



issues background

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Crimes (Serious Sex Offenders) Amendment Bill 2013

The [Crimes \(Serious Sex Offenders\) Amendment Bill 2013](#) (2013 Bill) was introduced in the Legislative Assembly by the Attorney General on 20 February 2013 ([Second Reading Speech](#)). The Bill provides for the making of extended supervision and continuing detention orders for “high risk violent offenders.” It builds on the existing *Crimes (Serious Sex Offenders) Act 2006*, which already provides for the making of such orders in relation to sex offenders who are considered to be at risk of reoffending.

The preventive detention of individuals is a complex issue touching on a range of fundamental legal principles as well as other matters, such as how, or even if, a violent offender’s tendency to reoffend can be predicted. In addition, questions surrounding the preventive detention and continued supervision of offenders are also connected to broader debates regarding the treatment and rehabilitation of offenders.

It is noted at the outset that there are a wide range of views on many aspects of these issues, which is reflected in the lack of unanimity amongst the members of the Sentencing Council in relation to some of the recommendations in its 2012 report, [High-Risk Violent Offenders: Sentencing and Post-Custody Management Options](#).

This Issues Backgrounder does not attempt to canvass all of these issues in their complexity, nor does it present a comprehensive guide to similar laws in other jurisdictions. Rather, it provides a brief overview of the existing legislation and the amendments contained in the 2013 Bill, as well as a (far from exhaustive) list of sources that may be of assistance to members in their consideration of the Bill.

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1. Crimes (Serious Sex Offenders) Act 2006

As noted by the Attorney General in his [response](#) to a Question Without Notice from the Member for East Hills, Mr Brookes, on 19 February 2013, the scheme proposed by the Bill “adopts a similar model to that which exists for serious sex offenders.”

Given that the 2013 Bill amends the existing Act, it is useful to provide a brief overview of that Act before referring any further to the Bill.

The objects of the [Crimes \(Serious Sex Offenders\) Act 2006 \(NSW\)](#) are set out in section 3. Section 3(1) states:

The primary object of this Act is to provide for the extended supervision and continuing detention of serious sex offenders so as to ensure the safety and protection of the community.

The Act provides for the “State of New South Wales” to make applications to the Supreme Court for the extended supervision of sex offenders. The terms “sex offender” and “offender” are currently defined in section 4 as follows:

sex offender and **offender** mean a person who has at any time been sentenced to imprisonment following his or her conviction of a serious sex offence, other than an offence committed while the person was a child.

The terms “serious sex offence” and “offence of a sexual nature” are also defined, in section 5 of the Act, by reference to certain offences in the *Crimes Act 1900* (NSW) and certain other Acts.

Extended supervision orders are governed by Part 2 of the Act, while Part 3 deals with continuing detention orders. Section 9(3) contains a list of matters that the Supreme Court must have regard to when determining whether or not to make an extended supervision order. Section 17(3) contains a near-mirror list of matters that the Court must have regard to when determining whether or not to make an order for

the continuing detention of an individual. These matters include, but are not limited to:

- the safety of the community (sections 9(3)(a) and 17(3)(a));
- the results of an assessment performed by a “qualified psychiatrist”, “registered psychologist” or “registered medical practitioner” regarding “the likelihood of the offender committing a further serious sex offence, the willingness of the offender to participate in any such assessment, and the level of the offender’s participation in any such assessment (sections 9(3)(c) and 17(3)(c));
- results “of any statistical or other assessment as to the likelihood of persons with histories and characteristics similar to those of the offender committing a further serious sex offence” (sections 9(3)(d) and 17(3)(d);
- reports, if any, from Corrective Services NSW “as to the extent to which the offender can reasonably and practicably be managed in the community” (sections 9(3)(d1) and 17(3)(d1)); and
- whether the offender has participated in any treatment or rehabilitation programs, “the willingness of the offender to participate in any such programs, and the level of the offender’s participation in any such programs” (sections 9(3)(e) and 17(3)(e)).

Section 10 of the Act provides that the maximum length of a supervision order is to be five years, while section 18 contains the same requirement in relation to orders for the continuing detention of an offender. The Supreme Court is able to make “second or subsequent” orders against the same offender upon the expiration of the initial order (sections 10(3) and 18(3)).

In May 2009, the Sentencing Council published [Volume Three](#) of its report on its review of [Penalties Relating to Sexual Assault Offences in New South Wales](#) (also available from the Library in hard copy – see [catalogue](#)). Volume Three of the report considered the justification for and operation of the *Crimes (Serious Sex Offenders) Act 2006* (see for example Chapter 1 and Chapter 9, also see pp 244-254 for a table outlining the cases in which orders under the Act had either been made or sought prior to April 2009).

A [Statutory Review](#) of the Act was published by the NSW Attorney General’s Department in November 2010.

The Act was amended in 2010 to adopt aspects of the recommendations from both of these reports. See [Crimes \(Serious Sex Offenders\) Amendment Bill 2010](#) the [Second Reading Speech](#) for the Bill.

The Second Reading Speech for the 2006 Bill can be accessed [here](#).

2. 2013 Bill

In his [Second Reading Speech](#), the Attorney General said of the 2013 Bill that:

We want serious violent offenders to undergo treatment, under extensive supervision, that assists them to reintegrate into the community and obey the law. This legislation

will help ensure that dangerous offenders who refuse to undertake rehabilitation during their sentence can be properly supervised in the community and detained if necessary.

The [Bill](#) amends the existing [Crimes \(Serious Sex Offenders\) Act 2006 \(NSW\)](#). The amendments it makes include:

- an extension of the Act so that it applies to offenders who have committed a “serious violence offence” as well as those who have committed a “serious sex offence”;
- the insertion of a definition of “serious violence offence”, in a new section, 5A (see Sch 1, Cl 5 of the Bill);
- a change in the definition of “sex offender” so that a person who committed a “serious sex offence” while still under the age of 18 can be subject to an order under the Act if they are over the age of 18 years when the order is sought (Sch 1, Cl 4);
- the insertion of a mirror definition of “violent offender” (Sch 1, Cl 4);
- a change in the name of the Act from the “*Crimes (Serious Sex Offenders) Act*” to the *Crimes (High Risk Offenders) Act*;
- a change in the terminology throughout the Act to reflect this change of the name; and
- the replacement of a requirement that the 2010 amendments be reviewed within 3 years of their assent with a provision requiring a review of the Act to be undertaken within three years of the assent of the 2013 Bill.

The definition of “serious sex offence” in section 5 of the Act will remain unchanged.

