

TRANSCRIPT

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into Victoria's Criminal Justice System

Melbourne—Tuesday, 19 October 2021

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Ms Harriet Shing

Mr Lee Tarlamis

Ms Sheena Watt

WITNESSES (*via videoconference*)

Ms Michele Williams, QC, Chair, and

Mr Stuart Ward, Deputy Chair, Post Sentence Authority.

The CHAIR: Good afternoon. Welcome back. As I am sure you are all aware, this is the Legislative Council Legal and Social Issues Committee's public hearing into our Inquiry into Victoria's Criminal Justice System. We are very pleased to be joined in this session by the Post Sentence Authority. We have Michele Williams, QC, the Chair, and Stuart Ward, the Deputy Chair. Welcome and thank you very much for joining us.

Ms WILLIAMS: Thank you for having us.

The CHAIR: I introduced you to Kaushaliya and Tania earlier.

If I could just let you know that all evidence taken is protected by parliamentary privilege and this is through our *Constitution Act* but also the standing orders of the Legislative Council. Therefore any information that you provide to us today is protected by law. You are protected against any action for what you say during this hearing, but if you were to repeat those same statements outside this hearing, you may not have the same protection. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

This hearing is being recorded. We have Hansard in the background, as I would say, hanging onto your every word. You will be sent a copy of a transcript of today's hearing, and I would encourage you to have a look at it, make sure that we did not mishear you or misrepresent you in any way. I know that would be very unlikely given the team in Hansard.

We would welcome you to make some opening remarks, and then we will open it up for committee discussion. Thank you.

Ms WILLIAMS: All right. Well, thank you very much for the opportunity to address the committee in regard to the role that the Post Sentence Authority plays and how you might gain some understanding and how it might assist the inquiry. I should say at the outset that, albeit this is the Inquiry into Victoria's Criminal Justice System, the post-sentence scheme is in fact deemed to be a civil scheme. If need be I could elaborate on that, but perhaps essentially we take into account and must take into account the human rights of each of the offenders. We provided a submission to the committee. That, together with our appearance today, focuses on the topic of recidivism—that is, strategies to reduce recidivism.

Just by way of background, following the murder of Masa Vukotic by Sean Price on 17 March 2015 the post-sentence scheme in existence since 2005 underwent a number of very significant changes, and that followed the Harper review. Those changes included extending the scheme to include serious violent offenders and the creation of an independent statutory body, the Post Sentence Authority, to monitor and supervise serious violent offenders and serious sex offenders and to have oversight of the post-sentence scheme.

The scheme applies to offenders who have completed their prison sentence but continue to pose an unacceptable risk of committing a further serious sex offence or serious violent offence. So they are eligible offenders and they are listed in the Act, but they are the offenders who have been sentenced to a term of imprisonment—for example, for a serious sex offence. It is quite a lot: it is almost all sex offences, including rape obviously, sexual penetration of a child and so on. In relation to violent offenders it is murder, manslaughter and a few others. That makes those offenders eligible; it does not mean that they go onto the scheme. In fact in 2020–21 1760 serious offenders were eligible to come onto the scheme. We in fact reported in our annual report 142 offenders, so we are dealing with a very small number. Some call it the pointy end. It is the serious offenders who by their risk of committing a further serious offence come onto the order.

So an application is made by the Secretary of the Department of Justice and Community Safety to the court. The application is supported by expert evidence—very detailed assessments of offenders. The offenders are actually looked at earlier, before they complete their prison sentence. A very detailed assessment report is made. That will be placed before the court with evidence and so on, and it is for the court to determine whether

an offender still poses an unacceptable risk of committing a further serious violent or serious sex offence. If so satisfied, the court will make an order, and that order will contain a number of different conditions—for example, cannot go near a school within 50 metres, must wear electronic monitoring, must undergo drug treatment and so on. There will be a number of conditions—curfew. And then the offenders, because the important thing to note about them is that they have completed their sentence—this is a post-sentence scheme, including any parole period—those offenders then are living in the community in one form or another, from a more restrictive environment to a less restrictive environment. For example, sex offenders might be residing at Corella Place, or there is supported accommodation. There is private accommodation and so on. Rivergum, which is a residential treatment service, houses both violent offenders and sex offenders. That is a treatment facility.

