everyday life after they have completed a full treatment program. It is designed on the success of "booster" sessions.

Note there is no high risk/needs sex offender treatment program offered by CSNSW in the community. This is because no community-based treatment program can match the intensity of the custodial program for High Risk/Needs sex offenders. The programs are run at no cost to the participants. There is generally a significant waiting list. The programs are primarily facilitated for male offenders, but some form of individual programming is offered to females who have sexually offended.

6.1.2 Private Sector

A number of private practitioners (psychologists and psychiatrists) also offer treatment programs to sex offenders. One of the difficulties with community based private treatment is affordability. Whereas a person suffering from conditions such as depression, anxiety or PTSD can obtain a Medicare rebate to offset treatment costs, there is no such rebate available for sex offender treatment, even when a paraphilic disorder is diagnosed. Specific experience and training is necessary for competence in this area. A background in forensic psychology is preferable, particularly endorsement by the governing body AHPRA as a forensic psychologist. Recent training and experience is also important so that the professional understands contemporary industry practices. One good strategy is to ask the psychologist how they would structure the treatment program. Unless they can provide a coherent and strategic framework that is offence specific and

involves developing insight and a relapse prevention plan, they may not be able to provide practical assistance to your client.

A number of Sydney based psychologists offer specialised treatment for sexual offenders:

Big Picture Psychology[14]

LSC Psychology[15]

Pastoral Counselling Institute (a Uniting Church run organisation)[16]

The Office of the Children's Guardian is a State Government Agency whose role is to promote the safety, welfare and well-being of children and young people in NSW, particularly the vulnerable. The Office is also the lead agency for the Working with Children Check in NSW. The Office has developed a register of practitioners through what they refer to as the NSW Child Sex Offender Counsellor Accreditation Scheme (CSOCAS). The register has minimum standards requiring the professional to have sufficient experience, training and expertise to work therapeutically with people who have sexually offended against children. Application to the register is not a mandatory requirement for specialists working in this area, and is therefore not an exhaustive list of qualified experts.

The scheme provides a good starting point for practitioners to locate an appropriately qualified professional. The list of professional can be found on the 'Kid's Guardian' website: http://www.kidsguardian.nsw.gov.au/about-us/offender-counsellors/accredited-members.

6.1.3 Antilibidinal Therapy (referred to colloquially as "chemical castration")

A range of medications are available that have the effect of reducing the levels of the testosterone hormone in an offenders' body. There is some empirical evidence to suggest that suppression of testosterone levels can be associated with a reduction of sexual arousal and sexual fantasy or preoccupation (Bradford & Pawlak, 1993; Maletzky, Tolan & McFarland, 2006). These medications, referred to as anti-libidinal therapy, are sometimes used as an adjunct to psychotherapy, as a biopsychosocial approach to lowering risk of sexual recidivism. Assessment for suitability can only be undertaken by qualified medical personnel, and entails ongoing assessment of factors such as bone density, liver functioning, and monitoring of testosterone levels.The medication can be taken in daily oral doses or monthly depo injection. In most cases, these medications are only prescribed when there is a diagnosis of paraphilia and there is psychological treatment running in adjunct to the pharmacotherapy. These medications cannot be prescribed to non-consenting or coerced patients.

There is also a class of antidepressant medications commonly prescribed to sex offenders. The Selective Serotonin Re-uptake Inhibitors (SSRI's) are a popular antidepressant medication known to have a side effect of reducing libido and attenuating obsessional thought.

6.2 Treatment in Custody

Sex offender treatment programs have evolved over the previous 30 years and there has been a body of literature developed guiding what appears to work and what doesn't. There remains some ongoing debate regarding the effectiveness of such programs (Coyle, 2011. The Cogency of Risk Assessments, *Psychiatry, Psychology and Law*, 18(2), 270-296).

[14] http://bigpicturepsychology.com.au/
[15] http://lscpsych.com.au/
[16] http://pastoralcounselling.org/

In CSNSW a range of programs are offered to assist participants work on changing the thinking, attitudes and feelings that led to their sexual offending behaviour. During treatment the offender works on understanding and taking responsibility for the offending; they examine victim issues; identify their offence pathway, and develop a detailed self-management plan to assist them in living an offence free and more satisfying future life. They are administered in a "rolling" format meaning that each person moves through the structured content at their individual pace. Most of the programs are only offered to minimum security inmates. Therefore, if the offender cannot obtain a "C1" classification, they may not have the opportunity to access treatment. Most programs have a waiting list, which is prioritised by earliest release date. There is no guarantee that an offender will be offered a custodial treatment program prior to their earliest release date.

The programs offered by CSNSW are as follows:

Deniers Program - This is a custody-based non-residential program for men who categorically deny all involvement in their convictions for sexual offending. The aim is to assist the offender in planning how to avoid future "accusations" by living responsibly and avoiding potentially risky situations. Although the concept may appear counterintuitive, there is some evidence that this approach can be impactful in reducing reoffending (Ware & Mann, 2012; *Aggression and Violent Behaviour, 17*, 279-288).

Preparatory Programs - This program aims to increase the offenders' motivation and readiness to participate in a sex offender treatment program. It uses the concepts underlying motivational interviewing to increase enthusiasm and self-belief in the change process. The process takes 12 -14 sessions. There is some evidence supporting the effectiveness of such programs (Sheehan & Ware, 2012; *Sexual Abuse in Australia and New Zealand*).

Low to Moderate Risk and Needs Programs (CUBIT Outreach or CORE Moderate) - This is a non-residential custodial program, where the participants are expected to attend the program from their normal wing and continue to participate in normal gaol programs such as employment and education. The program takes 6-8 months to complete. This program can be facilitated at any centre but is generally facilitated in the Metropolitan Special Programs Centre.