The amendments also include some redrafting of the provisions relating to the making of the relevant orders by the Supreme Court. However, these appear to be changes of form rather than substance. As the Attorney General explained in his [Second Reading Speech](#):

Item [6] of schedule 1 provides for the extension of the principal Act to high-risk violent offenders. Under the provisions of the bill an extended supervision order or continuing detention order can be made by the Supreme Court in respect of a high-risk violent offender. An order can be made against a violent offender if the Supreme Court is satisfied to a high degree of probability that the person poses an unacceptable risk of committing a serious violence offence if not kept under supervision. This test replicates the existing test of risk now applied by the Supreme Court for serious sex offenders. In coming to this decision the court must take into account the same listed factors currently taken into account in assessing an application for a serious sex offender order, as relevant. If, having considered all relevant matters, the court considers that the offender is a high-risk violent offender, it may make an extended supervision order. If the court is further satisfied that the offender cannot be adequately supervised under an extended supervision order, the court may make a continuing detention order. The maximum duration of either order is five years.

Further to this, the Attorney General added:

Items [7] to [35] of schedule 1 remake the provisions of the principal Act with respect to the making and determination of applications and the variation and revocation of orders. The procedures that presently apply to applications and orders for serious sex offenders will remain essentially unchanged and will now also apply to high-risk violent offenders. Additional measures include items [19] and [35], which require the Commissioner of Corrective Services to report annually to the Attorney General on whether he or she considers that an extended supervision or continuing detention order remains necessary. Further, items [18] and [34] clarify that the Supreme Court may revoke an extended supervision or continuing detention order if satisfied that circumstances have changed so as to render the order unnecessary.

A further amendment contained in the Bill is the inclusion of a provision requiring that offenders convicted of a serious violence offence be warned about the application of the Act. In his [Second Reading Speech](#), the Attorney General said of this provision that:

Item [37] of schedule 1 requires a court to warn a person who is sentenced for a serious violence offence of the application of the Act. Offenders who meet the definition of a violent offender under the Act will be on notice from the earliest possible opportunity that an order may be sought against them at the end of their sentence if they pose a high risk of serious violent reoffending. Offenders will therefore know that there may be implications for refusing to participate in programs that address their offending behaviour. This is in keeping with the principal Act's objective of encouraging high-risk offenders to undertake rehabilitation. The issuing of a warning under section 25C does not place any obligation on Corrective Services NSW to deal with the offender in a particular way. It will be a matter for Corrective Services to assess each offender and determine how best to address his or her rehabilitative needs. However, the opportunities given to and taken by an offender to participate in rehabilitation programs will be relevant to the Supreme Court in determining an application for an extended supervision or continuing detention order.

It seems that no similar warning is required for those being sentenced for serious sex offences.

In his [Second Reading Speech](#) the Attorney General further said that:

The high-risk violent offender scheme will apply to sentences imposed and offences committed before its commencement. This is consistent with the serious sex offender scheme, which also applied retrospectively in this way.

These amendments to the [Crimes \(Serious Sex Offenders\) Act 2006 \(NSW\)](#) were initially proposed by the Attorney General in September last year (see this [media release](#)).

3. NSW Sentencing Council review

In his Second Reading Speech for the Bill, the Attorney General noted:

The New South Wales Sentencing Council in its report on high risk violent offenders noted that there is a gap in the New South Wales legislative framework for dealing with high-risk violent offenders. This bill closes that gap by expanding the scheme in place for sex offenders that has been tested in the High Court.

The Sentencing Council Report, entitled High Risk Violent Offenders: Sentencing and Post-Custody Management Options was published in May 2012.

The following documents are available from this [webpage](#) on the Sentencing Council's website:

- [Terms of Reference](#);
- [Consultation Paper](#);
- [submissions](#); and
- [Final Report - High Risk Violent Offenders: Sentencing and Post-Custody Management Options](#).

The Final Report makes seven recommendations. **Recommendation 4** is that:

The Government should introduce a continuing detention and extended supervision scheme for high-risk violent offenders, subject to the safeguards and support structures outlined in this report.

However, the Final Report states:

An important factor in determining whether or not an additional [Sentencing or Post-Custody Management Option] for [High Risk Violent Offenders] is desirable in NSW is whether a gap now exists.

There is not a consensus amongst Council Members in relation to whether or not any gap exists which requires the introduction of a [Sentencing or Post-Custody Management Option].

The Council's research and consultation process has not given rise to any demonstrable failure of the current framework, as outlined in Chapter 3, which requires reform by way of legislative response.

A number of the stakeholders who provided written submissions considered that the existing legislative framework in NSW is sufficiently equipped to deal with this group of offenders, whose numbers are unlikely to be large.

A majority of the Council, however, considered that there is a gap that might justify an additional [Sentencing or Post-Custody Management Option] (p 124).

The Final Report goes on to summarise the divergence of views amongst the Sentencing Council as follows:

Council Members who considered that there is a need for a new [Sentencing or Post-Custody Management Option], were of the view that:

- NSW does not currently have an adequate legislative response to [High Risk Violent Offenders]; and
- an additional [Sentencing or Post-Custody Management Option] is necessary to protect the community.

A minority, on the other hand, considered that there is not a gap, and that:

- the identification of the relevant cohort in Chapter 2 [reference is provided to Table 1 of the Report] and the number of people captured by legislation to manage [High Risk Violent Offenders] in other jurisdictions [reference to Table 2 of the Report], suggests that any scheme based on risk-assessment rather than on offences committed can lead to inconsistent consequences; and that

- there is no discernible failure of the existing system, which justifies the introduction of a [Sentencing or Post-Custody Management Option], particularly where the legal basis for such an option falls outside traditional sentencing principles (p 125).

a. Models for addressing risks posed by violent offenders at risk of reoffending

The continuing supervision or detention model of what is referred to throughout the Final Report as a “Sentencing or Post-Custody Management Option” for “High Risk Violent Offenders” is just one form that such an option may take. Other models, including those in place in other jurisdictions are discussed in Chapter 4 of the Report.

In Chapter 5, from pp 131-141, the Sentencing Council summarises five potential options for a High Risk Violent Offender scheme. These are:

Option 1: Introduce a continuing detention and/or extended supervision scheme for High Risk Violent Offenders.

Option 2: Introduce an indefinite detention scheme for High Risk Violent Offenders.

Option 3: Introduce a scheme permitting the imposition of a disproportionate sentencing regime for High Risk Violent Offenders.

Option 4: Introduce a scheme based on the lifelong restriction model that exists in Scotland.

Option 5: Introduce a scheme for prohibition or control orders for High Risk Violent Offenders.

For further information regarding each of these potential options, see the relevant pages of Chapter 5.

The Sentencing Council’s preferred option was option 1, which it was suggested could be modelled along the lines of the [Crimes \(Serious Sex Offenders\) Act 2006 \(NSW\)](#) (see p 132).

However, this option was preferred only by a majority of those members of the Council “who voted”:

In addition to a lack of unanimity amongst Council Members in relation to whether or not an additional [Sentencing or Post-Custody Management Option] should be introduced in NSW, there was also a lack of unanimity in relation to the nature that any such option should take.

