The effectiveness of minimum non-parole period schemes for serious violent, sexual and drug offenders and evidence-based approaches to community protection, deterrence, and rehabilitation

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Purpose | *This review presents a summary of research that is relevant to the implementation of the serious violent offences (SVO) scheme in Queensland. This scheme requires a person declared convicted of a serious violent offence[1] to serve 80 per cent of their sentence (or 15 years, whichever is less) in prison before being eligible to apply for parole. Three separate but related questions are considered. The first relates to conceptualisations and stakeholder (i.e., community, victim and professional) perceptions of crime seriousness, risk, and harm - and how these influence determinations about the appropriate length of imprisonment and setting of non-parole periods. The second concerns current empirical evidence about the effectiveness of mandatory or presumptive minimum non-parole period schemes; and the final question considers what is known about the impact a range of other sentencing or programmatic approaches that might also be used to achieve community protection, deterrence, rehabilitation, punishment, and denunciation. These questions are answered with specific reference to those who have been convicted of Schedule 1 offences and who therefore may be subject to the SVO scheme, including those convicted of sexual violence, non-sexual violence, and serious drug offences.*

The sentencing, treatment, and post-sentence management of serious sexual and violent offenders has been the subject of considerable interest in Australia over the last decade. Several comprehensive reviews of criminal justice policy are now available; relating both to the management of those who have committed serious sexual and violent offences (e.g., Ogloff & OCSR, 2011 [Victoria], Harper, Mullen, & McSherry 2015 [Victoria]; Sentencing Council of NSW, 2012 [NSW]), and as part of wider reviews of parole systems (e.g., Callinan, 2013 [Victoria]; Sofronoff, 2016 [Queensland]). Each had to consider the problem of how to collect and evaluate evidence that speaks to the efficacy

[1] The court is required to make this declaration for offences listed in Schedule 1 of the Penalties and Sentences Act 1992 (Qld) (PSA) for sentences of 10 years or more, and has a discretion to make this declaration for sentences of 5 years or more, but less than 10 years (PSA, ss 161B(1), (3)). There is also a power for a court to make a declaration for any offence, and regardless of sentence length if the person is: (a) convicted on indictment of an offence—(i) that involved the use, counselling or procuring the use, or conspiring or attempting to use, serious violence against another person; or (ii)that resulted in serious harm to another person; and (b) sentenced to a term of imprisonment for the offence (PSA, s 161B(4)).

and outcomes of the regulatory, decision making, and administrative systems that apply to those who have committed serious offences, typically drawing on several different sources of information (e.g., interviews with and submissions from professionals and other interested parties, observation of parole proceedings, critical assessment of specific cases, and the evaluation of relevant research into public attitudes, programme efficacy, and case management options). In general, however, these previous reviews have relied mainly on expert or Departmental advice about the status of the evidence[i] without undertaking any formal or systematic evaluation of relevant empirical research.

Aim

This scoping review presents an overview of research that is currently available, both from Australian studies and those conducted overseas, relating to the effectiveness of mandatory non-parole period sentencing schemes. A specific aim is to consider this evidence in light of the operation of the serious violent offences scheme in Queensland. The SVO scheme, which came into operation on 1 July 1997 under the *Penalties and Sentences Act 1992* (Qld), requires a person who has been declared convicted of a serious violent offence to serve 80 per cent of their sentence (or 15 years, whichever is less) in prison before being eligible to apply for parole.[ii] Three separate but related sets of question are considered:

1. ***The concepts of risk, harm, and dangerousness***

- *What are the different ways in which conceptualisations of risk, harm, and dangerousness impact on penal responses and sentencing legislation that targets serious violent offences and offenders?*
- *What is known about Australian community, victim, and professional perceptions of risk, harm, and dangerousness and how these might influence determinations about the appropriate length of imprisonment and parole?*

2. ***Impact and effectiveness***

- *What is the current evidence relevant to understanding the effectiveness of mandatory or presumptive minimum non-parole period schemes?*
- *What is known about the effect of keeping people in custody for longer (with shorter periods of time on parole) on community safety?*
- *What is the evidence of victim satisfaction in relation to SVO, and similar, schemes?*

3. ***Evidence for other ways to achieve the aims of the SVO, and similar, schemes***

- *What evidence is there about sentencing alternatives and other effective strategies to reduce offending and reoffending following serious violent offences, achieving reintegration back in the community, and ensuring that community safety is maintained?*

Methodology

A methodology based on the Preferred Reporting Items for Systematic Reviews and Meta-Analyses (PRISMA) guidelines (Moher et al., 2009) was used to identify relevant sources. This utilises transparent procedures to find, evaluate, and synthesise the results of relevant research and offers a systematic and replicable approach to identifying sources of evidence and reporting findings against a minimum set of items. Relevant research databases (PsychInfo [Ovid], CINCH [Informit], Social Science Premium [Proquest], Criminal Justice Database [Proquest], SAGE Journals [Criminology & Criminal Justice]) were searched to identify contemporary public domain material written in the English language published since 2010, augmented

with searches of the grey literature and reference lists of relevant sources. For a full description of the methodology and the set of sources identified as relevant to the issues and findings summarised in this report, the reader is directed to the accompanying technical report.

1. The concepts of risk, harm, and dangerousness

There are currently insufficient grounds to systematically apply the concepts of 'dangerousness', 'risk', and 'harm' to sentencing legislation that targets serious violent offences and those who have committed them. Rather, there is a need to carefully assess the evidence upon which these labels are attributed. Froats (2011), for example, has pointed to 'slippage' between different meanings and understandings of serious offending that serve to maximise the legitimacy, persuasiveness, and perceived popular appeal of more punitive sentencing. Criminal justice agencies need to more accurately determine when notions of dangerousness are merely imagined or distorted by public fear and panic, noting that, at the same time, legislation and policy should recognise that the prediction of future risk is inherently challenging and may even be empirically impossible (see Hobbs & Trotter, 2018). It is particularly important to understand community and other stakeholder perceptions of offence seriousness.

The first question that this review seeks to answer is concerned with understanding the ways in which terms such as 'dangerousness', 'risk', and 'harm' have been conceptualised in the research literature. Both Australian and international sources identify how these terms have become important drivers of policy and practice, as particular emphasis has come to be placed on the overarching need to protect the safety of the community.

Unsurprisingly perhaps, the most relevant work was identified in reviews, policy documents, and reports. Only limited empirical research was available, probably reflecting the challenges that are inherent in reliably operationalising these different constructs. Whilst many researchers argue that the different ways key terminology is used is central to the development of appropriate and effective responses to serious and violent offending, these concepts do not currently have clear and accepted meanings. As a result, it is not always apparent when thresholds for 'seriousness' or 'dangerousness' have been met, the extent to which judgements about the probability of an individual labelled in this way committing further offences should be considered reliable, and whether interventions can be expected to successfully mitigate risk or reduce dangerousness.

It is evident that 'risk' is a broad and ambiguous concept. At times it is equated with possible harm to the community, but at others it is used to describe an individual characteristic or propensity. It has been employed (e.g., in risk assessment tools) not only to refer to the probability of an individual being involved in a future event, typically some metric of reoffending, but also to refer to the severity of any potential, future event. The most accurate risk assessment tools, however, aim to measure the probability of future offending of *groups* of people who have known histories of offending and, as a result, do not typically assess the likely level of harm that will ensue. Legal decision makers face particular challenges when applying this information to *individuals* in their efforts to identify those sanctions and interventions that might reasonably be expected to mitigate risk in specific circumstances. Risk assessment tools, particularly those that are statistically derived (known as actuarial tools), are also considered by some researchers to be culturally biased and this may present additional problems when attempting to assess the risk of future offending by those who identify as from Aboriginal and/or Torres Strait Islander cultural backgrounds. Similar

concerns have been raised about their use with women[iii] (e.g., Barlow & Walklate, 2021), and may also apply to other minority groups (e.g., people with a disability or older people in prison). Nonetheless, there is agreement in the professional literature that current violence risk assessment tools do provide a more transparent and empirically defensible approach to prediction than professional judgement alone. Their impact on successful *risk management* does, however, appear to be associated with the quality of implementation - a review of 73 published and unpublished studies by Viljoen, Cochrane, and Jonnson (2018) concluded that professionals do not consistently use risk assessment tools to guide risk management efforts and that there is currently insufficient evidence that the use of these tools alone will reduce either violence or reoffending. Risk assessment tools do appear to have more impact when staff are trained, and implementation guidelines are in place.