Moderate to High Risk and Needs Programs - Custody Based Intensive Treatment (CUBIT) - This is the most intensive treatment program offered by CSNSW. It is facilitated in a "therapeutic community" or a closed unit where the offenders do not engage with the rest of the inmate population. The advantage to this model is the high intensity and opportunity to closely observe the offender longitudinally in the unit, rather than limited to how they might present in the therapy sessions. The program takes 6-10 months, 3 sessions per week. CUBIT is based in the Metropolitan Special Programs Centre and Cessnock Correctional Centre.

Self-Regulation Program - Sex Offenders (SRP:SO) - This program is designed for sexual offenders with an intellectual disability or other cognitive impairment and have limited adaptive skills in the gaol environment. The program uses a more accessible and less cognitive approach to treatment, catering for the learning needs of the participants. The program is for moderate-high risk/needs offenders and is facilitated from the Additional Support Unit (ASU) in the Metropolitan Special Programs Centre. The SRP:SO often takes 12 months to complete.

Custodial Maintenance Program - This program is a less intensive, less structured treatment designed to create an opportunity for continuation of treatment gains made in CORE or CUBIT. The offender is encouraged to take a more autonomous role in working in treatment issues. It is generally facilitated one session per fortnight or less as the offender becomes more self-regulating.

A standard treatment plan might look like this:

TREATMENT TARGETS
Understanding of Offence
Life History
Victim Empathy / Perspective Taking
Offence Pathways
Social Skills **(Communication, assertiveness, self-esteem, problem solving)**
Coping and Mood Management
Relationships & Support Groups **(intimacy/loneliness, attachments, jealousy)**
Sexual Interests **(deviant arousal, sexual preoccupation, sexuality)**
Goal Setting
Risk Factors, Warning Signs and Self-Management Plans

7 NON-CUSTODIAL POST-SENTENCE ISSUES

7.1 CONVICTIONS

Ordinarily the *Criminal Records Act* 1991 gives convicted adult offenders the hope of unshackling themselves from the impediment of a criminal record after certain requirements are met (usually a 10 year crime-free period). Sexual offenders should have no such hope.[17]

Section 7 of the Act precludes convictions for ***sexual offences*** from becoming spent, and defines them as:

> (a) the offences under sections 61B–61F, 65A–66D, 66F, 73, 74, 78A, 78B, 78H, 78I, 78K, 78L, 78N, 78O, 78Q, 79, 80, 91A, 91B and 91D–91G of the *Crimes Act 1900*,
>
> (b) from the date of commencement of Schedule 1 (3) to the *Crimes (Amendment) Act 1989*, the offences under sections 61I–61P of the *Crimes Act 1900*,
>
> (c) from the date of commencement of Schedule 1 (6) to the *Crimes (Amendment) Act 1989*, the offence under section 80A of the *Crimes Act 1900*,
>
> (d) the offence under section 5 of the *Summary Offences Act 1988*,
>
> (e) an offence (such as an offence under section 37 (2) or 112 of the *Crimes Act 1900*) which includes the commission of, or an intention to commit, an offence referred to in paragraph (a), (b), (c) or (d),
>
> (f) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a), (b), (c), (d) or (e),
>
> (g) an offence committed:
>
> > (i) before the date of commencement of this section against a law of New South Wales or a law of a place outside New South Wales, or
> >
> > (ii) after the date of commencement of this section against a law of a place outside New South Wales,
>
> which constituted or constitutes an offence of a similar nature to an offence referred to in paragraph (a), (b), (c), (d), (e) or (f),
>
> (h) an offence prescribed by the regulations as a sexual offence for the purposes of this section.

[17] Orders under s10 of the Sentencing Act, in the Children's Court and under the Mental Health (Forensic Provisions) Act are a little more complicated. The following provides an excellent review of some of these issues: A Tang, 'Children's Criminal Records and Convictions,' Legal Aid, Children's Legal Service Conference, 2010, updated 2011 (with L Brown):
http://www.criminalcle.net.au/attachments/CRIM_RECORDS_updated_140911.pdf

7.2 Working with Children Checks

The *Child Protection (Working with Children) Act 2012* sets out the checks and clearances for the purpose of working with children.

The Act is administered by the Office of the Children's Guardian and clients concerned about how it might impact upon their volunteer and paid employment should be referred to the detailed website: http://www.kidsguardian.nsw.gov.au/working-with-children/working-with-children-check.

In summary the Act sets out the type of work and volunteer activities require checks and how the checks are to be conducted. Not only does it concern paid child-related workers, it might be required for volunteers, potential adoptive parents, authorised cares and people who live with authorised careers, family day care service providers and home-based education and care service providers. There is also a comprehensive list of exemptions (such as attending sporting events with a person's own child) that may be relevant.

The check involves a national criminal history check and a review of findings of workplace misconduct and notifications by the ombudsman.

Certain **disqualifying offences** will automatically result in a person being barred from child-related work if they have been convicted or are awaiting trial. These offences are set out in Schedule 2 of the Act.

The check also considers spent convictions, dismissed charges, findings of guilt which did not proceed to conviction and offences committed while the applicant was a juvenile. Certain events will trigger an assessment process which may result in a bar.

The Act also establishes rights of appeal to the NSW Civil and Administrative Tribunal.

The Act contains a number of offences provisions for engaging in child-related work without clearance (s8(1)) or in-spite of a bar (s8(2)) carrying maximum imprisonment for 2 years or 100 penalty units.