A majority of Council Members, who voted, considered that a post-custody management scheme is preferable to an indefinite sentencing option. These Council Members considered that:

- the risk that an offender poses to the community cannot be accurately identified at the time of sentencing of the offender, which may be many years before release, and prior to any engagement in rehabilitation or treatment programs. Rather, the risk that an offender poses to the community is much more accurately identifiable at a time proximate to the release of an the offender;

- because of the fact that any risk assessment done towards the end of an offender's sentence is likely to be more accurate, this also makes it more likely that such a scheme would only apply to a very small cohort who present a high-risk of serious violent re-offending immediately prior to their release; and
- it is unsatisfactory that NSW alone, of the Australian States and Territories, does not have any clear legislative mechanism to deal with [High Risk Violent Offenders] (p 141).

The Final Report goes on to explain why a majority of members selected this option in preference to an indefinite sentencing option. It then outlines the views of those members of the Council who were in favour of an indefinite sentencing model for a Sentencing or Post-Custody Management Option (see pp 141-142).

b. Identifying relevant cohort and conducting risk assessments

Chapter 2 of the Sentencing Council's Final Report provides an outline of the complexities that are associated with firstly identifying which offenders should be subject to a risk assessment to determine whether or not they "present a high risk of dangerousness to the community", and also how such a risk assessment is to be carried out/what it would entail (p 7).

The Sentencing Council's **Recommendation 1** was as follows:

Any sentencing or post-custody management option should apply a two stage process to defining high-risk violent offenders, defining them as offenders who:

- (a) are convicted of a serious indictable offence that involves the use of, attempted use of, or shows a propensity towards, serious interpersonal violence; and
- (b) have been assessed as presenting a high risk of violent re-offending in accordance with the most accurate risk-assessment tools available at the time of assessment, in conjunction with an individual case-by-case clinical assessment.

Whether or not it is possible to predict their likelihood a violent offender to reoffend appears to be a fraught question (see below at section 7 of this Issues Backgrounder for some further information on this issue).

c. Habitual Criminals Act

Recommendation 6 of the Sentencing Council's final report was that the [*Habitual Criminals Act 1957 \(NSW\)*](#) be repealed. The *Habitual Criminals Act* provides that the Supreme or District Courts may make an order that a person is a "habitual criminal" and sentence them to an additional sentence of between five and 14 years imprisonment (sections 4 and 6). This additional sentence is to be served concurrently with any sentence that the person is already serving (section 6(2)).

To be declared a "habitual criminal" a person must be:

- over the age of 25;
- convicted on indictment; and
- on at least two previous occasions "served separate terms of imprisonment as a consequence of convictions of indictable offences, not being indictable offences that were dealt with summarily without his consent"

The Judge making the order must be “satisfied that it is expedient with a view to such person’s reformation or the prevention of crime that such person should be detained in prison for a substantial time” (section 6(1)).

The Sentencing Council noted that the *Habitual Criminals Act* might apply to “High-Risk Violent Offenders.” However it also noted that the Act has been rarely used in recent decades and stakeholders that had made submissions to the High Risk Violent Offenders Review “did not support the retention of the legislation” (see pp 41-44).

The NSW Law Reform Commission has also previously recommended the repeal of this Act in its [Report 79: Sentencing](#) (1996). See in particular, recommendation 52 and [Chapter 10: Protective Sentences](#) (at paragraphs [10.10]-[10.20]).

The *Habitual Criminals Act* remains in force and will not be repealed by the 2013 Bill.

d. Other recommendations

The Sentencing Council made additional recommendations regarding:

- the introduction of legislation requiring State agencies to cooperate with each other to provide appropriate services to high risk violent offenders and serious sex offenders subject to community supervision orders (recommendation 3(a));
- the establishment of an independent risk management body “to facilitate and regulate best-practice in relation to risk assessment and risk-management” (recommendation 3(b));
- improvements to treatment programs for offenders in custody (recommendation 5 – see below at section 8 for some further information about treatment programs); and
- the amendment of the *Crimes (Sentencing Procedure) Act 1999* (NSW) to allow for the setting of non-parole periods where a life sentence is imposed, but not for “whole of life sentences” (recommendation 7).

For discussion of these additional recommendations, see pp 129-131 and 142-154 of the Final Report.

4. Other relevant aspects of the New South Wales system

Chapter 3 of the NSW Sentencing Council’s [Final Report - High Risk Violent Offenders: Sentencing and Post-Custody Management Options](#) is entitled “The current NSW model for managing [High Risk Violent Offenders].”

In addition to explaining the [Crimes \(Serious Sex Offenders\) Act 2006 \(NSW\)](#), as it currently operates, Chapter 3 contains information about:

- Natural life sentences, which are available in certain circumstances (see pp 35-41);
- Disproportionate sentencing – section 115 of the [Crimes Act 1900 \(NSW\)](#) (see p 44);

- Protection or prohibition orders (eg apprehended domestic violence orders) (see pp 45-48);
- Sentencing of offenders with a mental health or cognitive impairment (see pp 48-57);
- In-custody treatment of violent offenders (see pp 57-64).

5. Previous violent offenders legislation in New South Wales

There have been previous, unsuccessful, attempts to implement legislation providing for the preventive detention of violent offender in NSW.

Community Protection Act 1994 (NSW)

When the Bill that ultimately became the [Community Protection Act 1994 \(NSW\)](#) was initially introduced, its stated objective was:

. . . to protect the community by providing for the preventive detention (by order of the Supreme Court made on the application of the Attorney General) of persons who are, in the opinion of the Supreme Court, more likely than not to commit serious acts of violence (First Print, Community Protection Bill 1994, clause 3(1)).

The First Print Bill further stated:

In the construction of this Act, the need to protect the community from such persons is to be given paramount consideration (First Print, Community Protection Bill 1994, clause 3(2)).

In its First Print, the Bill would have given the Supreme Court the power to make preventive detention orders in relation to an individual if it was satisfied that they were "more likely than not to commit a serious act of violence" and also that "it was appropriate for the protection of a particular person or the community generally that the person be held in custody" (First Print, Community Protection Bill 1994, clauses 5(1)(a) and (b) (not digitised)). The minimum period that could be specified in a preventive detention order was 6 months while the maximum was 24 months (First Print, Community Protection Bill 1994, clause 5(2)).

In his [second reading speech](#) for the Bill, as it initially stood, the then Attorney General stated that:

. . . the law does not presently provide a mechanism whereby the community can be protected from a potentially violent individual, who is not mentally ill for the purposes of the mental health legislation, and who has not committed a serious offence of violence. Those who come within the definition of "mental illness" in the Mental Health Act 1990 may be involuntarily detained pursuant to that Act. Those who have been charged with the commission of a serious offence of violence are subject to the provisions of the Bail Act 1978, which may authorise the detention of an accused for the protection and welfare of the community. If ultimately a conviction is recorded, such an accused is subject to the imposition of a term of imprisonment by way of penalty.