A detention order is the second form of order that a court might make. It can only be made by the Supreme Court, for up to three years, whereas a supervision order is up to 15 years. We currently have four offenders who are on detention orders and 138 who are on supervision orders. So once the offender is put on an order it is then up to the Post Sentence Authority to supervise, if you like, and monitor compliance with the order to ensure that conditions are being complied with, to consider if their risk is escalating, whether there has been a breach, and if so, we have to take action to assess when they are ready to transition from a more restrictive environment, for example, again using Corella Place, from Corella Place to a less restrictive environment—for example, into the community.

The authority does look at very detailed—what are called—e-scans, environmental scans. They will contain all of the information about the location, including of course where schools are if it is a child sex offender, where kindergartens are and so on. So we will consider those e-scans, and we will make independent decisions, for example, about those and endorse whether the offender can in fact live at that property. So in all the decisions and directions that the authority gives, the paramount consideration is protection of the community so that in every decision that is what is uppermost in our minds,

The second consideration then is treatment and rehabilitation of the offender, and that is done by reviewing service and treatment plans which are put together addressing the offender's risk and looking at the services as agreed to by a multi-agency panel. A multi-agency panel is made up of the Department of Justice, Victoria Police and the Department of Health. They look at and agree to provide the services according to the plan, and then we review that plan. They provide a plan every six months. This is via legislation, so it is an obligation that we must review the plans, and it is an obligation on those agencies to ensure that the plan provides the services that are relevant to the risk factors of the offender, so looking at their risks—for example, mental health, drug offences, what treatment do they need and so on.

So just in terms of the way we do it, we are not bound by the rules of evidence, but our decision-making process is evidence based in the sense that it relies on reports that are very detailed reports provided by Corrections Victoria. We sit formally on those reports and interview offenders. Again, when we are interviewing offenders or sitting on reports or material, uppermost in our mind is protection of the community. To balance that out—or perhaps not balance that out; that is perhaps not quite the right way—we are obliged to take into account the human rights of the offender. We are also obliged to take into account any submission that has been made by a victim. And there are times when we look at, for example, an e-scan—where an offender is going to live—and we do liaise with the Victims Support Agency. It may be that CV, Corrections Victoria, might recommend, 'Well, this offender might live near an XYZ location', but then we know through a submission or a notification that that is maybe where a victim lives or works. So we take that into account, and there have been instances of course where we have refused to endorse the plan because it is near where a victim lives or works.

So we are balancing a number of different factors when we are looking at this material. The reason for this is the scheme is a preventative one; we are really trying to prevent. And this is where it perhaps dovetails into what you are looking at: rates of recidivism or ways to reduce recidivism. And the reason that we are looking at and have, if you like, what I call the pointy end is because these offenders are the ones who do or inflict the most serious harm. And that is what we are seeking to avoid, obviously, by quite rigorous monitoring and supervising 24/7. In fact I can say that Stuart Ward, the deputy, was up all night the other night receiving notifications. In fact that happened twice in a week for him. So we are prepared to act quite quickly. We are proactive in that space. That is the way the scheme has been designed for us as an authority.

So, you know, rigorous monitoring—looking at the risks, making sure that the risk of the offender is not escalating. Really the idea behind that is early intervention, because we do not claim that we can prevent altogether an offender from offending, the ones that we are dealing with. What we seek to do is to act early to prevent them from going on to commit more serious offences. So, you know, there are breaches—breaches of orders, breaches of conditions, breaches of drug use, possession—but the way that we are able to respond quickly is the way the system works for us.

So what are the challenges? So obviously we do not work alone. We work with a number of other organisations. We work with Victoria Police; Corrections Victoria, in particular; Department of Health; and I mentioned before about the services. But challenges are always accommodation: where is this offender going to live? If it is a sex offender, I use the saying, ‘Not in my backyard’, and that is the reality. Not only ‘not in my backyard’ but not next to a school ground. And, you know, we make independent decisions. For example, we had one recently. I am not identifying anything or anybody, but it was recommended that we endorse the e-scan. After considering it very carefully we decided we would not endorse it. It was in too much of a child-friendly location—near tennis courts, near schools. Now, that may be the case in many, many areas, so it is sometimes difficult to find appropriate accommodation. That is more so for violent offenders. That is the challenge, because they do not have a Corella Place, they do not have a step-down facility from prison. Many of them—probably most of them because these serious violent offenders have been in prison for a long, long time—come out into the community, a place is provided for them, many, many supports are put around them but what we find is they are at their greatest risk when they come out of custody and, you know, at the moment they are our challenge. We—