The concept of 'dangerousness' is not as widely used as that of 'risk', perhaps because it may be perceived to be a stigmatising term that attributes a label that is hard to dispel. Dangerousness is nonetheless sometimes equated with a substantial or high risk of *serious* future offending, often with a focus on violence and/or sexual offending. For example, the majority of the High Court, in *Wilson v The Queen* (1992) 174 CLR 313, held that a judgement of dangerousness is based on whether a reasonable person would have identified that their actions would lead to "an appreciable risk of serious injury" (para 53). Thus, those regarded as 'dangerous' may be assessed as at 'high risk' in terms of either their likelihood of reoffending ('appreciable risk') or because of the potentially severe consequences of any future offending (i.e., serious injury) or both. This is illustrated in an analysis of Western Australian sentencing remarks by Hobbs (2017), which concluded that a sizeable minority of those subject to Dangerous Sexual Offender legislation would not be assessed as 'high risk' using violence risk assessment tools and that sentencing decisions were often influenced by the level of harm that would result if a new offence was committed. It follows that attributions of dangerousness based only on criminal history are likely to be problematic.

Another approach to understanding offence 'seriousness' is through indices or systems that classify offences according to metrics of severity of punishment or harm. These indices have been used primarily for statistical classificatory purposes (e.g., classifying criminal incidents according to the Most Serious Offence in the construction of offence classificatory systems) or, more recently as the basis for allocating law enforcement resources or guiding crime prevention or victims' policy. Offence seriousness indices rank offences according to severity of sentences, sometimes with further refinement through input from practitioners or community representatives. Examples include the Australian National Offence Index (Australian Bureau of Statistics, 2018) and the UK Crime Severity Score (Office for National Statistics, no date). Local variants of the National Offence Index include the Median Sentencing Ranking and the Median Statutory Maximum Ranking, developed by the New South Wales Bureau of Crime Statistics for research purposes (MacKinnell, Poletti, & Holmes, 2010). In Canada, crime severity weights (derived from sentencing data) have also been used to calculate aggregate crime severity index scores that are then used to track trends in crime (Statistics Canada, no date). In the US, a survey-based crime severity index was developed in the 1980s but appears to no longer be used (Wolfgang, Figlio, Tracey, & Singer, 1985). Offence seriousness indices suffer from several problems relating to consistency and interpretability. Specifically, there can be significant temporal and jurisdiction-to-

jurisdiction variations in sentencing severity, especially for offences that rarely occur. In addition, public assessments of the seriousness of offences do not necessarily align with sentencing severity.

An alternative approach has been to rank offences in terms of the perceived 'harm' that arises from an offence. One way to measure harm is to consider the monetary costs of different offences, including both the direct costs to victims, as well as the indirect costs to society. This approach has proven influential in highlighting the very large intangible costs (including decreased quality of life, long-term ill-health, pain and psychological distress and fear of crime) associated with crimes like drug abuse and domestic violence (Laing & Bobic, 2002; McCollister, French, & Fang, 2010). Harm indices can also be derived from survey data of public perceptions. The Queensland Crime Harm Index (see Ransley et al., 2018), for example, was developed from data gathered from a social survey asking about perceptions of harm caused by different crimes. A similar survey was then completed by a sample of police professionals. Both groups were asked to assess the harm caused by different crimes to victims, their families, and to the community at large - as well as how police resources should be prioritised in relation to particular offences. A similar survey methodology is used by the Victorian Crime Statistics Agency to develop a local harm index (see Crime Statistics Agency, 2019). This harm measure is criteria-based in that it identifies key attributes of offences that are associated with 'high', 'medium', and 'low', harm offences. For example, high harm offences involve "life-long/severe physical, mental and/or emotional harms experienced simultaneously", medium harm offences involve harms that are "more likely to be long-term but may be more easily overcome than those in the high harm category", and low harm offences are those that do not involve physical harm and are not long lasting.

It is important to note that very few of the sources identified in these searches distinguish between the ways in which these concepts have been applied to those who have been convicted of Schedule 1 offences potentially subject to the Queensland SVO scheme: including those convicted of serious non-sexual violent offences; of serious sexual violent offences; and of serious drug offences.

Key points

Risk, harm, and dangerousness in policy and practice

- Central to any policy or legislative mechanism targeting 'serious violent offences' is the idea that there is a well-defined class of serious violent offences (or people) to whom sentencing, supervisory, or rehabilitative interventions can be applied in such a fashion as to produce reliable outcomes in the form of improved community safety or perceptions of safety;
- Terms such as 'dangerousness', 'risk', 'offence seriousness' and 'harm' have been important drivers of policy and practice in Australia and in other countries, placing particular emphasis on the overarching need to promote the safety of the community through the sentencing of serious offenders (Freiberg, 2017); and
- There is only limited empirical work published on these constructs, reflecting the challenges inherent in operationalising them. Very few of the sources identified in this review clearly distinguish between the ways in which these concepts have been applied.

Defining risk, harm, and dangerousness

- Risk is a broad and ambiguous concept that is sometimes equated with possible harm to the community, or to the probability of a future event occurring (typically reoffending), or less commonly to the severity of a potential, future event;
- Dangerousness is sometimes equated with a substantial or high risk of serious future

offending, often with a focus on violence and sexual offending;
- Harm is concerned with the outcomes of offending for victims and society, and includes both direct outcomes (death, injury, monetary loss) and the intangible outcomes (including decreased quality of life, long-term ill-health, pain and psychological distress and fear of crime); and
- In general, these constructs do not have clearly defined and accepted meanings, and this creates considerable difficulties when trying to apply these terms in legislation for serious violent offenders.

Offence seriousness indices

- Offence seriousness indices rank offences according to the severity of sentences imposed, sometimes with further refinement through input from practitioners or community representatives; and
- Offence seriousness indices suffer from problems of consistency and interpretability. Specifically, there can be significant temporal and jurisdiction-to-jurisdiction variations in sentencing severity, especially for offences that rarely occur. In addition, public assessments about the seriousness of offences do not necessarily align with sentencing severity.

Judgements about risk and dangerousness

- There is limited evidence about the reliability of judgements about the probability of individuals labelled in this way committing further offences or the extent to which interventions can successfully mitigate risk or reduce dangerousness;
- Current risk assessment tools offer a more transparent and empirically defensible approach to assessment than professional judgement alone;
- Professionals do not consistently use risk assessment tools to guide risk management efforts and there is currently insufficient evidence that the use of these tools by themselves will reduce either violence or reoffending (Viljoen, Cochrane, & Jonnson, 2018);
- There is no shared understanding across justice professionals of risk and dangerousness and judges are likely to rely on expert evidence of psychiatrists and psychologists. There is no clear consensus in how to determine who is 'high risk' and those found to be 'dangerous' were not a homogenous group (Hobbs, 2017);
- Efforts to develop dangerousness guidelines for sentencing have been hampered by paucity of guidance and understanding about what it means to be dangerous and the difficulties in assessing risk (Kelly & Harris, 2018); and
- Risk assessment measures are also considered by some researchers to be culturally biased, and this presents a particular problem when attempting to assess the risk of future offending of Aboriginal and Torres Strait Islander people who have a history of offending.

Assessments of harm

- There have been several methodologies developed to measure the level of harm associated with offending, including surveys of public perceptions and calculations of the monetary costs of different offences that consider both the direct costs to victims as well as the indirect costs to society.