This bill addresses that inadequacy by providing for a mechanism whereby persons who are more likely than not to commit serious acts of violence may be detained when it is appropriate to do so for the protection of the community. It is the need to protect the community which is the paramount consideration of this bill (see pp 4790-4791).

The then Opposition opposed the Bill, and a number of amendments were made to it before it passed Parliament (see the debate in the Legislative Council on [15 November 1994](#), [later that day](#) and [16 November 1994](#), and also in the Legislative Assembly on [23 November 1994](#) and [2 December 1994](#)). These amendments included that it would be the Director of Public Prosecutions who would apply for the preventive detention order, and, significantly, instead of being a law of general application, the provisions of the Act would relate to one named individual, Mr Gregory Wayne Kable (see section 3(1) of the [Community Protection Act 1994 \(NSW\)](#)).

In the 1995 decision of *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51 [\[1996\] HCA 24](#), the High Court found that the [Community Protection Act 1994 \(NSW\)](#) was constitutionally invalid. Although the principles set down by the High Court in the *Kable* case have proved to be far-reaching, it appears that one of the main concerns of the Court in relation to this particular Act was what it referred to as its "ad hominem" nature, or the fact that it specifically referred to Mr Kable and was not a law of general application. The validity of the [Dangerous Prisoners \(Sexual Offenders\) Act 2003 \(Qld\)](#) (which is similar to the [Crimes \(Serious Sex Offenders\) Act 2006 \(NSW\)](#)) was subsequently upheld by the High Court in *Fardon v Attorney General (Qld)* (2004) 223 CLR 575 [\[2004\] HCA 46](#), suggesting that laws providing for preventive detention are not constitutionally invalid per se. However, it should be noted that since the decision in *Fardon*, the High Court has shown renewed interest in the development of the *Kable* principle (see for example *South Australia v Totani* (2010) 242 CLR 1, [\[2010\] HCA 39](#) and *Wainohu v New South Wales* (2011) 243 CLR 181, [\[2011\] HCA 24](#)). It is possible to speculate that the limits of the principle have yet to be fully determined.

Community Protection (Dangerous Offenders) Bills

On two occasions, Mr Michael Richardson, MP, introduced a Private Members' Bill, which lapsed both times (the 1999 Bill can be accessed [here](#)). Owing to what Mr Richardson considered were the complications created by the *Kable* decision, his Bill did not provide for the preventive detention of violent offenders. Rather, it provided that the Director of Public Prosecutions could make an application to the Supreme Court to classify a person as a "dangerous offender" (cl 4(1)). Such an application could only be made in relation to a person who had been convicted of a serious violent offence (cl 4(2)). The effect of such a classification was that it rendered it an offence for the person so classified to contact or approach a "protected person" (c 7). In accordance with cl 8 of the Bill, the Attorney General was to keep a register of protected persons. Persons who had grounds to fear a particular classified person could be entered upon the register.

Mr Richardson's second reading speech for the 1999 Bill is available [here](#), while his second reading speech for the 1996 Bill is [here](#).

6. Arguments for and against preventive detention

There is a considerable body of academic literature on the subject of preventive detention. As noted at the outset, this Issues Backgrounder does not attempt to encompass all of the information that is available on this subject, including that which relates to arguments for and against the employment of models of preventive detention.

For a summary of the arguments for and against preventive detention, see [Volume Three](#) (2009) of the NSW Sentencing Council report on its review of [Penalties Relating to Sexual Assault Offences in New South Wales](#), at pp 9-18.

7. Predicting whether violent offenders will reoffend

As may be seen from the above outline of the [Crimes \(Serious Sex Offenders\) Act 2006 \(NSW\)](#), the matters that must be taken into account by the Supreme Court when making orders in accordance with it include:

- the results of an assessment performed by a “qualified psychiatrist”, “registered psychologist” or “registered medical practitioner” regarding “the likelihood of the offender committing a further serious sex offence, the willingness of the offender to participate in any such assessment, and the level of the offender’s participation in any such assessment (sections 9(3)(c) and 17(3)(c));
- results “of any statistical or other assessment as to the likelihood of persons with histories and characteristics similar to those of the offender committing a further serious sex offence” (sections 9(3)(d) and 17(3)(d);

The 2013 Bill does not alter the substance of these provisions.

In his Second Reading Speech the Attorney General referred to the following passage by the academics Patrick Keyzer and Bernadette McSherry:

The main challenge for policy makers is to find a midway point between assuming that all people in a certain group (sex offenders, suspected terrorists, young offenders and so on) are dangerous in the sense that they are a probability of harming others and assuming that no one, even those who have declared their intentions of committing crimes, are a danger to others (see McSherry, B and Keyzer P (eds), *Dangerous People: Policy, Prediction and Practice* (Routledge, 2011) at p 5 ([catalogue record](#))).

McSherry and Keyzer add to the comment extracted above that:

In its current iteration, risk assessment involves the consideration of risk factors, harm, and likelihood. It combines both actuarial and clinical approaches to form what has been termed *structured professional judgment* . . . (authors’ own italics).

In its 2007 Report, [High-Risk Offenders: Post-Sentence Supervision and Detention](#) (see below at section 11), the Victorian Sentencing Advisory Council considered that:

A defensible continuing detention scheme depends on the accurate and reliable assessment of an individual’s risk of reoffending. But risk assessment is notoriously difficult. Even for clinicians who have substantial experience in the prediction of risk for sex offenders, the best calibrated actuarial assessments will always be subject to the problem of ‘false positives’, where predictions of future offending are not fulfilled.

The issue of potentially incorrect predictions of risk is especially significant in the context of a continuing detention scheme. In the absence of a high degree of certainty in predictions of future offending, a scheme that detains offenders beyond the end of their sentence may be unjustified. Indeed, it has been suggested that continuing detention schemes are premised on the false assumption that individuals posing a serious danger to the community can be accurately identified (p 12).

In their 2006 paper "[Preventive Detention for 'Dangerous' Offenders in Australia: A Critical Analysis and Proposals for Policy Development](#)", McSherry, Keyzer and Freiberg said that:

Preventive detention schemes rely on assessments of risk. While mental health professionals who give evidence in court about offenders' risk are often cross-examined, there is some question about whether such evidence should be admitted at all (Ruschena 2003). These assessments of risk tend to be taken out of their primary context, which is one of treatment and intervention (Ruschena 2003: 127-128). There is also the potential for judges and juries to misunderstand and misuse risk assessments, assigning greater accuracy and inevitability to predicted behaviours than is warranted (Johnson 2005). In addition there are issues as to what level of risk (low/medium/high) should be required by such schemes and what level of offending the risk should relate to (any offending/serious offending/serious 'relevant' offending).

As well as having difficulties with accuracy, predictions of risk may be seen as providing a veil of science over what is essentially a social and moral decision about the kind of offender who creates the greatest fear within the community. Asking mental health professionals to assess the risk of future harm shifts the burden of deciding what to do with such offenders from the community to clinicians whose primary role lies within the medical model of treatment, rather than within the criminal justice model of punishment and community protection (p 14).