I was going to say ‘we advocate for’—I know everybody wants to advocate for lots of things, and resources and money only go so far, but a step-down facility for six months or so where they could have services wrapped around them, drug and alcohol and so on. Rivergum is a treatment facility but many of the offenders are not suitable to go there because they might have intellectual disabilities and so on.

So that leads to a topic, I suppose, of the complexity of the individuals that we are dealing with. They are extremely complex. They often have a number of problems—mental health issues, perhaps intellectual disability, maybe a personality disorder, low education, dysfunctional upbringing and so on and so forth. There is a pattern of those sorts of things, sometimes all of them—many of them—and it is a question of, when we are attempting to reduce their risk of committing a further serious offence, making sure that there are services to address those risks, making sure that we are monitoring them so that they do not commit a further serious offence. Drug rehabilitation would be on our wish list, accommodation for violent offenders would be on our wish list, mental health facilities would be on our wish list—these are the three, perhaps, primary things I would say that if we had facilities that could support those issues.

The CHAIR: Thanks very much, Michele. It does not matter whether you are at the pointy end or at the end of a victim-survivor who has ended up on remand for six months and then is sentenced out and goes straight out into homelessness and is in need of rehabilitation, housing and mental health services—it is just so interesting that it does not matter where you are on the spectrum, those still are the missing pieces. Oddly, at your end, the service that the authority provides is exactly what we have been talking about: this wraparound service that ensures the person has housing, ensures they are getting treatment and ensures they have got someone keeping an eye on them obviously because we are talking about the final 10 per cent of the people. Initially I just wanted to ask how your authority sits in with the sex offender register. It seems that the sex offender register is also interested in the issues that you are interested in.

Ms WILLIAMS: Well, from our point of view we in fact do not have, surprisingly, that many registered victims, and I think part of the reason for that is many of the victims have had enough—

Mr WARD: I think, Michele, we might be being asked about the Victoria Police sex offence register.

Ms WILLIAMS: Oh, the Victoria Police—

The CHAIR: Yes, sorry. But I will ask you about victims in a second.

Ms WILLIAMS: Okay, I understand the question now. Look, I am not that familiar with that, but I understand that they deal with more minor offences and they can put on orders, for example, about no alcohol

and things like that. But my understanding is that—I could be wrong on this—it is the more summary-type offences and—

The CHAIR: I guess I would just imagine that the people that you are considering and managing are on that sex offender register as well.

Ms WILLIAMS: They are, and they report; they are obliged to do their reporting conditions. So they sit side by side.

Mr WARD: Most, or I would say all, of the serious sex offenders who are subject to supervision would also be registered on the sex offence register, so they have obligations there. That is administered by Victoria Police. A lot of those obligations relate to reporting, email accounts, contacts and things like that. So they have to maintain that as well as having to comply with their obligations under the supervision orders that we administer, and Victoria Police look at both; they work together. And sometimes our offenders, whilst subject to our supervision, do breach their obligations to the sex offence register and are dealt with for doing that along the way.

Ms WILLIAMS: Sorry, Fiona; I misunderstood your question.

The CHAIR: That is all right. Do not worry at all, Michele. Just following on from that, Stuart, I was looking at I think it is paragraph 34 in your submission. I think it goes to what you were doing all last night or the night before—the other night. I do not mean to pry of course in a public hearing; however, I am assuming that this is around when conditions are breached or there needs to be a change in conditions or something—there is an episode, an escalation with someone's mental health, those sorts of things. I wonder if you could just expand on how the authority responds there.

Mr WARD: Yes. I mean, it is important to understand that conditions are not 'set and forget'. The conditions are imposed by the court, they are imposed at the time that the orders are made and they are related to the identified risks of the offenders. But the offenders may be on the order for many, many years, and so their circumstances are going to change. The mechanism that we have got, of the authority making directions under the conditions to give effect to the conditions, is the way those conditions can be adapted to meet the changing circumstances of the offenders. So if their behaviour improves and they are going well and their risk looks like it is being managed well, there is capacity for us to make directions perhaps to ease the restrictions of the condition. However, on the other hand, if their behaviour is escalating—and that is usually the case that we get called up at night about—then we can make directions to restrict or adjust what they can do under their conditions to help manage those risks.