The Children's Guardian has produced the following helpful Fact Sheets which might be provided to clients:

All Fact Sheets	http://www.kidsguardian.nsw.gov.au/working-with-children/working-with-children-check/resources
Overview	http://www.kidsguardian.nsw.gov.au/ArticleDocuments/316/WWCC_brochure.pdf.aspx
Exemptions	http://www.kidsguardian.nsw.gov.au/ArticleDocuments/191/FS4_Exemptions_July2014.pdf.aspx
Child related work	http://www.kidsguardian.nsw.gov.au/ArticleDocuments/191/FS5_Whatischildrelatedwork_July2014.pdf.aspx
Risk Assessments	http://www.kidsguardian.nsw.gov.au/ArticleDocuments/191/FS8_Riskassessment_July2014.pdf.aspx
Bars and appeals	http://www.kidsguardian.nsw.gov.au/Article

	Documents/191/FS12_Barsandappeals_July2014.pdf.aspx
Disqualifying offences	http://www.kidsguardian.nsw.gov.au/ArticleDocuments/191/FS13_Disqualifying_offences_Schedule2_May2015.pdf.aspx
Assessment triggers	http://www.kidsguardian.nsw.gov.au/ArticleDocuments/191/FS14_Assessementrequirementtriggersschedule1_May2015.pdf.aspx

7.3 REGISTRATION[18]

The *Child Protection (Offenders Registration) Act* 2000 No 42 provides for the registration of certain child sexual offenders in order to protect children from serious harm, detect recidivism by child sex offenders and control registered people. This Act creates the Child Protection Register (CPR). The Act does not impose behaviour conditions upon registered people (other than reporting and providing information), or authorise the public disclosure of their names.

7.3.1 Becoming a Registrable Person

A person is a registrable person if they have at any time been sentenced by a Court for a registerable offence. If they are a registerable person, they will **automatically** be required to comply with registration and reporting obligations, unless they fall into two categories (s3A(2)):

1. They were subject to an order under s10 of the *Crimes Sentencing Procedure Act 1999* or a s33(1)(a) of the *Children (Criminal Proceedings) Act 1987* in relation to the registerable offence.
2. They were a child at the time the offence was committed (under 18) and the registerable offence (or historical analogue) was:
    - (i) a single offence involving an act of indecency, or
    - (ii) a single offence under section 91H of the *Crimes Act 1900* or an offence of producing, disseminating or possessing child abuse material (in whatever terms expressed) under the laws of a foreign jurisdiction, or
    - (iii) a single offence under section 91J (1), 91K (1) or 91L (1) of the *Crimes Act 1900*, or
    - (iv) a single offence (including an offence committed under the laws of a foreign jurisdiction) that falls within a class of offence the regulations prescribe for the purposes of this subparagraph, or
    - (v) a single offence an element of which is an intention to commit an offence of a kind listed in this paragraph, or
    - (vi) a single offence of attempting, or of conspiracy or incitement, to commit an offence of a kind listed in this paragraph.

[18] See Nerissa Keay, 'The NSW Child Sex Offender Register" Conference Paper, September 2012: http://www.criminalcle.net.au/attachments/Child_Protection_Orders3.pdf

3. They were found guilty prior to 15 October 2001 (in certain circumstances).

Registrable offences are detailed in the definitions section of the act and are divided into Class 1 offences, Class 2 offences and an offence resulting in the making of a child protection registration order (see Part 2A). There are also provisions

Class 1	(a) the offence of murder, where the person murdered is a child, or (b) an offence that involves sexual intercourse with a child (other than an offence that is a Class 2 offence), or (c) an offence against section 66EA of the *Crimes Act 1900*, or (d) an offence against section 272.8, 272.10 (if it relates to an underlying offence against section 272.8) or 272.11 of the *Criminal Code* of the Commonwealth, or an offence against section 272.18, 272.19 or 272.20 of the *Criminal Code* of the Commonwealth if it relates to another Class 1 offence as elsewhere defined in this section, or (d1) an offence against section 80A of the *Crimes Act 1900*, where the person against whom the offence is committed is a child, or (e) any offence under a law of a foreign jurisdiction that, if it had been committed in New South Wales, would have constituted an offence of a kind listed in this definition, or (f) an offence under a law of a foreign jurisdiction that the regulations state is a Class 1 offence, or (g) an offence an element of which is an intention to commit an offence of a kind listed in this definition, or (h) an offence of attempting, or of conspiracy or incitement, to commit an offence of a kind listed in this definition, or (i) an offence that, at the time it was committed: (i) was a Class 1 offence for the purposes of this Act, or (ii) in the case of an offence occurring before the commencement of this definition, was an offence of a kind listed in this definition.
Class 2	(a) the offence of manslaughter (other than manslaughter as a result of a motor vehicle accident), where the victim of the manslaughter is a child, or (a1) an offence that involves an act of indecency against or in respect of a child, being an offence that is punishable by imprisonment for 12 months or more, or (a2) an offence under section 33 (1) of the *Crimes Act 1900*, where the person against whom the offence is committed is a child under 10 years of age and the person committing the offence is not a child, or (a3) an offence under section 66EB of the *Crimes Act 1900*, or (b) an offence under section 86 of the *Crimes Act 1900*, where the person against whom the offence is committed is a child, except where the person found guilty of the offence was, when the offence was committed or at some earlier time, a parent or carer of the child, or