There appears to be some dispute regarding whether or not available assessment tools are capable of predicting an offender's propensity to reoffend with sufficient accuracy.

In its [Final Report - High Risk Violent Offenders: Sentencing and Post-Custody Management Options](#), the NSW Sentencing Council noted that "there are strong opponents to the use of risk assessment in sentencing."

The Sentencing Council recognised that "[i]t is clear that there are individuals who will present a real risk to public safety if released out into the community without supervision", however, it added:

Despite this, it must be accepted that no system of risk assessment and management will ever prevent 100% of violent recidivism. A system of preventive detention, in particular, does not reduce recidivism if predictions of risk are not infallible, because any offender who is incorrectly assessed as not dangerous will be at large in the community.

Predicting violent re-offending is particularly difficult because of the . . . diversity amongst [High Risk Violent Offenders], and because [High Risk Violent Offenders] are not generally specialists – they engage in violent behaviour as part of a broader criminal career.

. . .

A further important limitation of risk assessment tools is that they are developed by studying the characteristics of particular samples of individuals. There is no guarantee that those characteristics are common across other samples. As Ogloff and Davis point out, assessment instruments should be validated in each population and sample in which it is intended that they will be used (pp 24-25).

Some submissions made to the Sentencing Council's High-Risk Violent Offenders Review directly address the issue of risk assessments. For example, in his [submission](#), the psychiatrist Dr Olav Nielsen states:

With regards assessment of risk of future violence, there are currently no methods that can predict the future violent conduct of an individual with sufficient accuracy to make a fair decision based on the results of that assessment (p 1).

On the other hand, in a work referred to by the NSW Sentencing Council (cited in full below), Ogloff and Davis stated:

Current research shows that second and third generation risk assessment approaches provide a level of accuracy that now far exceeds chance. While there is still room for improvement, it is not uncommon for research findings to show that when an individual is identified to be a high risk for violent offending, the probability is 80 per cent that the person will be violent in the future (p 314).

Some of the chapters in *Dangerous People* (Keyzer and McSherry eds, referred to above) contain information about the kinds of risk assessment tools that are available and how they are applied, for example:

Chapter 11 by Johnstone, L, "[Assessing and Managing Violent Youth: Implications for Sentencing](#)", pp 123-145; and

Chapter 12 by Cooke, D and Mitchie, C, "[Violence Risk Assessment: Challenging the Illusion of Certainty](#)", pp 147-161 (*need to fix links*).

Some of the articles referred to in section 15 of this Issues Backgrounder may also be of assistance in relation to this issue, including the following, which were cited by the Sentencing Council:

Hanson, K, Morton-Bourgon K, "The Accuracy of Recidivism Risk Assessments for Sexual Offenders: A Meta-Analysis of 118 Prediction Studies" (2009) 21(1) *Psychological Assessment* pp 1-21 (available from the Ebsco database, which can be accessed [here](#)).

Ogloff, J R P and Davis, M R, "Assessing Risk for Violence in the Australian Context" in Chappell D and Wilson P (eds) *Issues in Crime and the Criminal Justice System* (LexisNexis Butterworths, 2005) pp 301-338 ([catalogue record](#)).

Sreenivasan, S, Frances, A and Weinberger L, "[Normative versus consequential ethics in sexually violent predator laws: an ethics conundrum for psychiatry](#)" (2010) 38(3) *The Journal of the American Academy of Psychiatry and the Law* 386-391.

See also Chapter 4 of [Volume Three](#) of the NSW Sentencing Council's report on its review of [Penalties Relating to Sexual Assault Offences in New South Wales](#), which examines risk assessment in the context of sexual offenders, and its use in NSW (note that this report was published in 2009 and may or may not refer to practices that are still current).

This "[Compendium of Assessments Used](#)" provides an overview of the kinds of assessment tools currently used by Corrective Services NSW. Further information about assessments used by Corrective Services is available on this [webpage](#).

8. Rehabilitation and treatment of offenders

Rehabilitation and treatment of offenders is important in this context for two reasons.

The first is the cost of keeping a person in custody.

The 2013 Productivity Commission Report on Government Services indicated that:

Reported recurrent expenditure on prisons and periodic detention centres, net of operating revenues and excluding payroll tax and expenditure on transport/escort, totalled \$2.4 billion nationally in 2011-12. The equivalent figure for community corrections was \$0.5 billion ([Chapter 8](#), pp 8.3-8.4).

Although the numbers of people in prison in NSW declined in 2011-12, NSW still had the largest daily average number of people in custody of any Australian State or Territory (see NSW Government Response, [Chapter 8](#), p 8.37).

The second reason is that observed by the NSW Sentencing Council in [Volume Three](#) of its review of [Penalties Relating to Sexual Assault Offences in New South Wales](#), in the context of programs for those convicted of sex offences:

Their availability and effectiveness are important considerations so far as the objective and possibility (or lack thereof) of rehabilitation underpins the justification of preventive detention (p 90).

This [Compendium of Correctional Programs in NSW](#), published in November 2012, provides information about the types of programs used by Corrective Services NSW, including the Violent Offenders Therapeutic Program (VOTP).

In its [Final Report - High Risk Violent Offenders: Sentencing and Post-Custody Management Options](#), the NSW Sentencing Council made the following recommendation in relation to treatment programs for violent offenders:

Recommendation 5

- a) An independent review of VOTP should be conducted to assess whether it effectively targets the diverse therapeutic needs of HRVOs, and whether it is sufficiently accessible to those who may benefit from it, and if not, how it should be reformed or what other programs or resources should be introduced in order for therapeutic needs of HRVOs to be met.
- b) In-custody treatment programs for HRVOs should be expanded to cater for all HRVOs, including women and offenders with mental or cognitive impairments.
- c) BOCSAR should review and monitor the grant of parole to gauge trends in relation to parole eligibility and post-release

It is unclear whether such a review of VOTP has been undertaken.

For some further information about programs for offenders, see pp 57-64 of the [Final Report - High Risk Violent Offenders: Sentencing and Post-Custody Management Options](#) and the [Corrective Services NSW](#) section of the [2011-12 Annual Report of the Department of Attorney General and Justice](#).

Also see these Corrective Services NSW webpages:

- [Offender Services and Programs](#)
- [Sex and Violent Offenders Therapeutic Programs](#)

9. Preventive detention and the International Covenant on Civil and Political Rights

Two men detained in accordance with the [Dangerous Prisoners \(Sexual Offenders\) Act 2003 \(Qld\)](#) (Robert Fardon, who had previously challenged the validity of the Act in the *Fardon* case referred to above) and the [Crimes \(Serious Sex Offenders\) Act 2006 \(NSW\)](#) (Kenneth Tillman) complained to the United Nations Human Rights Committee regarding their confinement under these regimes.

In 2010, the Committee issued views in both matters indicating that the continued detention of both men breached Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR).

