



FACS 11/0468

The Hon Jerrold Cripps QC  
Chairperson  
The NSW Sentencing Council  
GPO Box 6  
SYDNEY NSW 2001

27 JUN 2011

Dear Judge

**Sentencing Serious Violent Offenders Consultation Paper**

Thank you for the opportunity to make a submission to the Sentencing Council's consultation paper.

Please find enclosed a submission from the Department of Family and Community Services.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Jim Moore'.

Jim Moore  
**A/Director General**

## Submission to the NSW Sentencing Council

*Sentencing Serious Violent Offenders Consultation Paper*  
Submission Due: Monday 27 June 2011

### **General Comments**

- By way of general comment, the eligibility criteria for the Violent Offenders Therapeutic Program (VOTP) which targets offenders assessed on actuarial measures as high risk of violent re-offending could be a starting point for identifying serious violent offenders. Failure of an offender to participate in or complete this or other relevant therapeutic programs whilst in custody i.e. address their violent behaviours prior to their release, might be a basis for identifying those offenders who require extended supervision beyond the end date of their sentence.
- Finding a balance between protecting the community from violent offenders and the rights of these offenders to be at liberty once they have served their sentence is a complex issue.
- As noted by the Sentencing Council, the identification of a single cohort of serious violent offenders is a difficult issue and one that may be better addressed by agencies with expertise in dealing directly with these offenders e.g. Corrective Services NSW. These agencies working closely with these offenders and utilising relevant psychiatric assessment tools should be consulted on the reliability of actuarial or clinical risk assessment methods.
- FACS is supportive of initiatives that are aimed at rehabilitating these serious violent offenders prior to their release to the community e.g. through the expansion of the VOTP and/or the introduction of additional relevant anger management or cognitive skills programs; psychiatric counselling and support. Rehabilitative programs should be accessible to all male and female offenders who fit the VOTP eligibility criteria.
- FACS also supports the introduction of legislation and utilisation of existing schemes (e.g. the parole scheme's Community Compliance and Monitoring Groups) that would facilitate additional supervision of serious violent offenders upon their release into the community.
- Extending the supervision period of identified serious violent offenders beyond the expiration of their sentence date is therefore supported. The extended supervision orders contained in Part 2 of the *Crimes (Serious Sex Offenders) Act 2006 No 7* could provide a suitable model that could be adapted for serious violent offenders and would ensure that there is continuing management of these offenders to support reintegration into the community. Further, the assessment of the risk of future offending would take place near the expiration of their sentence at a time when the Court is better placed to consider risk of future offending on the basis of the rehabilitative efforts of the offender whilst in custody and psychiatric reports proximate to the offenders release date.
- Similarly, the use of violent offender restriction orders like the existing child protection prohibition orders available under the *Child Protection (Offenders Prohibition Orders) Act 2000* could also assist in ensuring protection of members of the community.
- FACS is a participant in the multi agency Child Protection Watch Team which monitors high risk registrable offenders who have committed sexual or violent crimes against children. While this is a very intensive management and support model, it may be worth considering for the management of those serious violent offenders who are ultimately returned to the community.

### **Intellectual Disability Issues**

- People with an intellectual disability are over represented in the criminal justice system. The Consultation Paper *Sentencing Serious Violent Offenders* (the Paper) notes that the profile of high-risk violent offenders includes many people with an intellectual disability.
- The Paper also notes that currently people with an intellectual disability may not meet eligibility criteria for the Violent Offenders Treatment Program as they may be assessed as unable to complete the program. The Paper notes that it is anticipated that a specific program for violent offenders with a cognitive impairment will be available from 2012. FACS ADHC division welcomes the news that an accessible program will soon be available and is willing to participate with Corrective Services in the development of the program.
- The NSW Interagency Service Principles and Protocols for People with an Intellectual Disability and the Criminal Justice System were developed in February 2010 as the participating agencies response to this population (**TAB 1**).
- The ADHC Justice Services Policy outlines ADHC's commitments to this population (**TAB 2**).
- The Senior Officers' Group on Intellectual Disability and the Criminal Justice System, NSW Interagency Service Principles and Protocols are attached (**TAB 3**) which includes the entry criteria into the Community Justice Program.
- FACS recommends that the vulnerability and specific needs of people with an intellectual disability are considered carefully during this review.

### **Women's Policy Issues**

- Of particular relevance to the Women's Portfolio are questions 14 and 17. Question 14 asks whether the Violent Offender Therapeutic Program (VOTP) should be expanded, and if so in what respect. Question 17 asks whether there should be programs that should be considered as part of the Sentencing Council review for the management of serious violent offenders that are not presently available either post-sentence or post-custody.
- During the Corrective Services NSW audit, women were identified as forming 21% of violent offenders who potentially posed a risk to the community upon release due to their history of violence and lack of participation in therapeutic programs. Currently, the only women specific programs being offered within correctional facilities in NSW are 'Mothering at a Distance', a program to increase parenting skills, and 'Out of the Dark', a program for victims of domestic violence, not offenders.
- However, Corrective Services NSW has advised that there is a VOTP in development for female serious violent offenders, of which there are approximately 100 in prison in NSW. We understand there is also a female sex offender treatment program currently being developed which will be available to the 25 female sexual offenders in prison in NSW. Both these therapeutic programs will be available to female offenders at the end of this year or early next year at the South Coast Correctional Centre.
- The female serious violent offenders and the female sexual offenders generally have experienced early childhood trauma, including sexual abuse, violence and drug use. Primarily the violent offences committed by women are drug related, or involve assaults and armed robbery while intoxicated or drug affected. The female version of the VOTP will differ from the male programs, as the needs of male and female violent offenders are vastly different.

- FACS is of the view that, in relation to Questions 14 and 17, the female version of the VOTP should be evaluated to ensure that the therapeutic options available for women prisoners are effective and appropriate before any legislative regime is introduced to manage serious violent offenders. Due to the history of violence and sexual abuse suffered by the majority of violent female offenders, ongoing therapeutic options and support would also need to be available to these offenders post-release.