Stakeholder perceptions

If sentencing is to reflect the values of the community, then understanding the level of support that exists for the setting of mandatory minimum non-parole period sentencing is critical. Community attitudes towards parole are likely to be contingent on an understanding of the availability and effectiveness of alternative sanctions, prison rehabilitation, and the way in which the parole system is administered. There is little evidence to support the assumption that the public opposes parole (perceiving it to be a 'soft' or even 'dangerous' option), with studies of Australian community attitudes to sentencing showing that the public view of parole is more nuanced than has often been assumed (e.g., Fitzgerald et al., 2020). Many people base their opinions on the information that is available, which is often limited to media reports that focus on a small number of atypical cases or on the most serious violent and sexual offences. There is evidence that when asked for their opinion in abstract terms, people will often report that current sentences are too lenient. However, when presented with the same facts as those considered by judges, sentencing views tend to converge with those of judges. Members of the public are also much more supportive of rehabilitation than is sometimes thought and there is evidence that simply increasing the severity of sentencing will not necessarily result in greater public confidence in the criminal justice system.

Several studies have now been published that examine different aspects of Australian community attitudes towards parole and sentencing. These have generally produced consistent findings. For example, it seems clear that members of the general public hold varying views about the relative importance of punishment and rehabilitation, but generally favour imprisonment for more serious offences (e.g., Stobbs, Mackenzie, & Gelb, 2015). Perhaps unsurprisingly, Spiranovic et al. (2012a, b) reported that punishment was endorsed as most important for repeat, adult, and serious assault offenders, but also that public preferences are broadly consistent with current sentencing practices.[iv] There appears to be little evidence, however, to support claims that the public are generally very punitive, and it cannot be assumed that there is widespread or consistent support for the setting of mandatory non-parole periods for serious offenders. Rather, there is evidence that the community may be equally concerned with the availability and quality of rehabilitation programmes and services and alternative sanctions, particularly for those who are considered 'vulnerable' (e.g., Bartels, Fitzgerald, & Freiberg, 2018). Such evidence provides a counterweight in debates about the appropriate use of parole when claims are made that more punitive policies are required because the public demand them. There do appear to be significant differences in attitudes within the community, with higher education levels associated with less punitive attitudes, as are age, gender, and income (with young people, women, and higher income earners tending to hold less punitive attitudes; Spiranovic et al., 2012 a, b). Those studies that have investigated the views of victims of crime on parole are reviewed below.

None of the identified sources specifically considered the use of mandatory non-parole periods. The Hidderley et al. (2021) study of public opinion towards sentencing for the homicide of a child does, however, provide a methodology that might be used to gather this type of information. This study demonstrated that level of satisfaction with sentencing varied according to the defendant's assessed level of culpability and criminal responsibility. It would be feasible to ask similar questions about the use of parole and setting of non-parole periods in future studies.

There is a body of research that specifically examines public attitudes towards those who have committed sexual offences. This establishes—from both international and Australian studies—that public attitudes are

consistently punitive and that longer sentences are preferred (e.g., Bogle & Chumney, 2006). These attitudes are often thought to be fuelled by inaccurate portrayals in the media that, for example, promote a stereotype of perpetrators as predatory paedophiles who offend against children outside of their families (Brayford & Deering, 2012). Shackley et al. (2013), however, do point to some more nuanced findings, noting an early study by Brown (1999) which concluded that while members of the public were very supportive of treatment, they were not supportive of treatment being provided in their own or nearby communities. There is also some evidence from the US that members of the public will significantly over-estimate the risk of known recidivism in this group and have little confidence in treatment programmes. Investigations of how specific participant characteristics influence attitudes towards those who have committed sexual offences, including student status (e.g., Ferguson & Ireland, 2006; Kjelsberg & Loos, 2008), exposure to perpetrators (e.g., Craun & Theriot, 2009; Sahlstrom & Jeglic, 2008; Sanghara & Wilson, 2006), and type of employment (e.g., Hogue, 1993; Hogue & Peebles, 1997; Johnson, Hughes & Ireland, 2007), generally conclude that greater exposure or contact with people known to have committed sexual offences is associated with less negative attitudes towards them. Attitudes also appear to vary across different demographic groups; including by sex (e.g., men seem to generally hold less punitive attitudes towards perpetrators of rape than women; see Ferguson & Ireland, 2006; Rogers, Hirst & Davies, 2011; Willis, Malinen, & Johnston, 2013), age (younger participants have been shown to have less negative attitudes; Brown, 1999), and education (higher levels of education are associated with less negative attitudes; Willis et al., 2013). In their study, Shackley and colleagues (2013) examined whether the seriousness of an offence and reoffending risk would influence community members' judgements towards a hypothetical person who had been convicted of a sex offence. It was hypothesised that the higher the seriousness of the offence and reoffence risk, the more negative the judgements towards the person would be. However, minimal support was found for both hypotheses. Rather it was age and level of education that influenced these judgements. Specifically, an increase in age and higher educational attainment were associated with less negative attitudes. Finally, there is some evidence that attitudes can change when information and training is provided (see Ware, Galouzis, Hart, & Allen, 2012; Willis, Levenson, & Ward, 2010), especially when facts about recidivism rates, the heterogeneity of the cohort, and the effect on victims is presented (Levenson et al., 2007). One evaluation of a training course offered to police officers in Western Australia, for example, concluded that training led to fewer attributions of victim responsibility and more confidence that cases would be authorised to proceed to prosecution (Darwinkel, Powell, & Tidmarsh, 2013).

The work of Fitzgerald et al. (2020) shows that the Australian public holds varying views about the use of parole and re-entry following imprisonment, although the majority do appear wary of the concept of parole and support the suggestion that those in prison should serve their full term in custody. They also support increased funding for prison education and treatment programmes, in the belief that society is obligated to assist those who are incarcerated. O'Sullivan et al. (2018) have also reported that the Australian public is generally optimistic about the prospect of successfully re-integrating ex-prisoners, including serious offenders (see also Reich, 2017). A study by Dodd (2018) concluded that gender predicts attitudes towards parole, with Australian women significantly less likely to support parole than Australian men. Thus, it might be concluded that any assumption

that the community holds punitive views is likely to be over-simplistic and potentially inaccurate (see Bartels et al., 2018). In fact, for Fitzgerald et al. (2020), their recent finding that less than 20 per cent of Australians could be classified as 'punitive' in relation to parole "should provide a stark reminder of the need to ensure that policymaking reflects actual, rather than presumed, community attitudes" (p.183). Nonetheless, a different survey conducted 5 years earlier by the same research team did report that over half of respondents either opposed parole altogether or believed that prisoners should be required to serve at least 80 per cent of their sentence before release (Fitzgerald et al., 2016). At the same time, there is some evidence that mandatory sentencing is viewed by many in the community as simply a political tool to show the public that a government is 'tough on crime' (Stobbs, Mackenzie, & Gelb, 2015).

Of course, it should not be assumed that the attitudes of the public, or indeed professionals, are necessarily either accurate or valid. The work of Fitzgerald and colleagues reminds us that there is a lack of understanding of the nature and purposes of parole in the community. As such, it may be unrealistic to expect members of the public to make reliable judgements about the setting of non-parole periods. In his review of the Adult Parole Board of Victoria, Callinan (2013) further observed that any community desire for punitiveness may be driven by 'misleading' media reports "designed to provoke an immediate strong and not necessarily rational emotional reaction" (p.13).

Less is known about the attitudes of professionals who work with those convicted of serious (sexual) offences, although a recent study by Shaefer and Williams (2020) did conclude that probation and parole officers' attitudes do vary in relation to optimism about this work. Day et al. (2014) have further reported the attitudes of 18 allied health workers and 17 police officers who participated in the study based on their known involvement with providing services to registered sex offenders. Their analysis demonstrated, perhaps unsurprisingly, that those tasked with the supervision and control of sex offenders, such as police officers, are likely to hold somewhat more negative views than those who deliver treatment and support services (i.e., allied health workers).