The ICCPR was [signed by Australia in 1972 and ratified in 1980](#). Article 9(1) of the ICCPR provides:

Article 9(1) - Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

The views of the Committee regarding the complaint of Tillman can be accessed [here](#), while the views in the matter of Fardon are available [here](#).

On the subject of the necessity of the continued detention of Tillman due to the fact that he was considered a danger to the community, the Committee stated:

The concept of feared or predicted dangerousness to the community applicable in the case of past offenders is inherently problematic. It is essentially based on opinion as distinct from factual evidence, even if that evidence consists in the opinion of psychiatric experts. But psychiatry is not an exact science. The [*Crimes (Serious Sex Offenders) Act*] on the one hand, requires the Court to have regard to the opinion of psychiatric experts on the future dangerousness, but on the other hand, requires the Court to make a finding of fact of dangerousness. While Courts are free to accept or reject expert opinion and are required to consider all other available relevant evidence, the reality is that the Courts must make a finding of fact on the suspected future behaviour of a past offender which may or may not materialise. To avoid arbitrariness, in these circumstances, the State party should have demonstrated that the [complainants] rehabilitation could not have been achieved by means less intrusive than continued imprisonment or even detention, particularly as the State party had a continuing obligation under article 10, paragraph 3, of the Covenant to adopt meaningful measures for the reformation, if indeed it was needed, of [Tillman] throughout the 10 years during which he was in prison (p 11).

The Australian Government's response to the findings of the Human Rights Committee in Tillman and Fardon can be accessed [here](#). On the subject of the availability of less restrictive means of rehabilitation it states:

While rehabilitation of the offenders is integral to the legislative schemes, protection of the community is also of central importance as a purpose of these schemes, and it was assessed by the Supreme Courts of New South Wales and Queensland at the time that continuing detention orders were imposed on Mr Tillman and Mr Fardon as not being able to be achieved through less restrictive means. Under the CSSOA [*Crimes Serious Sex Offenders Act* 2006] and DPSOA [*Dangerous Prisoners (Sexual Offenders Act)* 2003], the New South Wales and Queensland Supreme Courts each have a duty to consider less restrictive means of achieving the purposes of the legislative schemes before imposing continuing detention orders. Under the CSSOA,

a continuing detention order may only be imposed by the New South Wales Supreme Court where it has been determined that adequate supervision of the offender will not be provided by an extended supervision order. Under the DPSOA, the Queensland Supreme Court must decide whether adequate protection of the community can be reasonably and practically managed by a supervision order before imposing a continuing detention order. Therefore, both the New South Wales Supreme Court and the Queensland Supreme Court were actively required to consider less restrictive options when imposing a period of preventive detention on [Tillman and Fardon]. Therefore, Australia rejects the factual finding of the Committee that Australia did not demonstrate that no less restrictive means were available to meet the objectives of the relevant legislative schemes.

Requirement to rehabilitate

In relation to rehabilitation, Australia maintains that meaningful measures for reformation and social rehabilitation were in place throughout the incarceration of Mr Tillman and Mr Fardon, but that they failed to avail themselves of these measures by refusing to attend rehabilitation programs while incarcerated. In *Dean v New Zealand*, the Committee held that where the author chose not to attend certain rehabilitation programs, the delay of the author's release from preventive detention that was caused by his decision not to attend rehabilitation programs did not amount to a violation of article 10(3). In addition, each of the legislative schemes Mr Tillman and Mr Fardon were detained under require an assessment of an offender's risk of recidivism after they have served their term of imprisonment. Therefore, one of the overall purposes of preventive detention in these cases was to facilitate rehabilitation of the offenders (pp 4-5, *footnotes omitted*).

For further information regarding Tillman and Fardon and the views of the Human Rights Committee, see:

McSherry, B, "[The preventive detention of 'dangerous people'](#)" (2012) 112 *Precedent* pp 4-8.

McSherry, B, "[Preventive Detention of Sex Offenders: Recent Trends](#)" paper presented at the Professional Legal Education Seminar, Victoria Legal Aid, Lionel Murphy Centre, 14 July 2010.

Sifris, R, "An International Human Rights Perspective on Detention Without Charge or Trial: Article 9 of the International Covenant on Civil and Political Rights", in McSherry, B and Keyzer P (eds), *Dangerous People: Policy, Prediction and Practice* (Routledge, 2011), pp 13-23 ([catalogue record](#)).

McSherry, B and Keyzer, P, *Sex Offenders and Preventive Detention* (The Federation Press, 2009) ([catalogue record](#)).

NSW Bar Association, InBrief, 21 April 2010, online [here](#).

10. Legislation making provision for the detention/supervision of sexual offenders in other States and Territories

Other jurisdictions have legislation that is similar, although not identical, to the [Crimes \(Serious Sex Offenders\) Act 2006 \(NSW\)](#).

The 2013 Bill is unique in that it extends the coverage of this kind of legislation to violent offenders. The Acts referred to below currently relate only to sexual offenders.

However, it should be noted that other Australian jurisdictions may have other options for the sentencing of violent offenders that are not currently available in NSW (see section 12 for some brief information regarding such other schemes and links to further information).

Links to the relevant sexual offenders legislation are provided in the table below:

Jurisdiction	Legislation title	Second Reading Speech
Queensland	<u><i>Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)</i></u>	<u>Second Reading Speech</u> (from p 2484)
Western Australia	<u><i>Dangerous Sexual Offenders Act 2006 (WA)</i></u>	<u>Second Reading Speech</u>
Victoria	<u><i>Serious Sex Offenders (Detention and Supervision Act) 2009 (Vic)</i></u>	<u>Second Reading Speech</u>
Northern Territory	<u>Serious Sex Offenders Bill 2013</u> <i>(introduced on 14 February 2013, not passed as at 26 February)</i>	<u>Second Reading Speech</u>

Note that the links provided here are to the current versions of each Act. With the exception of the Northern Territory Bill, which is yet to pass, these Acts have all been subject to various amendments since they first commenced.

11. 2007 Victorian Sentencing Advisory Council review

In 2005, the Victorian Government enacted the *Serious Sex Offenders Monitoring Act 2005* (Vic), which provided for the extended supervision of sex offenders, but not for continued detention (*although such a scheme was subsequently enacted in 2009 - see table above for link to the relevant Act*).

In 2006, the then Victorian Attorney General asked the Victorian Sentencing Advisory Council to advise him in relation to “the merit of introducing a scheme that would allow for the continued detention of offenders”.

In the preface to its final report on this reference, [High-Risk Offenders: Post-Sentence Supervision and Detention](#), published in 2007, the Sentencing Advisory Council noted that the members of the Council were divided on the question of whether or not such a scheme should be implemented:

A narrow majority of the Council has concluded that regardless of how carefully a continuing detention scheme is to be structured, the inherent dangers involved outweigh its potential benefits. This view particularly takes into account the existence of less extreme approaches to achieving community protection, such as extended supervision. Members of the Council taking this position were concerned about the

inability of clinicians accurately to predict risk, the potential of such schemes to limit human rights and due process unjustifiably, the lack of evidence to support claims that continuing detention will reduce overall risks to the community, and the availability of other, more cost-effective means of reducing risk (p x).