One option we would have, as an example, for a sex offender who is living in the community would be that if we were worried that their risk was escalating to a point where it could not be properly managed in that environment, we could make a direction under the relevant condition to return them to Corella Place, which Michele has talked about, as a way of giving the opportunity, giving time, to help get on top of that issue that gave us concern about their risk. And that might be for a short time; they might be able to come back out once that has been organised. So we can be very responsive, we can act very quickly—and it is not always at night-time, it just might be tomorrow, that we hear about an issue, an incident—and we get in a report immediately. We convene a panel, and we can consider it very quickly and make a very timely decision.

The CHAIR: Thank you. I have got some other questions, but I will share the little time we have. Tania.

Ms MAXWELL: Thank you. Michele and Stuart, thank you so much for being here today. It is this very topic that started my journey in becoming an elected member, and I would just like to give you a very brief background if I may.

Karen Chetcuti was murdered in Wangaratta, where I live. He was a sex offender who was released from prison. He was released to his 80-year-old mother in an area where there was no police station and no phone reception, and that raised serious flags with me. He ultimately murdered, tortured and raped his neighbour, who left two small children. The reason I raise that is: what are your thoughts on allowing a sex offender to be released to an area where there is no police station for miles, in a remote rural area, and there is no phone reception?

Ms WILLIAMS: I can answer that. We would be given an e-scan that would have a very detailed not only map of the area but input by experts and other people who have looked at what the risks are and so on. We usually know the offender—a lot of the offenders we have sat on many times and we get to know them in any event—but more specifically we have had instances like that, where it is said that the offender is ready to be transitioned and we have refused to do so because we have not been satisfied with what is being put in place. But the main thing that we have for them—and in my view one of the primary tools that helps us in our work—is electronic monitoring, and nearly all of our offenders have electronic monitoring bracelets and sometimes an alcohol SCRAM device as well. What is true sometimes in rural areas or isolated areas is that the electronic monitoring device may not operate. Tests are done, and if it is not satisfactory, certainly I would expect Corrections Victoria to not endorse that e-scan, and we certainly would not. I think that is one of the big factors here.

There is a multitude of things: who, for example, is the prosocial support person in the area? What we have not talked about much or at all is that they will have their case manager; they are under supervision. So there are many people who are involved in the case management of a serious sex offender or a serious violent offender. I am talking about the serious violent offenders who are subject to our scheme. They are no longer just placed out into a community unsupervised, because that is of course what happened with Sean Price.

Ms MAXWELL: That is right.

Ms WILLIAMS: That is exactly what happened. You know, it was a failing of the system. It did not have adequate safeguards in place; we do now. You cannot always—

Ms MAXWELL: You cannot predict.

Ms WILLIAMS: No, you cannot predict, but what you can do is make sure that all the supports and preventative devices are wrapped around the person. You make sure that if we do transition a person to a place, it is not going to be an isolated place where there are no supports in place; they are obliged to have weekly or fortnightly—whatever is deemed necessary—meetings with their case managers, for example.

Ms MAXWELL: Michele, can I just jump in there quickly for a moment. Another instance that we had in Wangaratta was somebody being released and raping and murdering a little 11-year-old girl, Zoe Buttigieg. Now, Bowe Maddigan had a history of I think sexual offences and was certainly found with child pornography on his phone. The problem was that he was only monitored for a very short space of time. He breached that monitoring, he was reincarcerated and then he came out on a straight release. And I know that it is a very complex situation to determine who should come out on a straight release, who should be under the Post Sentence Authority, but they are also very clever, these people, and they know—

Ms WILLIAMS: They are, yes.

Ms MAXWELL: How do we address that?

Mr WARD: That is right. Of all the sex offenders that are released there are only about 130 of them who are subject to our orders. So the others, some will be on parole for a period of time, but at the end of that parole or if they do not get parole they will be in the community without the intense supervision of our scheme. They will be subject to sex offence register obligations possibly, but that is the difference.