	(c) an offence under section 80D or 80E of the *Crimes Act 1900*, where the person against whom the offence is committed is a child, or (c1) an offence under section 87 of the *Crimes Act 1900*, where the person committing the offence has never had parental responsibility (within the meaning of that section) for the child who is taken or detained, or (d) an offence under section 91D, 91E, 91F, 91G or 91H of the *Crimes Act 1900* (other than an offence committed by a child prostitute), or (e) (Repealed) (f) an offence under section 91J, 91K or 91L of the *Crimes Act 1900* where the person who was being observed or filmed as referred to in those sections was then a child, or (g) an offence against section 271.4, 271.7, 272.9, 272.10 (if it relates to an underlying offence against section 272.9), 272.11, 272.12, 272.13, 272.14, 272.15, 273.5, 273.6, 273.7, 471.16, 471.17, 471.19, 471.20, 471.22, 471.24, 471.25, 471.26, 474.19, 474.20, 474.22, 474.23, 474.24A, 474.25A, 474.25B, 474.26, 474.27 or 474.27A of the *Criminal Code* of the Commonwealth, or an offence against section 272.18, 272.19 or 272.20 of the *Criminal Code* of the Commonwealth if it relates to another Class 2 offence as elsewhere defined in this section, or (h) an offence against section 270.6 or 270.7 of the *Criminal Code* of the Commonwealth where the person against whom the offence is committed is a child, or (i) an offence against section 233BAB of the *Customs Act 1901* of the Commonwealth involving items of child pornography or of child abuse material, or (j) any offence under a law of a foreign jurisdiction that, if it had been committed in New South Wales, would have constituted an offence of a kind listed in this definition, or (k) an offence under a law of a foreign jurisdiction that the regulations state is a Class 2 offence, or (l) an offence an element of which is an intention to commit an offence of a kind listed in this definition, or (m) an offence of attempting, or of conspiracy or incitement, to commit an offence of a kind listed in this definition, or (n) an offence that, at the time it was committed: (i) was a Class 2 offence for the purposes of this Act, or (ii) in the case of an offence occurring before the commencement of this definition, was an offence of a kind listed in this definition.

Those people who are not automatically subject to registration, may become so by order of the Court under Part 2A of the Act upon a finding of guilty for a Class 1 or 2 Offence. This may be so in circumstances where the prosecution makes application, and the court is satisfied that the person poses a risk to the lives or sexual safety of child or children (such an order may not be made if Court has made a s10 or s33(1)(a) above). This also provides that the order can be made upon finding of guilt and prior to sentence in relation to any other person. People can also be made to register on application by the Commissioner of Police for any offence (not just registerable offences) (s3E), old

offences or foreign offences (s3F) and certain bail decisions under the *Mental Health (Forensic Provisions) Act* 1990.

7.3.2 Requirements of Being a Registrable Person

Once a person becomes subject to registration requirements, it is required that the Court gives them certain notices setting out their reporting requirements. The registerable person will then be required to make an initial report to the Commissioner of Police within 7 days of being sentenced for a registerable offence, or if imprisoned, within 7 days of leaving custody (9A). (There are also reporting requirements for foreign registerable visitors).

The registerable person is then required to divulge all ***relevant personal information*** (see s9 for an extensive list). The registerable person is then under an ongoing obligation to report changes to this information and certain travel.

Once a person is a registerable person the Police gain certain powers to enter their premises for inspection (see s16C).

The duration of reporting is specified in Part 3, Division 6 of the Act. The standard periods are: 8 years for a single class 2 offence, 15 years for a single Class 1 offence or any two offences, the remainder of the person's life if sentenced for a second Class 1 or Class 2 offence if they had previously been a registerable person in relation to a Class 1 offence, or were registerable in relation to a Class 2 offence and are later found guilty of a number of other Class 2 offences. These periods may be reduced for young offenders (s14B) or extended to take account of parole (14C).

7.3.3 Breach of Reporting Conditions

The Act creates the following offences:

1. ***Failing to comply with reporting obligations*** (s17) which is punishable by 5 years imprisonment, 500 penalty units or both. This offence contains a **reasonable excuse** provision which must be examined in detail. It is highly appropriate that this provision relates back to the adequacy of the notification given to the offender regarding their obligations and their ability to understand or comply with the obligations (s17(2)(a)&(b1)).
2. ***Furnishing false or misleading information*** *(in purported compliance with their obligations)* (s18) which is punishable by 5 years imprisonment, 500 penalty units or both.

7.3.4 Debate and rational around registers and reporting

Concerns have recently been raised regarding the efficacy of registration for juvenile sex offenders. According to the NSW Ombudsman 'research shows that juvenile sex offenders generally do not go on to commit sex offences as adults, and that the registration of juvenile sex offenders fails to reduce juvenile recidivism' and may delay the reintegration of the young person into the community making it more difficult for them to obtain suitable employment, access to education and recreational opportunities. [19]

[19] NSW Ombudsman, Responding to Sexual Assault in Aboriginal Communities: A report under Part 6A of the *Community Services (Complaints, Reviews and Monitoring) Act 1993,* December 2012 at p233 https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0005/7961/ACSA-report-web1.pdf

Dr Seidler of LSC Psychology has also recently criticised the 'one size fits all' nature of the register where low risk offenders have the same requirements as high risk offenders leading to wasted investment monitoring low risk offenders.

7.4 Child Protection and Prohibition Orders

The *Child Protection (Offenders Prohibition Orders) Act* 2004 allows the NSW Commissioner of Police to apply to the Local Court for orders prohibiting certain offenders who pose a risk to the lives or sexual safety of children from engaging in specific conduct. These orders are known as Child Protection and Prohibition Orders (CPPOs).

The Court may make a CPPO when it has 'reasonable cause to believe' that a person 'poses a risk to the lives or sexual safety of one or more children or children generally' and that the order will reduce that risk (s5 sets out a these tests and a number of considerations).

Orders may be for up to 5 years, and typically prohibit offenders from associating with specific people or kinds of people, attending particular locations, engaging in specified behaviour or work but the act does not limit the kinds of conduct that may be prohibited (s8). Hearings for these proceedings are to be held in the absence of the public (s14)

A recent NSW Ombudsman report noted that applications for CPPOs were extremely low and as a consequence, between 1 January 2007 and 23 May 2012, only 71 CPPOs were issued by NSW Courts. The report opined that despite the importance of such orders, they were not commonly used due to a lack of awareness of them within the NSW Police and associated child protection agencies.[20]

The Act provides an offence of **contravening a prohibition order**, without reasonable excuse, carrying a maximum penalty of 5 years imprisonment or 500 penalty units (s13).