The view of the other members of the Council were summarised as follows:

However, a significant minority of the Council was of the view that a continuing detention scheme should be introduced in Victoria to deal with the 'critical few' offenders who pose a serious risk to the safety of community members. These Council members believe such a scheme can be crafted to ensure that the competing rights and interests of offenders and of the broader community are balanced appropriately and orders made only in the most compelling cases (p X).

Despite the majority views, the final report makes a number of recommendations as to the possible structure of a continuing detention scheme for sex offenders at risk of reoffending, as this is what its terms of reference had asked it to do (p xii).

In addition to their final report, and this [summary](#) of it, the Sentencing Advisory Council produced a range of publications in connection with this reference:

- [High-Risk Offenders: Continued Detention and Supervision Options Community Issues Paper](#)
- [High-Risk Offenders: Post-Sentence Supervision and Detention Discussion and Options Paper](#)
- [High-Risk Offenders: Post-Sentence Supervision and Detention Discussion and Options Paper Summary](#)
- [Recidivism of Sex Offenders Research Paper](#)

It is noted that these papers primarily address issues relating to the continued detention of sex offenders, rather than violent offenders. However, the material contained in the papers also refers frequently to violent offenders (see for example the [Recidivism of Sex Offenders Research Paper](#)). On this distinction it is worth noting the following comment made by the Sentencing Advisory Council in its final report:

In this report a distinction is made between sexual and violent offences. The Council acknowledges that sexual offences in their nature are violent. In this report, we refer to offences that have a sexual element as 'sexual offences'. Non-sexual violent offences are referred to as 'violent offences' (p 3).

12. Preventive schemes for violent offenders in other jurisdictions

As noted above, in its [Final Report - High Risk Violent Offenders: Sentencing and Post-Custody Management Options](#), the NSW Sentencing Council referred to other options for the sentencing of high risk violent offenders, additional to that of extended supervision or continuing detention.

Examples of these regimes include indefinite sentencing, which has been implemented in some form in most States and Territories, but only in a very limited form in NSW (see Sentencing Council, [Final Report - High Risk Violent Offenders:](#)

[Sentencing and Post-Custody Management Options](#) at p 67). The Sentencing Council's [Final Report - High Risk Violent Offenders: Sentencing and Post-Custody Management Options](#) describes indefinite sentencing as follows:

An indefinite sentence is a sentence of imprisonment, imposed at the time of sentencing, which has no specified end-point. This may be a life-sentence, but sentencing schemes of this kind usually provide for the indefinite detention of offenders who commit certain serious offences regardless of the maximum sentence otherwise available for the offence. Offenders who receive such sentences are however subject to the possibility of release following review at some future undefined time, that is after they have served what would otherwise have been an appropriate punitive sentence for the serious offence (p 67).

A further sentencing option for violent offenders considered by the NSW Sentencing Council was disproportional sentencing, which it described as follows:

Disproportionate sentencing schemes that apply to serious offenders or repeat offenders allow for the imposition of a determinate sentence of imprisonment that is longer than the term that would otherwise be proportionate to the gravity of the offence (see p 92).

For a more complete discussion of these options as they have been adopted by other jurisdictions, both Australian and international, see Chapters 4 and 5 of the Sentencing Council's Final Report on High Risk Violent Offenders, and also Chapter 5 of [Volume Three](#) of the Council's report on its review of [Penalties Relating to Sexual Assault Offences in New South Wales](#).

13. Stakeholder views

Many stakeholders made submissions to the Sentencing Council's review of options for High Risk Violent Offenders. The links below are taken from the [submissions](#) webpage on the Sentencing Council's website:

- [Community Relations Commission \[PDF, 190kb\]](#)
- [Justice Health \[PDF, 53kb\]](#)
- [NSW Legal Aid \[PDF, 28kb\]](#)
- [NSW Young Lawyers \[PDF, 246kb\]](#)
- [ODPP \[PDF, 18kb\]](#)
- [State Parole Authority \[PDF, 513kb\]](#)
- [NSW Ombudsman \[PDF, 1453kb\]](#)
- [Justice Action \[PDF, 200kb\]](#)
- [NSW Law Society \[PDF, 2585kb\]](#)
- [Family and Community Services \[PDF, 2231kb\]](#)
- [Family and Community Services Tab 1](#)
- [Family and Community Services Tab 2 \[PDF, 347kb\]](#)

- [Family and Community Services Tab 3](#)
- [Bar Association \[PDF, 223kb\]](#)
- [NSW Police Association \[PDF, 386kb\]](#)
- [NSW Police Force \[PDF, 484kb\]](#)
- [NSW RANZCP Letter \[PDF, 91kb\]](#)
- [NSW RANZCP Submission \[PDF, 53kb\]](#)
- [Dr Olav Nielssen Submission \[PDF, 232kb\]](#)
- [Dr Olav Nielssen Attachment 1 \[PDF, 45kb\]](#)
- [Dr Olav Nielssen Attachment 2 \[PDF, 92kb\]](#)
- [Dr Olav Nielssen Attachment 3 \[PDF, 109kb\]](#)
- [Dr Olav Nielssen Attachment 4 \[PDF, 109kb\]](#)
- [Public Defenders \[PDF, 116kb\]](#)
- [Chief Judge of the District Court of NSW \[PDF, 190kb\]](#)
- [Serious Offenders Review Council](#)

14. Selected books

Howard, D and Westmore, B, *Crime and Mental Law in New South Wales: A Practical Guide for Lawyers and Health Care Professionals* (LexisNexis Butterworths, 2nd ed, 2010), see in particular Chapter 11 – Risk: Assessment, Management and Applicable Legal Principles, pp 464-519 ([catalogue record](#)).

Chappell, D and Wilson, P, *Issues in Australian Criminal Justice* (LexisNexis Butterworths, 2005), see pp 154-156 for material on indefinite and extended sentences ([catalogue record](#)).

Hayes, R and Eburn, M, *Criminal Law and Procedure in New South Wales* (LexisNexis Butterworths, 3rd ed, 2009) ([catalogue record](#)).

Maguire, M, Morgan, R and Reiner, R (eds), *The Oxford Handbook of Criminology* (Oxford University Press, 5th ed, 2012) ([catalogue record](#)).

McSherry, B and Keyzer, P, *Sex Offenders and Preventive Detention* (The Federation Press, 2009) ([catalogue record](#)).

McSherry, B and Keyzer P (eds), *Dangerous People: Policy, Prediction and Practice* (Routledge, 2011) ([catalogue record](#)).