Ms WILLIAMS: And also, Tania, obviously our powers do not come into play until an offender is put on an order. They are assessed whilst they are in custody, when they are coming near to the completion of their sentence, and it is a very detailed assessment—looking at their past history, looking at what they have done, looking at what their risks are and so on. So I do not know how long ago those cases are that you were talking about—

Ms MAXWELL: 2015 and 2016, so end of 2015 and January 2016.

The CHAIR: Yes, so pre.

Ms MAXWELL: Pre.

Ms WILLIAMS: We came into existence in 2018 as a new organisation. And that person that you talked about with the child, I cannot say, but I would have assumed now that person would be put on an order because their risk factor would be identified whilst they were in custody, looking at their history of offending and so on. And it is once they are put on an order that they are then subject to this really intense, rigorous monitoring that goes on. So, yes, we would of course be mortified if something like that happened now. But, you know, we cannot predict and we cannot prevent all offending, but what we can say is—and we have in our annual report—that three offenders committed serious offences. They were non-contact. I am not going to downplay the offending, but they were non-contact, indirect offending, and what we would say about it is what I mentioned earlier—that it is our view that with that sort of thing we have caught the person before they have gone up there. Their risk is escalating upwards, so we have caught them—we hope; obviously that is the way it is designed—before they go on to commit further serious offending. Can we prevent it altogether? Well, human behaviour is unpredictable, and as you said before, Tania, many of these people—I think you used the word ‘deceptive’; I am not quite sure what word you used—

Ms MAXWELL: Devious.

Ms WILLIAMS: But they are. They are devious and deviant. And the sex offenders are different to the violent offenders in our view. They sort of operate differently. They present differently and they have different—not so much different issues. The sex offenders are very deviant. The violent offenders, our experience is showing pretty much all—100 per cent, I think our stats show us—have drug use and alcohol. So they are the ones who get out of prison and start running around and looking for their cohorts to take drugs with. You sometimes do feel like you are playing catch-up, I have to be honest, but they are the ones I am talking about who need, in my view anyway, some step-down accommodation for them. They need much more assistance. Sex offenders, as I say, I think are more deviant. But with them they need to have, and we do have, the ability to monitor or audit—we do not do it; the police do it—their phones. Internet-capable devices would be a normal condition for a sex offender, so that they are not looking at child abuse material. Can we stop that altogether? That has been a problem, I must say, because they are very devious and, you know, resourceful.

Ms MAXWELL: What background checks are done on the people that they are actually going to live with? For example, if it is parents, we know that Michael Cardamone’s mother was actually incarcerated for trying to hire a hitman to kill the witness who was going up against her son. So that could have perhaps been prevented.

Ms WILLIAMS: A lot of work is done around that as well. That would feature in the e-scan that I am talking about. It would say who is going to live at the property. I do not say that it does not happen, but it is pretty unusual for us to endorse a property for someone to go to—we usually endorse it for them to go alone, probably as a matter of practicality. A lot do not have family support and those that do are not prosocial, so we would not endorse the property. If parents, for example, are not prosocial, we would be unlikely to. Let’s put it that way. So yes, that is the biggest challenge for transitioning them from, say, Corella out into the community, a less restricted environment, looking at where they are going or where they should not go.

The CHAIR: Yes. Thank you. Kaushaliya.

Ms VAGHELA: Thanks, Chair. Thanks, Michele and Stuart, for your time and for your submission. A quick question: in terms of the effectiveness of this scheme, have you got anything to compare it against, any other interstate jurisdiction or internationally, where we can learn something from them?

Ms WILLIAMS: That is a very interesting question actually, because it is something that we are wanting to do, and that is to look at and learn from other jurisdictions. But we actually think they can look at and learn from us, because we are pretty much out there in the space. There are other post-sentence schemes in the other states, but most of them are quite different and most of them are not independent. We I guess pride ourselves on being independent, because it means we make a decision based on the evidence, but it is our decision. We do not just tick a box or agree to what someone wants us to do. So yes, it is a space I think we need to get into, and in fact on our agenda—we have not been able to do it—is to have an interjurisdictional conference.

The CHAIR: Terrific.