What is clear is that the setting of mandatory non-parole periods is generally not supported by legal stakeholders and practitioners.[v] In 2011, for example, the Queensland Sentencing Advisory Council (QSAC), as it was then constituted, did not recommend the introduction of minimum standard non-parole periods following an extensive consultation process. QSAC expressed particular concern that, at the time, there was limited evidence that such schemes meet their objectives - beyond making sentencing more punitive and the sentencing process more costly and time consuming; as well as having possible negative impacts on vulnerable offenders. Fitz-Gibbon and Roffee (2019), in their more contemporary discussion about the introduction of standard non-parole periods in NSW in 2003 and a baseline sentencing scheme in Victoria in 2014, further reported that the legal community (including legal practitioners and members of the judiciary), expressly and openly stated their lack of support for such an approach to sentencing - be it presumptive or mandatory – again on the grounds that it further curtailed judicial discretion.

Another relatively recent study by Warner et al. (2019) also investigated the views of members of the community who had served as jurors. They concluded that views about sentencing of jurors, judges, and legislators in Victoria were not always well aligned. Jurors tended to place less emphasis on general

deterrence than judges and identified incapacitation as the primary purpose of sentencing in only about one fifth of serious cases. This relatively low level of support for incapacitation is consistent with the findings of a previous jury study conducted in Tasmania (Warner et al., 2010), as well as studies from countries like England and Wales (see Roberts & Hough, 2005). For Warner et al. (2019), these findings suggest that the juror perceptions of what constitutes a serious violent and sexual offence are narrower than those who potentially meet the current criteria.

Key points

Community attitudes towards parole and sentencing

- Studies of Australian community attitudes towards punishment and sentencing show that public preferences are broadly consistent with current sentencing practice (Stobbs, Mackenzie, & Gelb, 2015). There is little evidence to support claims that the public hold very punitive attitudes;
- There is no single community view regarding sentencing practices. Community members' level of satisfaction with sentences varies based on the nature of the defendant's assessed level of culpability and criminal responsibility. Current sentences for child homicide are, in particular, viewed as inadequate and not sufficiently reflective of the vulnerability and defencelessness of the child (Hidderley et al., 2021); and
- There is evidence that the community may be equally concerned with the availability of rehabilitation programmes and services and alternative sanctions, particularly for those who are considered vulnerable (Bartels, Fitzgerald, & Freiberg, 2018).

Community attitudes towards parole

- The Australian public holds seemingly conflicting views about parole and re-entry - the majority are wary of the concept of parole and support the suggestion that people in prison should serve their full term in custody (Fitzgerald, Freiberg, & Bartels, 2020), but at the same time, the Australian public is generally optimistic about the prospect of successfully re-integrating ex-prisoners, including serious offenders, and supports increased funding for prison education and treatment programmes;
- Public attitudes towards parole vary across different groups in the community. Australian women are significantly less likely to support parole than Australian men, while those most likely to hold 'progressive' views about parole are more likely to be male, younger and have attended some tertiary education (Fitzgerald, Freiberg, & Bartels, 2020); and
- None of the identified sources specifically consider public attitudes towards the use of mandatory non-parole periods. The study by Hidderley and colleagues (2021) of public opinion towards sentencing for the homicide of a child provides a methodology that might be used to gather this type of information about the use of parole.

Community attitudes towards people who have been convicted of sexual offences

- A number of studies have specifically examined public attitudes towards those who have committed sexual offences, but there is no comparable body of research relating to attitudes towards those who are subject to any SVO scheme;
- Attitudes to some types of sexual offences vary across different demographic groups; men generally hold less punitive attitudes towards perpetrators of rape offences than women. The five crimes identified as most harmful by the Queensland community in one study were: child sexual abuse; murder; rape; child physical abuse; and domestic violence (Murphy, 2019); and
- There is some evidence that attitudes towards the sentencing of serious offenders, particularly those convicted of sexual offences, become less punitive when information is provided about recidivism rates, the heterogeneity of the cohort, and the effect on victims (Ware, Galouzis, Hart, & Allen, 2012).

Practitioner and judicial attitudes about sentencing and parole

- The sentencing policy of mandatory minimum non-parole periods has not received the support of the legal community, primarily because it curtails judicial discretion (Fitz-Gibbon & Roffee, 2019);
- Jury research shows that jurors are less likely than judges to nominate incapacitation as the primary sentencing goal and tend to define what constitutes a serious sexual or violent offence more narrowly than sentencing legislation; and
- Those tasked with the supervision and control of sex offenders, such as police officers, are likely to hold somewhat more negative views compared to those who deliver treatment and support services.

2. Mandatory non-parole periods (MNPPs): Impact and effectiveness

Whilst the setting of MNPPs is likely to result in more consistent and longer sentences, it is not likely to contribute to the overall objective of enhancing community safety. Very little information was identified relating to the impact of MNPPs on different offence types, beyond some general discussion around community support for longer sentences for those who have committed certain repeat child sexual offences. There are, however, broader concerns that MNPP schemes have not been transparent about how the specific offences covered have been selected, nor is there a sufficiently robust evidence-base for choosing the specified incarceration periods.

The second, and perhaps most important, question of this review focuses attention on existing evidence regarding the effectiveness of mandatory or presumptive non-parole period schemes as they apply to serious violent offences. The reports and studies identified in our searches considered how effectiveness needs to be assessed in terms of the different sentencing purposes (i.e., community protection, deterrence, rehabilitation, punishment, and denunciation), as well indicators of improved victim satisfaction and any unintended consequences.

The most comprehensive and relevant reviews are those prepared by Sentencing Advisory Councils across the country. Whilst these are not based on primary data, they each report key stakeholder views about questions of impact and effectiveness, concluding that MNPPs neither achieve effective deterrence nor support rehabilitation. They each arrived at the view that, beyond incapacitating people in prison in the short term, community protection will not improve as a result of this approach. However, given that MNPPs have been found to result in longer periods of imprisonment, they can be considered to achieve the sentencing purposes of punishment and denunciation and there is some evidence that sentencing outcomes are more consistent when MNPPs are in place, at least in terms of sentence length. This is supported by the findings of a recent analysis of Victoria's Standard Sentencing Scheme which applies to 12 offences, many of which are serious sex offences and includes a legislated MNPP aspect. This examined sentencing outcomes for 3 sexual offences to see whether the new scheme (and 2 other interventions) had increased sentences (SAC [Victoria], 2021). The conclusion was that sentences had increased and that this was likely due to the scheme.

It is important to consider the possibility that the existing safeguards (i.e., in the criminal law and justice system) already adequately protect the safety of the community. This would appear to be the view of many of the judiciary and the legal community. For example, Sofronoff (2016) has challenged the idea that MNPPs are key to achieving community safety, stating that:

> *a mandatory non-parole period is not necessary to prevent crime or to ensure community safety as these factors are primary considerations at two points in the criminal justice process: at the sentencing stage and at the time of consideration of parole (para 516.)*

A NSW study conducted by Menéndez and Weatherburn (2016) is one of the few Australian empirical investigations of whether violence (assault) rates are affected by the threat of more severe penalties. This study found no evidence to suggest that the threat of longer prison terms reduced the incidence of assault. Another NSW study by Poletti and Donnelly (2010), on the impact of the NSW standard non-parole period (SNPP) sentencing scheme as it then was understood and applied, found that guilty pleas significantly increased for serious offences, with longer sentences imposed. Both studies could potentially be replicated using Queensland data.

