PUBLIC DEFENDERS

20 July 2011

The Hon Jerrold Cripps QC
Chairperson
New South Wales Sentencing Council
By email

Dear Chair,

I refer to your letter of 10 May 2011 inviting a submission in response to the Sentencing Serious Violent Offenders Consultation Paper of May 2011. I note that Ms Waladan of the Sentencing Council kindly granted an extension of time in which to respond. I am grateful to Richard Button SC, Deputy Senior Public Defender, for writing the submissions below on behalf of the Public Defenders Office.

Generally, we are in favour of all and any rehabilitative treatment that can be provided to violent offenders during the course of their sentences.

However, we are opposed to any extension of the system of Continuing Detention Orders (CDOs) or Extended Supervision Orders (ESOs) from sexual offenders to violent offenders. As a matter of principle, citizens should not be subject to diminution or deprivation of liberty once their sentences have fully expired. The fact that the High Court has held that the regime is constitutionally valid does not provide support for it as a matter of policy. We adopt all of the

Carl Shannon Chambers, 13/175 Liverpool St, SYDNEY NSW 2000
Telephone (02) 9268 3111 Facsimile (02) 9268 3168 DX 11545 Sydney Downtown
Web www.publicdefenders.nsw.gov.au

arguments against the regime contained at 4.10 of the Consultation Paper. It is noteworthy that the last argument therein, based on the danger of net widening to other offences, may now be coming to pass. It is also a matter of concern that the United Nations Human Rights Committee found the regime of CDOs contravenes the International Covenant on Civil and Political Rights.

Apart from questions of policy and civil liberties, there are practical difficulties in attempting to predict recidivism in violent offenders, and determining who should be placed in the most serious category. We agree that offenders who commit serious violent offences are a disparate group. To give one example of the difficulties of predicting recidivism, it is well known that people convicted of the most serious offences of murder and manslaughter rarely commit those offences again once released from gaol.

In short, our submission is that the authorities should monitor, treat and rehabilitate (with the threat of sanctions if necessary) prisoners whilst they are serving their sentence or on parole. However, there should be no form of CDO or ESO, or other preventative detention, for violent offenders after they have completed their sentence.

Turning to the consultation questions, our responses are as follows:

Question 1 We consider that, for the reasons given in the Consultation Paper, it is virtually impossible to identify serious violent offenders as part of a single cohort.

Question 2 Not applicable.

Question 3 We are not sufficiently qualified to answer the question of what is the best method of assessing the risk of re-offending of any cohort of violent offenders that may be identified.

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Question 4 Serious violent offenders should be identified within the custodial system and provided with rehabilitation during the course of their sentence.

Question 5 Actuarial risk assessment and clinical risk assessment methods both have a role to play in sentencing, and have had for years. They should not be used as a basis for a preventative detention scheme.

Question 6 We are not sufficiently qualified to answer the question of how serious violent offenders with complex needs can best be identified or managed.

Question 7 The current legal framework with regard to serious violent offenders is sufficient. We know of no issues within the current framework, apart from the well-known restrictions on judicial discretion in the system of standard non-parole periods, and the general need for there to be more emphasis on rehabilitation and less on punishment.

Question 8 In conformity with the calls for its abolition that began no later than 1973, we submit that the *Habitual Criminals Act* should be abolished. It is a pernicious and anachronistic example of preventative detention.

Question 9 - There is no way to amend the legislation referred to above in order to make it useful in dealing with serious violent offenders.

Question 10 Maximum sentences of imprisonment for life should not be extended to any further offences. Maximum penalties for crimes of serious violence are already extremely high. It would be anomalous for the offence of kidnapping to have the same maximum penalty as the offence of murder. The current

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reasonably coherent structure of maximum penalties should not be altered.

Question 11 There should be no extension of gradated sentencing laws. Those that already exist and may apply to violent offenders, such as s 115 of the *Crimes Act*, are rarely used; when they are, they constitute a form of punishing an offender for his or her past.

The system of CDOs and EPOs should not be extended to serious violent offenders.

Question 12 Not applicable.

Question 13 We believe that the Parole Authority has ample scope to supervise effectively serious violent offenders within the current parole provisions.

Question 14 We are not qualified to answer whether the Violent Offender Therapeutic Program should be expanded.

Question 15 There is no need for a regime of Personal Restriction Orders. Offenders on parole can already be sufficiently controlled by parole conditions, AVOs, scheduling, and other forms of restriction. Persons whose sentences have completely expired should not be subject to diminution of liberty above and beyond that applicable to ordinary citizens.

Question 16 Preventative detention should not be adopted in New South Wales for serious violent offenders, for reasons of principle and practicality. It is noteworthy that the system in the United Kingdom appears to have become completely unworkable.

Question 17 We are not sufficiently qualified to express an opinion about whether there are further programs that should be considered in

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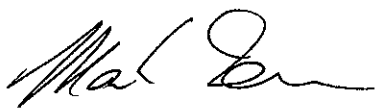
the review and that are not currently available. Generally we are prepared to be guided by experts as to the most effective rehabilitative treatment.

Question 18 Of course the models of indeterminate sentencing practised in other jurisdictions, both national and international, should be examined and evaluated by the government of this State. However, on the material provided in the Consultation Paper, we submit that none of them should be adopted in New South Wales.

Thank you for the opportunity to comment on this important Consultation Paper.

Yours sincerely



Mark Ierace SC
Senior Public Defender

Carl Shannon Chambers, 13/175 Liverpool St, SYDNEY NSW 2000
Telephone (02) 9268 3111 Facsimile (02) 9268 3168 DX 11545 Sydney Downtown
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