7.1 Recidivism

There have been varying estimates of recidivism rates depending on the various methodologies and populations studied. The largest international meta-analysis estimated the base rate to be between 11 percent for "treated" sexual offenders and 17.5 percent for "untreated" sexual offenders (Lösel, F., & Schmucker, M. (2005). The effectiveness of treatment for sexual offenders: A comprehensive meta-analysis*. Journal of Experimental Criminology, 1, 117-146).* This is a low base rate relative to many other offence types and makes prediction for difficult.

A 2011 BOCSAR Study of adults convicted in 1994 who were reconvicted of any offence within 15 years. People convicted of sexual assault and related offences re-offended with any offence (not necessarily sexual) at a rate of 42% - which was the lowest rate in the study. Unlawful entry offenders reoffended at an 81% rate, robbery 75%, assault 64% (to name a few).[21]

Sexual assault and related offence offenders: 42% compared to Assault, 64%, Robbery, 75%, Drink/Drug Driving offences 46%. http://www.bocsar.nsw.gov.au/Documents/bb56.pdf

[20] NSW Ombudsman, 'Responding to Sexual Assault in Aboriginal Communities,' A report under Part 6A of the *Community Services (Complaints, Reviews and Monitoring) Act 1993,* December 2012 at p236 https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0005/7961/ACSA-report-web1.pdf

[21] J. Holmes, Re-offending in NSW, *Crime and Justice Statistics,* NSW Bureau of Crime Statistics and Research, Issue paper no.56, revised January 2012: http://www.bocsar.nsw.gov.au/Documents/bb56.pdf

8 CUSTODIAL ISSUES

8.1 PAROLE

The *Crimes (Administration of Sentences) Act* at Part 6 deals with the parole of prisoners.

An offender is eligible for parole if they are serving a sentence for which a non-parole period has been set, and they have served all other periods of non-parole (s126). Subject to the *Crimes (High Risk Offenders) Act* 2006 (see below).

Under Division 3 of the Part, parole is automatic for offenders subject to a sentence of 3 years or less if a non-parole period has been set by the court (ss158 and 159). Although, parole can be revoked before release: s130.

Where a person's sentence exceeds 3 years, parole is granted at the discretion of the Parole Authority (Division 2). The Parole Authority is prohibited from making a parole order 'unless it is satisfied, on the balance of probabilities, that the release of the offender is appropriate in the public interest' (s135).

Graduated release to independent community life has a greater likelihood of successful reintegration, relative to sudden release from a high security setting. Ideally, an offender can move through the internal security classification system in custody, obtaining minimum security, day leave programs, before moving to supervised parole. This provides incremental increases in autonomy and positive decision-making, thereby reducing the likelihood of overwhelm and relapse to prior dysfunctional habits. The discretionary release to parole has the potential to affect an offender's opportunity to readjust to community live with support and supervision. The prospect of uncertain parole does have the effect of creating an external motivating factor to maximise the likelihood that an offender will apply for and participate in a treatment program or otherwise 'address their offending behaviour' in custody. It also creates an expectation that an offender will need to obtain stable accommodation and present a plan for positive living in the community prior to release. These factors are important correlates to successful reintegration and protective factors against reoffending. The system can be counterproductive when the State Parole Authority (SPA) withholds release of an offender purely because they have not completed a sex offender treatment program in custody. This is particularly problematic if this decision brings an offender to the end of the head sentence, meaning that no period of supervision can be offered at release from custody.

8.2 CLASSIFICATION

The inmate classification system is a means of managing institutional security risk. It ranges from maximum security (A) to Minimum (C).[22] An individual's classification is decided by internal classification committee unless the offender is managed under the Serious Offender Review Council (SORC). There are general rules about when an inmate can move to medium (B) and minimum in terms of how far they have advanced through the sentence. Minimum security areas have more amenities and freedoms. All remand facilities are maximum security, mainly because this is when

[22] CSNSW Fact Sheet – Classification: http://www.correctiveservices.justice.nsw.gov.au/Documents/CSNSW%20Fact%20Sheets/fact_sheet_9_classification.pdf

flight risk is highest. If an offender is known to attempt escape, they can be classified as an "E" which is difficult to have removed and will limit their movement in the gaol system. An offender with an "E" classification will struggle to get to a minimum security facility to participate in sex offender programs, even if the escape was many years ago. A "C3" is the lowest level of security and allows for an offender to engage in day leave and works release programs. These are notoriously difficult to obtain for convicted sex offenders, particularly child sex offenders.

Another dimension to classification is "association". This is a specification as to what degree offenders can associate with others. There are various forms of protection and limited association that can be applied to offenders. Most child sex offenders and a proportion of adult sex offenders are subject to limited association, which restricts them from being placed with the main inmate population where they will be at risk from other offenders, who might seek to obtain notoriety by assaulting a child sex offender. This culture of division between general offenders and sex offenders remains very much a part of institutional life. Even amongst sex offenders there is the threat of aggression or harassment when offenders deem one offence "worse" than others, usually offences against young children.