Many of the sources identified in these searches considered the unintended consequences of schemes that reduce judicial discretion. The arguments - both for and against - mandatory sentencing have been well-documented elsewhere (see the Australian Law Reform Commission, 2017; Freiberg et al., 2018; White, 2000), with those in favour arguing that it improves both consistency and transparency and meets community expectations, whilst opponents point to the increased likelihood of arbitrary, unnecessarily complicated, and punitive decision making. What is clear, however, is that all forms of mandatory sentencing are based on the premise that similar type offences should be sentenced in the same way, regardless of information about the context in which the offending occurred, the person who committed the offence, and the needs and circumstances of the victim. A legitimate concern here is that any approach that reduces the capacity of the court to take all relevant factors into account will inevitably result in poorer decision making (see Freiberg et al., 2018). For example, judicial discretion is of particular importance when responding to complex needs and disadvantages, such as may arise in the context of crime in Aboriginal and Torres Strait Islander communities. Others have pointed to the inadvertent impacts of mandatory sentencing on victims (e.g., increasing the likelihood they may have to give evidence in court, aligning the penalties for child sex offences with child homicide increasing the risk of child deaths, increasing the incarceration of vulnerable defendants, decreasing the likelihood of perpetrators being able to access rehabilitation, and ultimately not increasing community safety).

Key points

Effectiveness of mandatory non-parole periods in achieving sentencing purposes

- The effectiveness of mandatory or presumptive non-parole period schemes as they apply to serious violent offences need to be considered in relation to the different purposes of sentencing, as well as indicators of improved victim satisfaction, any unintended consequences, and the effect on community safety of keeping people in custody for longer;
- There is evidence to suggest that the setting of non-parole periods does not achieve effective deterrence and fails to support rehabilitation but will incapacitate people in prison in the short term and result in longer periods of imprisonment. On this basis, they can be considered to achieve the sentencing purposes of punishment and denunciation.

Unintended consequences of mandatory non-parole period schemes

- The most cited concern about MNPPs is that they reduce judicial discretion, and hence the capacity of the court to take all relevant factors into account. It is argued that this will inevitably result in poorer decision making (see Freiberg et al., 2018); and

- Any reduction in judicial discretion is likely to be particularly important when responding to persons with complex needs and disadvantages, such as may arise in the context of sentencing those from Aboriginal and Torres Strait Islander communities.

The effects of longer periods in custody/shorter periods on parole

There is consistent evidence that imprisonment has criminogenic effects and that the parole system plays a key role in enhancing community safety. Whilst only a few studies have examined the impact of time spent in custody compared to time spent on parole on those who have committed specific types of offences (i.e., SVOs), it seems that those who have been convicted of more serious offences and who have served longer sentences will require longer periods of supervision in the community. At the same time, the nature of community supervision is also critical, in terms of the intensity of services provided, the types of service, and the way in which they are delivered.

Considering the varying opinions that have been expressed about the value of imprisonment and the use of discretionary release (parole), it is important to identify evidence that relates to the impact of sentence length and nature of any subsequent reoffending. Notwithstanding consistent evidence that, on balance, people become more, rather than less, criminally oriented because of any prison experience (Cullen, Jonson, & Nagin, 2011), some of the largest and most robust studies in this area have been conducted in the US. One of the best-known studies by Mears et al. (2016), for example, demonstrated that longer prison sentences initially increase recidivism but then, after approximately one year in prison, decrease it, and, after a two-year sentence (up to five years), exert no effect. However, the impact of spending more than five years in prison was unclear. It seems plausible that similar results would be found in Australian jurisdictions, although this does need to be established given that the US criminal justice and prison systems operate very differently to those in Australia. Only one Australian analysis was identified in the conducted searches - using data from New South Wales (Menéndez & Weatherburn, 2016). This study concluded that the threat of a longer sentences did not act either as a specific or as a general deterrent.

An important question is the extent to which the experience of parole impacts on post-release outcomes, particularly for those convicted of more serious offences or who have spent extended periods in prison. In another New South Wales study, Wan, Poynton, and Weatherburn (2016) reported that those who received parole took longer to commit a new offence, were less likely to commit a new indictable offence, and committed fewer offences than those who were at a similar risk of reoffending but were released unconditionally into the community. This finding appears to be robust, holding after 12-month and 3-year follow up periods. Another NSW study, by Galouzis, Meyer, and Day (2020), further shows that the actual period spent on parole may be less significant than the opportunities that arise to connect with pro-social people and to participate in meaningful work. This seems broadly consistent with the view that serious offenders require more, rather than less, time on parole to maintain community safety (see Queensland Productivity Commission, 2019). Sofronoff (2016), for example, argued that those:

> who are convicted of serious violent offences or offences of trafficking drugs such as methamphetamines may be the types of offenders that most require an extended period of parole. These offenders could have a significant drug history that is

> linked to offending and the community's safety would be more assured not only by the rehabilitation and programs that can form part of a parole order but also from supervision as the parolee adjusts to life in the community after a significant period in custody (para 518).

Here, Sofronoff is proposing that people released on parole need sufficient time to take active steps to reduce risk, build strengths, and take steps towards desistance. This view is supported by evidence that people on parole do need to be able to access evidence-informed programmes (designed to manage or address criminogenic need) if they are to successfully desist. As a result, more time on parole would, in theory at least, allow time to engage in rehabilitative programmes and pursue employment and education opportunities as supervision levels step down. In addition, extended time on parole may be needed given that many community programmes, including substance abuse treatment, have long waiting lists and may take months to access.

There is a separate body of evidence that has found that it is the quality of supervision that makes the difference to reoffending outcomes, both in terms of how it is structured and delivered. In terms of structure, Duwe and McNeeley (2021) describe a cost-effective intervention model for use with those with a higher risk of committing serious, violent crimes. The model has four phases,[vi] with the first three phases typically lasting about four months each. Each phase requires 40 hours of constructive activity, such as work, education, training, and/or treatment. There is now quite a large body of international literature on the impact of intensive supervision programmes of this type (see Day, Hardcastle, & Birgden, 2012 for a review). In terms of delivery, there is some evidence that it is the relationship with parole/community correction officers that is a significant indicator of parole success.

Overall, though, a wide range of factors are likely to influence the association between prison and parole success, and these will inevitably interact in ways that make evaluation difficult. For example, Polaschek, Yesberg, and Chauhan (2018) note that those who are released early on discretionary parole will be more likely to have completed programmes in prison that improved their release prospects.

Key points

Impact of sentence length on reoffending

- There is consistent evidence that, on balance, people become more, rather than less, criminally oriented because of prison experience. Longer prison sentences have been shown to increase short-term recidivism, although the medium- and longer-term impacts of longer prison sentences are unclear (Mears et al., 2016); and
- There is no evidence that the threat of a longer prison term acts as either a specific or general deterrent (Menéndez & Weatherburn, 2016).

Impacts of parole on post-release outcomes

- The most relevant Australian study (Wan, Poynton, & Weatherburn, 2016) showed that those who received parole took longer to commit a new offence, were less likely to commit a new indictable offence, and committed fewer offences than those who were released unconditionally into the community after considering reoffending risk.

Victim satisfaction regarding parole

There are limited studies reporting the views of victims of crime, with almost no evidence specific to the setting of MNPPs or, more broadly, the sentencing of serious violence offences. The available studies nonetheless offer evidence that many victims of crime will only support release from custody on parole when they feel satisfied that the person has been successfully rehabilitated and poses no ongoing risk to the community. It is also apparent that victims of crime value efforts to consult with them and are important stakeholders in the ongoing development of any policy in this area.

Victims are engaged with sentencing and parole at several points in the criminal justice process – as witnesses or complainants at the hearing stage, at the victim impact statement stage in sentencing, in submissions to parole hearings, and when being advised about parole outcomes. As a result, victims' experiences (both harmful and beneficial) are not necessarily specific to any stage of the justice process, but rather reflect their interactions with the entire justice system. In general, interactions with police are most favourably rated by victims, whilst the court and sentencing stages are typically much less positively experienced (Holder, 2015).

Research involving victims of crime has tended to conclude that it is both *procedural justice* (i.e., the perceived fairness of procedures; see Wemmers, 2013) and *outcome justice* that contribute most to levels of satisfaction. The perceived quality and legitimacy of decision making processes is a function of both the perceived fairness of the process and the quality of treatment. For example, decisions are perceived as fair when decision makers are regarded as competent and unbiased, and when victims have an opportunity to participate and to express their views and experiences. Quality of treatment relates to how well victims of crime feel that they have been treated and is a function of the dignity and respect they feel that they have been afforded. For example, being 'taken seriously' appears particularly important (e.g., Laxminarayan et al., 2013). Flynn (2011) also found that being 'treated fairly' was a more significant indicator of victim satisfaction than achieving a preferred outcome. Similarly, O'Connell and Fletcher (2018) concluded that:

> victims' … dissatisfaction can be alleviated by keeping them informed throughout the investigation, adjudication and prosecution as well as given a voice on decisions that affect them (p.61).