See also:

Chapter 11 by Johnstone, L, "[Assessing and Managing Violent Youth: Implications for Sentencing](#)", *Dangerous People* pp 123-145; and

Chapter 12 by Cooke, D and Mitchie, C, "[Violence Risk Assessment: Challenging the Illusion of Certainty](#)", *Dangerous People* pp 147-161.

15. Selected articles, papers and research reports

Where direct links have not been provided below, the articles can be accessed via databases available on the Library webpages of Parliament's intranet. Please contact the Library for assistance in locating these articles, if required.

Baker, D J, "Punishment Without A Crime: Is Preventive Detention Reconcilable with Justice?" 34 (2009) *Australian Journal of Legal Philosophy* pp 120-150 (available from HeinOnline, which can be accessed [here](#)).

Edgely, M, "[Preventing Crime or Punishing Propensities? A Purpoisive Examination of the Preventive Detention of Sex Offenders in Queensland and Western Australia](#)" (2007) 33 *University of Western Australia Law Review* pp 351-386.

Figgis, H, and Simpson, R, [Dangerous Offenders Legislation: An Overview](#), Parliamentary Research Service, Briefing Paper No 14/97.

Gray, A, "[Standard of Proof, Unpredictable Behaviour and the High Court of Australia](#)" (2005) 10(1) *Deakin Law Review* pp 178-207.

Keyzer P, Pereira, C, and Southwood, S, "Pre-emptive Imprisonment for Dangerousness in Queensland under the *Dangerous Prisoners (Sexual Offenders) Act 2003*: The Constitutional Issues" (2004) 11 *Psychiatry, Psychology and Law* pp 244-253 (available from HeinOnline, which can be accessed [here](#)).

Hanson, K, and Morton-Bourgon K, "The Accuracy of Recidivism Risk Assessments for Sexual Offenders: A Meta-Analysis of 118 Prediction Studies" (2009) 21(1) *Psychological Assessment* pp 1-21 (available from Ebsco, which can be accessed [here](#)).

Hanson, K, and Morton-Bourgon K, "[The Accuracy of Recidivism Risk Assessments for Sexual Offenders: A Meta-Analysis](#)" Public Safety Canada Research Report 2007-01 (other research reports, including more recent ones about specific risk assessment tools are available [here](#) on the Reports and Manuals page of the Public Safety Canada website).

Heseltine, K, Sarre, R, Day, A, "[Prison-based correctional rehabilitation: An overview of intensive interventions for moderate to high-risk offenders](#)" Australian Institute of Criminology, Trends and Issues in Criminal Justice No 412, May 2011.

Keyzer, P "[Preserving Due Process or Warehousing the Undesirables: To What End the Separation of Judicial Power of the Commonwealth](#)" (2008) 30 *Sydney Law Review* pp 101-114.

McSherry, B, "[Risk Assessment by Mental Health Professionals and the Prevention of Future Violent Behaviours](#)", Australian Institute of Criminology, Trends and Issues in Criminal Justice No 281, July 2004.

McSherry, B, "[Indefinite and preventive detention legislation: From caution to an open door](#)" (2005) 29 *Criminal Law Journal* pp 94-110.

McSherry, B, Keyzer P and Freiberg A, "[Preventive Detention for 'Dangerous' Offenders in Australia: A Critical Analysis and Proposals for Policy Development](#)" Report to the Criminology Research Council, December 2006.

McSherry, B, "[Preventive Detention of Sex Offenders: Recent Trends](#)" paper presented at the Professional Legal Education Seminar, Victoria Legal Aid, Lionel Murphy Centre, 14 July 2010.

McSherry, B, "[The preventive detention of 'dangerous people'](#)" (2012) 112 *Precedent* pp 4-8.

Murray, J and Thomson, E, "Clinical judgment in violence risk assessment" (2010) 1 *Europe's Journal of Psychology* pp 128-149 (available from Ebsco, which can be accessed [here](#)).

Ogloff, J R P and Davis, M R, "Assessing Risk for Violence in the Australian Context" in Chappell D and Wilson P (eds) *Issues in Crime and the Criminal Justice System* (LexisNexis Butterworths, 2005) pp 301-338 ([catalogue record](#)).

Ruffles, J, "Diagnosing Evil in Australian Courts: Psychopathy and Antisocial Personality Disorder as Legal Synonyms of Evil" (2004) 11(1) *Psychiatry, Psychology and the Law* pp 113-121 (available from HeinOnline, which can be accessed [here](#)).

Robinson, P, "[Punishing Dangerousness: Cloaking Preventative Detention as Criminal Justice](#)" (2001) *Scholarship at Penn Law*, Paper 41.

Sreenivasan, S, Frances, A and Weinberger L, "[Normative versus consequential ethics in sexually violent predator laws: an ethics conundrum for psychiatry](#)" (2010) 38(3) *The Journal of the American Academy of Psychiatry and the Law* 386-391.

Scott, R, "Risk Assessment and Sentencing Serious Sex Offenders" (2008) 15(2) *Psychiatry, Psychology and Law* pp 188-200 (available from HeinOnline, which can be accessed [here](#)).

Summers, R and Loza, W, "Cross-Validation of the Self-Appraisal Questionnaire (SAQ): A Tool for Assessing Violent and Nonviolent Recidivism in Australian Offenders" (2004) 11(2) *Psychiatry, Psychology and Law* pp 254-262 (available from HeinOnline, which can be accessed [here](#)).

See also this [Legal responses and treatment of sexual assault offenders bibliography](#), which is maintained by the [Australian Centre for the Study of Sexual Assault](#).

16. Selected media

In chronological order:

ABC, Radio National Law Report, "[Queensland's Dangerous Prisoner's Act](#)", 1 July 2003.

Frank Robson, "[Sex, Crime and Punishment](#)" *Sydney Morning Herald (Good Weekend)* 28 July 2012, p 20.

Barclay Crawford, "[A Crime to let them go](#)" *Sunday Telegraph*, 29 July 2012, p 9.

ABC online "[Fear of violence could keep offenders in jail](#)" 24 September 2012.

Police News online "[Victims back jail plan for violent inmates](#)" 24 September 2012.

Nick Ralston, "[Law change for violent criminals condemned](#)" *Sydney Morning Herald*, 25 September 2012, p 3.

Faye Wheeler, "[Proposal open to abuse: law society](#)" *Daily Liberal*, 26 September 2012, p 4.

Adam Shand, "[Inside the criminal mind](#)" *The Australian*, 18 October 2012, p 11.

Chip Le Grand, "[Rehab 'a \\$110k saving over jail'](#)", *The Australian*, 4 February 2013, p 7.

Barclay Crawford, "[Blind eye turned to evil](#)", *Sunday Telegraph*, 20 January 2013, p 9.

Anna Patty, "[Jail extention bill](#)", *Sydney Morning Herald*, 20 February 2013, p 4.

Alicia Wood, "[Violent will stay in prison](#)", *Daily Telegraph*, 20 February 2013, p 2.

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