Graduated release to independent community life has a greater likelihood of successful reintegration, relative to sudden release from a high security setting. Ideally, an offender can move through the internal security classification system in custody, obtaining minimum security, day leave programs, before moving to supervised parole. This provides incremental increases in autonomy and positive decision-making, thereby reducing the likelihood of overwhelm and relapse to prior dysfunctional habits. The discretionary release to parole has the potential to affect an offender's opportunity to readjust to community live with support and supervision. The prospect of uncertain parole does have the effect of creating an external motivating factor to maximise the likelihood that an offender will apply for and participate in a treatment program or otherwise 'address their offending behaviour' in custody. It also creates an expectation that an offender will need to obtain stable accommodation and present a plan for positive living in the community prior to release. These factors are important correlates to successful reintegration and protective factors against reoffending. The issue of stable accommodation has become increasingly contentious over the last decade. Most AOD rehabilitation facilities will not accept sex offenders as a matter of policy. Prior to a SPA hearing, a community corrections officer will do a home visit to assess the suitability of the residence proposed. There has an arbitrary ruling that dwellings within 500 metres of schools or other places that children might congregate will be automatically declined. This has proved a significant barrier to offenders seeking parole, as well as a burden to families who sometimes are required to relocate the family home to meet these requirements, whether or not they are germane to the individual offenders' risk profile. For these reasons, CSNSW introduced a number of Community Offender Support Program (COSP) facilities across the State of NSW. However, most of these were decommissioned over recent years, with the exception of two Sydney-based facilities.

One surprisingly common phenomenon is the offender who chooses to serve the full term in custody, rather than have to accept conditions of release or deal with the uncertainty of applying for parole. It was this phenomenon that prompted the post sentence legislation described below.

8.3 HIGH RISK SEX OFFENDERS[23]

The *Crimes (High Risk Offenders) Act* 2006 has the object of providing extended supervision and continuing detention of high risk sex offenders (and high risk violent offenders) so as to ensure the safety and protection of the community. It also purports to 'encourage high risk sex offenders (and high risk violent offenders) to undertake rehabilitation.

Under s4 a person automatically becomes a **sex offender** if they are over the age of 18 and have at any time been sentenced to imprisonment following their conviction of a serious sex offence.

A **serious sex offence** is defined by s5 of the Act. A practitioner must advise their client at the earliest opportunity of the risk that they will be affected by the scheme. The following are serious sex offences:

1(a)(i)	Any offence under Division 10 Part 3 (61H – 80AA) of the Crimes Act against a child where the offence intended is punishable by imprisonment for 7 years or more. It is easiest to list the offences that have maximum penalties **under 7 years**: 1. S61L – Indecent Assault (5 years). 2. S61N(1) – Act of indecency on person under 16 years (2 years). 3. S61N(2) – Act of indecency on person 16 years or above (18 months). 4. S61O(1A) – Aggravated act of indecency on person 16 years or above (3 years). 5. S73(2) – Sexual intercourse with person aged 17 – 18 years and under special care (4 years). 6. S78B – Attempted incest (4 years). 7. S80 – Attempted bestiality (5 years).
1(a)(i)&(ii)	Any offence under Division 10 Part 3 (61H – 80AA) of the Crimes Act against an adult which carries a maximum penalty of 7 years or more AND is committed within circumstances of aggravation (within the meaning of the offence provision).
1(a1)	Always: 1. 61K – Assault with intent to have sexual intercourse (20 years). 2. 66EA – Persistent sexual abuse of a child (25 years).
1(b)	Any of the following offences which were committed with intent to commit an offence under Division 10 Part 3 (61H – 80AA) of the *Crimes Act* 1900 against an adult or child where the offence intended is punishable by imprisonment for 7 years ore more: 1. 38 – Using intoxicating substance to commit an indictable offence. 2. 86(1)(a1) – Kidnapping with the intention of committing a serious indictable offence. 3. 111 – Entering a dwelling house. 4. 112 – Breaking etc into any house etc and committing serious indictable

[23] See for more detail: A. Cook, Public Defender, *Continuing Detention Orders for Sex Offenders: Future Sex Crimes,* Paper Presented at the Public Defenders Criminal Law Conference 2008: http://www.publicdefenders.lawlink.nsw.gov.au/agdbasev7wr/pdo/documents/pdf/continuingdetentionorders.pdf

	offence. 5. 113 – Breaking etc into any house etc with intent to commit serious indictable offence. 6. 114(1)(a), (c) or (d) – Being armed with intent to commit indictable offence.
1(c)	An offence committed outside of NSW which, if committed in NSW, would be a serious sex offence.
1(c1)	an offence by a person that, at the time it was committed, was not a serious sex offence for the purposes of this Act but which was committed in circumstances that would make the offence a serious sex offence if it were committed at the time an application for an order against the person is made under this Act, and
1(d)	any other offence that, at the time it was committed, was a serious sex offence for the purposes of this Act.

Once a person becomes a sex offender the State can apply to the Supreme Court to determine whether they are a **high risk sex offender** (s5B) and if so for one of two orders to be made:

1. a **high risk sex offender extended supervision order** ('ESO' s5C), or
2. a **high risk sex offender continuing detention order** ('CDO' s5D).

These proceedings are civil in nature and conducted in accordance with the law relating to civil proceedings (s21). The Supreme Court will find that a sex offender is a high risk sex offender if it is 'satisfied to a high degree of probability that the offender poses an unacceptable risk of committing a serious sex offence if they are not kept under supervision' (s5B). There are provisions for interim orders whilst these matters are being determined.

The term "unacceptable" was introduced in 2010 as an amendment to replace the term "likely", which at different times had been criticised as tautological or implying a risk exceeding fifty percent. The new terminology also invites consideration of the type of offending and degree of harm posed as opposed to a myopic focus on probabilities. For example, a case of child sexual homicide may be assessed as a low-moderate risk, but the high level of harm may make that risk unacceptable. Conversely, an entrenched exhibitionist might present a highly elevated likelihood of reoffending but present a low risk of relative harm.