When considering the specific issue of victims' satisfaction with parole, it is useful to distinguish between preferences for parole decisions and outcomes, the extent to which these preferences actually influence parole decisions, and then ultimately their satisfaction with the whole parole process. It is apparent that evidence about levels of victim satisfaction with parole is sparse, with no empirical studies identified that specifically considered satisfaction with the setting of MNPPs. Generally, there is very limited research data on victim preferences, although Caplan (2012) did review several older (pre-2010) studies that supported the view that victims are not supportive of parole release. However, there is almost no relevant Australian data other than that from O'Connell and Fletcher (2018) which relates only to South Australian murder cases.

There is very limited evidence about the impact of victim preferences in submissions to parole hearings. Caplan (2012) reports that the "actual impact of victim participation at parole hearings on parole outcomes has been mixed or unclear" (p.63). Again citing a series of pre-2010 studies, Caplan notes that they showed that "victim input against parole release is significant in explaining the denial of parole for certain types of inmates in some

jurisdictions", and that a national survey commissioned by the Association of Paroling Authorities International reported that all responding states regarded victim input as either "very influential" or "somewhat influential". However, victim input "appears to be given less weight than other significant criminogenic risk factors" (p.63). As with much of the research on parole, it is important to note that this data is from the US and, given the finding of Ross (2015) that victim submissions are made in only one to four per cent of Australian parole cases, it seems possible that victim perspectives will have less influence in Australian jurisdictions. It is also unclear whether those victims who elect to make submission are representative of all victims (there are suggestions, for example, that those who do make submissions are often fearful for their personal safety). Compliance with victims' charters (which typically provide for parole boards to consult and inform victims) provides another perspective on victim satisfaction with parole.

Whilst there is an assumption that victims of crime are generally more punitive than other members of the public, this is not necessarily the case (see Devilly & Le Grand, 2015). Further, the Queensland Legal Affairs and Community Safety Committee (2012) cited submissions arguing that mandatory sentencing of child sex offenders would lead to fewer guilty pleas, an increase in court delays as well as making it more likely for (child) victims to have to give evidence and be cross-examined in court. Submissions to the Committee proposed that these factors could reduce the number of reports made to police. Submissions made by victim support agencies and victim advocates (and others) were also critical of mandatory sentencing, arguing that such sentences reduced the likelihood of effective rehabilitation, and would not achieve greater levels of community safety (Legal Affairs and Community Safety Committee, 2012).

There is a substantial body of other work that has considered the media reporting of parole. This falls outside the scope of this review but it is possible to view media reporting as one form of presenting 'victim preferences' to the community. This also appears to be an international phenomenon, as "exceptional parole failures are prominently brought to the public's attention" (Caplan, 2012; p.64) and, in Australia, the reporting of these cases has been a major contributing factor in the establishment of parole reviews. The most direct example, a newspaper article by Kelly and Kelly (2014), advocated for mandatory minimum sentencing following the death of their son, Thomas Kelly, after being punched ('king hit') in Kings Cross, Sydney in 2012. The article reported that the offender was sentenced to four years' imprisonment, following which the parents of the victim established a petition calling for mandatory sentencing laws to be introduced in cases of manslaughter. The petition received over 23,000 signatures and was a contributing factor to the passing of legislation introducing mandatory sentencing laws for 'one punch' assaults in NSW (see also Menéndez & Weatherburn, 2016; Quilter, 2014).

Key points

It is useful to distinguish between victims' preferences for parole decisions and outcomes, the extent to which these victim preferences influence parole decisions, and then ultimately their satisfaction with the parole process.

Victim preferences for parole decisions and outcomes

- US research studies generally suggest that victims are not supportive of parole release (Caplan, 2012). Many victims of crime will only support release from custody on parole when they feel satisfied that the person has been successfully rehabilitated and will pose no ongoing risk to the community;

- There is essentially no relevant Australian data other than O'Connell & Fletcher's (2018) research on South Australian murder cases, which found that 60 per cent of victims did not support release on parole; and
- There is a substantial body of media reporting on parole cases, most often highlighting failures of the parole system. Caplan (2012) argues that this reporting of exceptional parole failures gives rise to empathetic responses which, in turn, result in political action.

Influence of victim preferences on parole decisions

- US studies show that victim input against parole release is significant in explaining the denial of parole for certain types of inmates in some jurisdictions. However, victim input probably has less influence on decision outcomes compared to other criminological risk factors; and
- In Australia, a low rate of victim submissions to parole boards means that victim preferences probably have limited effect on decision making (Ross, 2015).

Victim satisfaction with parole

- Information about the level of victim satisfaction with parole is sparse, with no empirical studies identified that specifically considered satisfaction with the setting of MNPPs; and
- In general, interactions with police are most favourably rated by victims while the court and sentencing stages are typically much less positively experienced (Holder, 2015).

3. Evidence-based approaches to achieving community protection, deterrence, rehabilitation, punishment, and denunciation

Community safety and public protection are often equated with incapacitation and punishment, and a focus on general deterrence (see Warner et al., 2017), but community safety can be promoted in many ways. In their report for QSAC, Karen Gelb and colleagues (2019) acknowledged that a sentencing sanction may seek to achieve a specific sentencing purpose (e.g., punishment), or act as a mechanism that enables one or more sentencing purposes to be achieved. As was also noted by the Sentencing Advisory Council in Victoria:

> *the purpose of rehabilitation may best be satisfied by the imposition of a community-based sentence, which maintains an offender's links with family and community (including possible employment) and allows broader access to drug or alcohol treatment services. However, such a sentence may fail to sufficiently punish an offender or adequately denounce his or her offending behaviour* (Ritchie, 2011, p. 2, emphasis added).

Whilst South Australia's *Sentencing Act 2017* (SA) and Tasmania's *Sentencing Act 1997* (Tas) both specify community protection as the principal purpose of sentencing, this is not the case in Queensland's *Penalties and Sentences Act 1992* (Qld) (PSA), where no single sentencing purpose is given prominence. However, courts are directed to have primary regard to certain purposes and factors when sentencing an offender for certain types of offences. For example, under section 9(3) of the PSA, sentencing for an offence that involved the use, or attempted use, of violence against another person, or that resulted in physical harm, must have primary regard to factors including the risk of physical harm to any members of the community if a custodial sentence were not imposed, as well as the need to protect any member of the community from that risk.

Judges do have considerable discretion in how they use and weight different sentencing purposes, with some studies indicating that judges are most likely to make express

reference to deterrence, incapacitation[vii], and rehabilitation in sentencing remarks (Livings, 2021; Warner et al., 2019). Despite their apparent influence in justifying sentencing decisions, legal scholars have critiqued attempts to invoke general and personal deterrence as lacking empirical support (Bagaric & Alexander, 2012; Warner et al., 2017). Where judges impose sentences of incarceration with the intention of achieving general and personal deterrence and punishment it has, for example, been argued that such a sentence may instead delay or undermine opportunities for rehabilitation (Byrne, 2013; O'Donnell, 2020).

The purpose of these searches was to identify alternative sentencing approaches that might also be used to achieve various sentencing purposes (i.e., community protection, deterrence, rehabilitation, punishment, and denunciation). As noted above, these different sentencing purposes are not necessarily complementary and, as such, different criteria will become relevant to efforts to establish effectiveness. Nonetheless it has been argued that punishment and denunciation are best achieved through sentencing itself (Gelb et al., 2019), and that deterrence is neither a key concern of the public (Warner et al., 2019), nor an evidence-based strategy to address most forms of serious violent offending (MacKenzie & Lattimore, 2018). Indeed, as highlighted by Bathurst (2013), general deterrence is probably best achieved through front-end crime prevention and detection strategies rather than through sentencing.