Mr WARD: One of the points around effectiveness is the rate at which the offenders who are subject to the scheme commit further serious offences, and we have spoken about that. It is a small rate, so that seems to indicate the scheme is effective at stopping them seriously reoffending.

The other consideration is those offenders who through the scheme are able to lower their risk to a point where it is no longer deemed unacceptably high and therefore are able to come off the scheme. In our written submission we pointed out that this year we are reporting that 11 offenders got to that stage. You know, that is good because it shows us that even for these most high-risk offenders who are at the highest risk of committing serious further personal harm offences there is the opportunity that if they do choose to engage properly in the treatment and the programs and with the supports that are there for them—and sometimes this is the first time they have really had all that wrapped together for them—there is the prospect that they can lower their risk to the point where they can get off. And we are pleased, I suppose, that they are coming off the orders that way, at a higher rate than the reoffending rate. So that seems to work well, and if they have developed the awareness of their risks and the insight as to what causes their risk to increase and strategies for dealing with that themselves, hopefully they are lifelong skills that will not only help them come off the order but help them for the years after the order as well.

So you know, there is that positive aspect to the scheme, too—that it can really help those who have the capacity and who choose to engage. Some of them of course are very resistant. They have had a lifelong experience of not trusting the government or authority or not engaging with agencies and it is very hard for them to turn it around, but the opportunities are there.

Ms VAGHELA: So resistant to go under the order? How much resistance do you see from the offenders not wanting to go under whether it is the supervision or the detention order?

Mr WARD: Occasionally you do get an offender who says, and I have had them say to panels that I have been on, that they are pleased that they are on an order because it gives them the opportunity to have the services around them. You know, sometimes people coming out of prison really struggle if they do not have those supports, and you do hear stories of ex-prisoners committing offences just so they can go back to jail—because in jail they know the routine, they know they are going to be fed and they are not worried day to day how they are going to survive.

So you do get some offenders that say that, but obviously a lot of offenders contest going on an order because being on an order is hard work. You know, there is a lot of scrutiny that comes with it. They have to engage in regular supervision and treatment. Some of them see that as an impost on their time and they think they do not need that. But you do see, over a lengthy period of time, sometimes that changes. You know, they might after a year or two start to engage and start to make some progress, which is always pleasing for us to see.

Ms VAGHELA: Thank you.

The CHAIR: Thank you. I agree. I do like—and we have had it raised with us with another organisation—that, you know, when you are looking at recidivism, yes, some of them may have breached a drug and alcohol offence or done something like that, but where you are protecting from the real recidivism is that real harm that they are at risk of committing.

Ms WILLIAMS: That is right.

The CHAIR: It is recognising those two different things, that they are not just—you know, you can see past it. Can I just—I am just taking advantage, I am sorry. Rivergum—did you say you had any people there?

Ms WILLIAMS: Yes, we have got currently, I think it is, eight people there. Rivergum is—

The CHAIR: If they have got a disability, then it is not an appropriate place for them?

Ms WILLIAMS: Yes. Because it is a treatment facility and they have, I guess, a number of different requirements. They have a three-phase model that goes through different stages that the offenders are required to participate in. So it is said that for those who perhaps have an intellectual disability it is not going to be appropriate for them. You know, it is new, and it is state of the art, and it will be interesting to see, you know, a review of it, perhaps in a few years time, to see how effective it is. It is certainly intensive for them. They are there a maximum of two years. The order is—sorry, it is a condition of an order, an intensive treatment condition—that they reside there and receive treatment and so on. Some of them participate at various levels. Some of them resist participation, if I can put it that way. So it will be interesting to see in the end how it all

develops. But it is based on a therapeutic model, so yes, as I say, it is one facet and probably the only place that I am aware of where sex offenders and violent offenders are housed together.

The CHAIR: Yes. Thank you very much. It has been really informative, and it is really interesting to already see the outcomes of such a new authority. We really appreciate the time that you have given to us but obviously the work that you are doing out there in the community as well.

As I mentioned at the outset, you will get a transcript of today. Have a quick check and make sure that we have not misunderstood or said something terrible about you. I am sure we will not have.

Ms WILLIAMS: I do not think so.

The CHAIR: I do not think so either. And that concludes today's public hearing.

Ms WILLIAMS: Thanks very much for the opportunity.

Committee adjourned.