The evidence in the interim hearings is required to meet similar to a prima facie standard. It is untested until the main hearing. At the interim hearing, a CSNSW expert produces a comprehensive risk assessment report. The report usually consists of a review of prior offending and examination of risk using static and dynamic risk assessment tools. If an interim order is granted, two independent experts are appointed to complete further assessments to see if there are convergent views whether risk meets the required threshold.

8.3.1 High Risk Sex Offender Extended Supervision Orders

An application for an ESO may be brought against a person if they are a ***supervised sex offender,*** which means that they are a ***sex offender*** under current custody or supervision (serving a sentence of imprisonment, for a serious sex offence, offence of a sexual nature (see s5), or for another offence being served wholly or partly concurrently or consecutively with such an offence (or is under a current ESO. This includes serving a sentence by way of full-time detention, intensive correction order, and home detention and on release on parole.

An application for an ESO can only be made in the last six months of the offender's custody or supervision and must be supported by various documents including a mental health report that addresses the likelihood of the offender committing a further serious sex offence.

The Court may make or decline to make an ESO based on a number of criteria set out in s9 of the Act. A supervision order can be made for up to five years and there is no limit to how may orders may be applied for. The duration and conditions of the order are argued during proceedings.

To date, approximately 60 ESO's have been brought to the Supreme Court. The mean order length has been three years. The conditions imposed can be onerous, including electronic monitoring, a proposed schedule of movements that the supervisee must submit every week projecting their movements in the community over the following week (see s11). Evidence for electronic monitoring (EM) - EM is one of the most onerous aspects of supervision. The units are obtrusive and noisy. They often lose contact inside buildings requiring the wearer to go back outside to re-establish a connection. There is not a solid body of evidence to suggest they are efficacious in reducing reoffending. Whilst most orders require the offender to submit a weekly schedule of movements which can be checked against the projected movements each day, the timetable is often subject to approval or rejection by supervising staff. This has been a source of tension between legislation and practice.

No ESO application has ever failed since the Act was introduced. Although encouraging offenders to undertake treatment was one of the rationale for the legislation, most applications have been made for offenders who have already completed treatment.

If a person under an ESO breaches that order, they can be charged with an offence under s12 of the Act (carrying a maximum of 500 penalty units or 5 years imprisonment, or both).

8.3.2 High Risk Sex Offender Continuing Detention Order

The Supreme Court may make a CDO if, upon application, it is satisfied that an ESO will not provide adequate supervision (s5D). The applications can be made against a sex offender who is serving a period of full time detention for a relevant offence in the last six months of that detention, or against a supervise sex offender who has breached their ESO or can no longer be provided with adequate supervision.

A continuing detention order can be made for up to five years at a time and there is no limit to how many consecutive orders might be imposed. Less than ten CDO's have been granted. The main impediment to the State has been having to prove that an intensive supervision regime would not be adequate to reduce the risk, not necessarily to ablate the risk (*State of NSW v Richardson (No. 2)* [2011] NSWSC 276).

8.3.3 HROs and Human Rights[24]

High Risk Orders were introduced by the 2006 Act in relation to sexual offenders and by virtue of the *Crimes (Serious Sex Offenders) Amendment Act 2013* extended to violent offenders. The 2006 contained similar provisions to Queensland's *Dangerous Prisoners (Sexual Offenders) Act 2003.*

[24] For detailed Discussion: Ian Freckleton and Patrick Keyzer. "Indefinite detention of sex offenders and human rights: The intervention of the human rights committee of the United Nations" *Psychology, Psychiatry and Law* 17.3 (2010): 345-354. And: Tamara Tulich, Post-Sentence Preventitive Detention and Extended Supervision of High Risk Offenders in New South Wales,' *UNSW Law Journal* Vol 38(2) (2015): 823 – 853.

In 2004 the High Court declared the Queensland Legislation constitutionally valid: Fardon v Attorney-General (QLD) [2004] HCA 46 (Kirby J dissenting).

Both Mr Fardon's and a Mr Tillman's case were considered by the United Nations Human Rights Committee which held that the post-sentence detention of these two men was incompatible with the prohibition against arbitrary detention under Art 9(1) of the *International Covenant on Civil and Political Rights*. The Committee also opined, without deciding the matter, that the post-sentence detention of Tillman and Fardon may contravene the prohibition against double-punishment under Art 14(7) and against retroactive punishment under Art 15(1).[25]

The UNHRC has indicated in past decisions that to avoid being arbitrary, detention must be (a) 'reasonable', (b) 'necessary in all circumstances of the case', and (c) proportionate to achieving the legitimate ends of the State party' (Keyzer & McSherry, 2009. Sex offenders and preventative detention: Politics, policy and practice. Federation Press).

Limitations on Rights: The requirement of 'Minimal Impairment'. The Committee stated that in circumstances where a person is preventatively detained because they are 'feared' to be a 'danger to the community... and for the purposes of rehabilitation', the State Party **must demonstrate that rehabilitation could not have been achieved by means less intrusive** than continued imprisonment.

The Australian Government respectfully disagreed with the UNHCR.[26]

[25] Human Rights Law Centre, Case Note, 12/4/2010: http://hrlc.org.au/tillman-v-australia-un-doc-ccprc98d16352007-12-april-2010/. (*Tillman v Australia, UN Doc CCPR/C/98/D/1635/2007 (12 April 2010) and Fardon v Australia*, UN Doc CCPR/C/98/D/1629/2007 (12 April 2010))

[26] Australian Government Response to the Views of the Committee in Communication No.1635/2007 Tillman v Australia and Communication No.1629/2007 Fardon v Australia: https://www.ag.gov.au/RightsAndProtections/HumanRights/DisabilityStandards/Documents/TillmanvAustralia-AustralianGovernmentResponse.pdf

9 ISSUES FOR PRACTITIONERS

It is a normal healthy human reaction to be upset by exposure to offence descriptions and visual images encountered when working in this area. A normal empathic reaction becomes pathological trauma when it starts to impose disorder our life. Things to look out for include: repetitive distressing intrusive thoughts, increasing avoidance of people, places or objects that remind you of the stress stimulus, social withdrawal, and loss of pleasure in daily activities.