Studies were identified that focused on strategies found to reduce recidivism and that promote desistance from crime. As such, many of the measures described here focus on protecting community safety through rehabilitation, rather than through deterrence, punishment, or denunciation. There is a need to acknowledge the limitations of this body of research, especially in relation to the management of those who have committed serious offences. Data on the effectiveness of programmes for this group remains both incomplete and inconclusive.

The question of which programme and policy options (other than the setting of non-parole periods) might achieve the desired purposes of the SVO scheme is just one facet of a larger question of 'what works' in rehabilitating offenders, preventing crime, and protecting the community from the effects of crime (Weisburd, Farrington, & Gill, 2017). As such, this literature describes a broad range of intervention types, including social and community development, policing, mental health, substance abuse treatment and rehabilitation, and the provision of material and other supports. Responding to - and managing - the SVO population will also inevitably require a systemic approach that is not based only on sentencing and the setting of non-parole periods, but also on the availability and quality of programmes, interventions, and support services across all parts of the criminal justice system. Whilst sentencing can incorporate some of these intervention approaches, it is particularly important to recognise its limitations. For example, a custodial sentence following a conviction for a sexual offence may include some expectation that the person will be offered treatment, but cannot specify the specific form, timing, or duration of that treatment. The important point here is that appropriate sentencing decisions rely on the ability for those who are imprisoned or released on parole to receive appropriate – and, for SVOs, sufficiently intensive – programmes.

Responding to individual differences

A wide range of approaches are required to meet the needs of specific groups of people who have committed serious offences. A one-size-fits all approach is unlikely to prove particularly effective, and tailored responses are required for men and women, younger and older people, people from different cultural backgrounds, and for those with different abilities and mental health backgrounds. This speaks to the need to incorporate high levels of discretion into judicial decision making, allowing consideration of how gender-, age-, cultural-, and disability-responsive sanctions and programmes can best be incorporated into effective sentencing.

Evidence about the effectiveness of any intervention is often limited to knowledge about group-level effects. This provides a measure of change across all members of a treatment group, but this overall effect may be manifested in large changes in behaviour for some individuals but not for others. In addition, two important contextual constraints should be taken into account. Firstly, the research evidence is derived from mainly US and UK programme outcome studies, and the extent to which this can be meaningfully applied to Australian (and specifically Queensland) defendants is often uncertain. The second consideration is that the characteristics of offending populations are subject to change – the emergence of new forms of indirect sexual offending and the detection of historical sexual offending are just two examples of this. As a result, there is a need for local evaluation, for the development of tailored approaches to suit the specific needs of individuals, and for the provision of high quality and high integrity rehabilitation and reintegration programmes and services.

Rehabilitation programs

There is a large literature on the effectiveness of offender rehabilitation programming, with consistent international evidence now available that programmes for sexual violence can play an important role in reducing reoffending. The evidence is less robust, but nonetheless still generally positive for violent offender treatment, with inconsistent findings about the impact of specialised programmes for family and domestic violence. An important observation here is that programmes such as these are only effective when they are implemented in certain ways and that, even then, the effect sizes suggest that they only have a limited impact on reoffending. Accordingly, it seems reasonable to conclude that they offer an important, but not sufficient, strategy to manage future risk in the SVO population.

Specialist programmes have been routinely offered by correctional services across Australia for some time now (Heseltine & Day, 2017), supported by what is a large body of research that has examined the impact of prison rehabilitation programmes on reoffending. Reviews of these studies have generally arrived at positive conclusions, especially when intensive programmes are provided for those in prison identified as at high risk of reoffending. There is specific evidence to support the delivery of programmes for those who have committed violent or sexual offences (e.g., Papalia, Ogloff, & Daffern, 2019), including in Australia (e.g., Mercer et al., 2021), although it is harder to determine their overall effectiveness when these programmes are widely implemented and large randomised outcome trials remain relatively scarce (Beaudry, Yu, Perry, & Faze, 2021). Although difficult to evaluate, specialist programmes have also now been developed for very high-risk populations (e.g., Henfrey, 2018), with the strongest evidence existing for the delivery of therapeutic community models of treatment (see Day & Doyle, 2010). [viii]

Reintegration and post-release support

The challenges facing many people leaving prison include, but are by no means limited to, difficulties in finding meaningful employment and stable accommodation, problems accessing mainstream health and mental health services, and the more general challenges that arise in efforts to maintain supportive relationships (e.g., Farrall, 2004; Lattimore, 2007; Shinkfield & Graffam, 2009). Given that it is the first few weeks and months after release from custody during which the risk of reoffending is thought to be at its highest (Langan & Levin, 2002), the provision of reintegration programmes that support those who are leaving prison to re-enter the community has emerged as an important component of effective practice. Yet, the way in which reintegration services are structured varies considerably between jurisdictions; with some programmes available only after release and others offered as part of a continuum of throughcare from custody into the community. In some jurisdictions, reintegration programmes are primarily provided by correctional services (see Correctional Service Canada, 2018; Moroney et al., 2019; Tissera, 2019), whilst in others it is the non-government or voluntary sector that assumes the primary service provision role, either independently (e.g., Bond, Mann & Powitzky, 2011) or as a subcontractor (e.g., Day, Ward & Shirley, 2011). As a result, practice in this area is inconsistent both within and across jurisdictions and it is difficult to describe any broad consensus about the type of reintegration services that should be preferred for the SVO population.

Those studies that have examined the outcomes of programmes offered to people leaving prison have, however, generally produced disappointing results when assessed against the objective of reducing reoffending. The most significant body of relevant work in this area comes from a series of evaluations of the US government's Serious and Violent Offender Re-entry Initiative (SVORI). A total of US$100 million was invested in 89 different adult and juvenile programmes across five areas: criminal justice, housing, health, employment, and education (National Institute of Justice, 2011), with a series of well-designed evaluations by Lattimore and colleagues (Lattimore, Steffey, & Visher 2009; Lattimore & Visher, 2009; Lindquist et al., 2009; Lattimore et al., 2012) analysing data from a total of 1,618 adult males, 348 adult females, and 337 juvenile males. Participants were drawn from 12 distinct adult and four juvenile programmes selected on the basis that they were among the most promising. When SVORI participants and non-participants were compared, there were inconsistent programme effects (Lattimore & Visher, 2009). By 24 months, both male and female SVORI participants had *higher* reincarceration rates than those who had not attended a programme. A subsequent analysis of re-arrest and nine other self-reported outcomes (e.g., housing, employment, job pay and benefits, drug use, committed any crime) at 15 months did, however, reveal that SVORI participation had mostly "beneficial but non-significant" effects (Lattimore et al. 2012, p. ES-10) and, in a subsequent follow-up at 56 months or longer, more promising findings were reported for adult offenders who had a longer time to arrest and fewer arrests after release (Lattimore et al., 2012). Somewhat surprisingly, a subsequent review of these studies by Jonson and Cullen (2015) noted that self-reports of the types of service received (e.g., a re-entry plan, help with life skills, access to mental health treatment) were typically *unrelated* to recidivism and, in some cases, had criminogenic effects. Even so, it did appear once again that the more effective programmes were those that provided continuity of care (beginning in the prison and continuing once prisoners were released into the community), had higher levels of integrity, targeted those assessed as at high-risk and addressed their criminogenic needs, and employed therapeutic community approaches. The quality of the relationship formed with the parole/community correction officer does appear to be a significant indicator of success on parole, as

does interagency collaboration (Larsen, Dale, & Ødegård, 2021).