Suggestions to maintain self-care

Do not look at images or descriptions that are not necessary for you to undertake your role.

Talk with colleagues about the case and allow yourself to debrief and vent. Do this as close to real time as possible, as opposed to weeks later. It is more effective to process these issues immediately.

Know your limits. This work is not for everyone.

Discuss value of counselling/debriefing.

Look for warning signs of needing help.

Confidential support and assistance is available to all lawyers:

Legal Aid provides an in house structure for obtaining psychological assistance through their employee support and wellbeing programs.

The Law Society has support structure in place available to all members:

https://www.lawsociety.com.au/ForSolictors/professionalsupport/supportingyou/index.htm

The NSW Bar has a similar program: www.barcare.org

Both of the authors are happy to be contacted to clarify anything in this paper or offer assistance in relation to the matters raised. Please also forward any criticisms, complaints, suggestions, and updates to the law or research so that the paper can be kept up to date.

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10 BIBLIOGRAPHY

Abel, G.G., & Obsborn, C.A. (2000). The Paraphilias. In Gelder, M.G., Lopex-Ibor, J.J., Andreasen, N. (eds), New Oxford Textbook of Psychiatry. Volume 1. New York: oxford University Press.

Andrews, D. & Bonta, J. (1998). *The psychology of criminal conduct.* 2. Cincinnati, OH:Anderson.

Bradford, J.M., & Pawlak, A. (1993). Effects of cyproterone acetate on sexual arousal patterns of pedophiles. Archives of Sexual Behaviour, 22(6), 629-641

Cortoni, F., Hanson, K,. & Coache, M. (2010). The recidivism rates of female sexual offenders are low: a meta-analysis*. Sex Abuse, 22*, 387-401.

Coyle, I.R. (2011). The cogency of risk assessments. *Psychiatry, Psychology and the Law, 18(2),* 270-296.

D*iagnostic and Statistical Manual of Mental Disorders - Fifth Edition* (DSM-5). (2013). American Psychiatric Association, Washington DC.

Endrass, J., Urbaniok, F., Hammermeidter, L.C., Benz, C., Elbert, T., Laubacher, A., & Rossegger, A. (2009). The consumption of internet pornography and violent sex offending. *BMC Psychiatry, 9:43*

Freckleton, I., and Keyzer, P., "Indefinite detention of sex offenders and human rights: The intervention of the human rights committee of the United Nations" *Psychology, Psychiatry and Law* 17.3 (2010)

Gannon, T.A., Hoare, J.A., Rose, M.R., & Parrett, N. (2012). A re-examination of female child molesters' implicit theories: evidence for female specificity?. *Psychology, Crime and Law, 18(2), 209-244.*

Hart, S.D., Kropp, P.R., Laws, D.R., Klaver, J., Logan, C. & Watt, K.A. (2003). *The Risk of Sexual Violence Protocol (RSVP): Structured Professional Guidelines for Assessing Risk of Sexual Violence.* Mental Health Law & Policy Institute.

Helmus, L., Babchishin, K.M., Hanson, K. & Thornton, D. (2009). *Static-99R: Revised Age Weights*. 34Twww.static99.org34T

Losel, F., & Schmucker, M. (2005). The effectiveness of treatment for sexual offenders: A comprehensive meta-analysis. *Journal of Experimental Criminology, 1*, 117-146.

Maletzky, B.M., Tolan, A., & McFarland, B. (2006). The Oregon depo-Provera program: a five year follow-up, *Sex Abuse, 18(3)*, 303-316.

McSheery, B. & Keyzer, P. (2009). S*ex offender and preventative detention: Politics, policy and practice.* Sydney, NSW: The Federation Press.

Nisbet, I. 'Adolescent sex offenders: A life sentence?,' InPsych 2010: 34T**HTTPS://WWW.PSYCHOLOGY.ORG.AU/PUBLICATIONS/INPSYCH/2010/AUGUST/NISBET/**

Prentky, R., & Righthand, S. (2003). *Juvenile Sex Offender Assessment Protocol - II (J-SOAP-II).* Office of Juvenile Justice and Delinquency Prevention's Juvenile Justice Clearinghouse.

Sheehan, P., & Ware, J. (2012). Preparing sex offenders for treatment: A preliminary evaluation of a preparatory programme. *Sexual Abuse in Australia and New Zealand, 4(2)*, 3-12.

Ware, J. & Mann, R.E. (2012). How should "acceptance of responsibility" be addressed in sexual offending treatment programs? *Aggression and Violent Behaviour, 17*, 279-288.

Webb, L., Craissati, J., & Keen, S. (2007). Characteristics of internet pornography offenders: a comparison with child molesters, Sexual Abuse: *A Journal of Research and Treatment, 19 (4*): 449-465.

Williams, K.S., & Biere, D.M. (2014). An incident-based comparison of female and male sexual offenders. *Sex Abuse, 27(3)*, 235-257.

Krone, T. (2004). A typology of online child pornography offending. *Trends & Issues in Crime & Criminal Justice*, no. 279.

Shackel, R '34TVictim Impact Statements in Child Sexual Assault Cases: A restorative Role or Restrained Rhetoric?'34T *UNSW Law Journal* Vol 34(1), 2011 at 211 – 249.

Tulich,T., Post-Sentence Preventative Detention and Extended Supervision of High Risk Offenders in New South Wales,' *UNSW Law Journal* Vol 38(2) (2015): 823 – 853.