Multiagency approaches

Whilst public protection policy measures, including registration schemes, community notification, and residency restrictions, have been implemented to manage some group of people identified as at high risk in the community, the evidence base supporting their effectiveness is, at best, limited. There is a need to coordinate activity across different agencies and respond to the different needs and risks of particular individuals. Guidelines, such as those prepared by the Scottish government's Risk Management Authority (RMA, 2011) are now available that detail how interagency management of this type should occur, promoting defensible and ethical risk management practice that is proportionate to risk, legitimate to role, appropriate for the task in hand, and communicated meaningfully.

An important approach to managing the risks associated with serious and violent reoffending involves coordinated, multi-agency strategies that combine assessment, case planning, and the implementation of a range of risk management measures (monitoring and supervision, treatment, and victim safety planning) (see Queensland Productivity Commission, 2019). Originally developed to manage high risk domestic violence cases, what are sometimes referred to as 'safeguarding' models have now been extended to manage other forms of violent and sexual offending. Examples include the MARACS (Multi-Agency Risk Assessment Conferences), MASH (Multi-Agency Safeguarding Hubs) and MARAM (Multi-Agency Risk Assessment and Management) models targeting high risk domestic violence cases in the UK and Victoria respectively, and the MAPPA (Multi Agency Public Protection Arrangement), FRAME (Framework for Risk Assessment, Management and Evaluation) and PPANI (Public Protection Arrangements Northern Ireland) models targeting adult sexual and violent offenders in the UK and Northern Ireland. In Queensland, a similar approach – High Risk Teams – has been implemented, although only a high-level summary of the programme evaluation is currently available.

Multi-agency models are seen as appropriate practice frameworks for managing those who have the greatest potential to cause serious harm – the MARACS model, for example, is typically used with the most serious 10 per cent of cases. A particular strength is that they require the use of common risk assessment tools, such that every agency is operating on the same understanding of what constitutes 'high risk'. Some of these schemes have not, however, typically been developed specifically for use post-conviction and used irrespective of whether a person has been charged and convicted.

Multiagency approaches also rely on the delivery of programmes. One review of effective crime prevention strategies for the European Commission found that multi-modal approaches combining cognitive-behavioural treatments and psycho-social therapies, delivered in a consistent multi-agency way, have the most efficacy (Kemshall, Wilkinson, Kelly, & Hilder, 2015). The reported benefits included improved service delivery, better use of resources, and reduced opportunities for vulnerable individuals to slip through the net (Shorrock, McManus, & Kirby, 2020). However, the research literature on their actual effectiveness remains scant (see Robbins, McLaughlin, Banks, Bellamy, & Thackray, 2014) and whilst they do appear to lead to improvement in information sharing and service coordination, the effectiveness of these models in reducing the incidence or severity of harm is yet to be clearly established.

It is important to note that the sources identified in these searches offer just some

examples of the type of measures that might be considered in efforts to manage the SVO population when in prison and following release. It is apparent that other relevant literature is available but was not identified using our search terms. This includes, for example, some of our own studies of mental health and other diversion courts (e.g., Lim & Day, 2014), prison social climates (Day et al., 2012), prison vocational education and training (Cale et al., 2019), men's behaviour change programmes (Day et al., 2019) and prison substance abuse treatment (Casey & Day, 2014). Whilst the strength of evidence to support the implementation of these various initiatives does vary, these studies do provide a rationale for developing a range of specialist services that act to divert people away from prison where possible, ensure that the prison regime is as conducive to change as possible (i.e., they provide an 'enabling environment'), and that provide high quality interventions in prison to address family and domestic violence and problematic substance use, as well as preparing people to re-enter the workforce following release. There is also a body of work published by Australia's National Research Organisation for Women's Safety Limited (ANROWS) that speaks directly to the prevention of family and domestic offences, including sexual offences, in the community that warrants consideration. Richards, Death, and McCartan (2020), for example, have recently discussed the provision of support mechanisms for people who have been convicted of sexual offences. Chung et al. (2020) have also discussed the importance of systemic approaches to intervention. Other promising responses to DFV include early intervention, father programs, and specialist sentencing approaches (AIFS, 2020; CIJ, 2015; VSAC, 2017). Each of these responses may be relevant to efforts to maintain the safety of the community from those who have committed serious offences. This group is likely to have multiple needs that require a range of different programme responses. The provision of prison substance use treatment is also likely to be of particular importance to those who have been convicted of serious drug trafficking offences and who also experience problems related to use and dependency. There is some evidence from other Australian jurisdictions that specialist legislation and service delivery in this area can play an important role (see Birgden & Grant, 2010).

A large body of material is available that considers issues regarding the criminal justice system involvement of people from Aboriginal and Torres Strait Islander communities, both in Queensland and across the country. The sources identified using the search terms employed for this review do not provide adequate coverage of this issue and it is reasonable to observe that significant questions arise in any effort to apply this literature to a cultural or cross-cultural context. Edwige and Gray (2021), in a report, commissioned by the NSW Bugmy Bar Book (http://publicdefenders.nsw.gov.au/barbook) have recently outlined the importance of culture in the context of providing rehabilitation and healing, highlighting the significant benefits of connecting to culture, family and community. They identify key characteristics to promote healing and wellbeing, including self-determination, and the application of trauma-informed principles and provide examples of community- and place-based initiatives that are directly relevant to sentencing.

Key points

- The sentencing goals of community protection, deterrence, rehabilitation, punishment, and denunciation may be achieved through implementing a range of different measures, programmes, and policies;
- Consideration should be given to the importance of individual factors (e.g., age, gender, disability), the stage of the criminal justice system where services are made available (e.g., courts, corrections, post-release), and the nature of the offence (sexual violence, non-sexual violence, domestic abuse, drug trafficking); and
- Very few sources were identified that considered how best to respond to the specific needs presented by those convicted of drug trafficking offences.

General considerations for evidence-based approaches

- A wide range of approaches are required to meet the needs of specific groups of people. A one-size-fits all approach is unlikely to prove particularly effective;
- There is a range of different interventions and measures that can be applied to reduce the risk, dangerousness, and harms of the SVO population. These can form part of an effective strategy and should be implemented across all stages of the criminal justice system;
- People who are released on parole need sufficient time to take active steps to reduce risk, build strengths, and take steps towards desistance. More and not less time on parole would allow time to engage in rehabilitative programmes;
- The more effective programmes are those that provide continuity of care (beginning in the prison and continuing once people in prison were released into the community), have higher levels of integrity, target those who are at high-risk and their criminogenic needs, and employ therapeutic community approaches. The quality of the relationship formed with the parole/community correction officer appears to be a significant indicator of success on parole; and
- This research speaks to the need to incorporate high levels of discretion into judicial decision making; allowing consideration of how gender-, age-, cultural-, and disability-responsive sanctions and programmes can best be incorporated into effective sentencing.

Discussion

What emerges from this review is a large, but somewhat disparate, body of work that is broadly relevant to the terms of the inquiry. Within this, there is a much smaller body of evidence that directly applies to sentencing review and reform in Queensland, both in terms of content and jurisdictional relevance. It is possible to identify some common themes and general conclusions based on this body of evidence, to each of the questions that this review sought to answer.

Currently, there are insufficient grounds to systematically apply the concepts of 'dangerousness', 'risk', and 'harm' to the sentencing of serious violent offenders. Rather, high levels of judicial discretion are preferred as they allow individual circumstances to be taken into account.

Whilst it is often assumed that members of the community will typically favour more punitive and uniform sentences for serious offences, the available evidence suggests that this is not necessarily the case. Public views about the use of parole are nuanced and judgements about appropriate sentencing will change when detailed case-specific information and rehabilitation options are provided. There is also some evidence that whilst standard non-parole period and sentencing schemes are likely to result in more consistent and longer periods in custody, they may not contribute to the overall objective of enhancing community safety. In fact, there is no substantive evidence that setting a threshold of 80 per

cent of the sentence served in prison will contribute to improved community safety, and it seems likely that providing longer periods of supervision in the community will prove more effective.

A wide range of different interventions and measures have also been shown to play a role in reducing the risk, dangerousness, and harms caused by those who may be eligible for any SVO scheme. Any effective strategy will clearly need to involve a combination of discretionary sentencing, informed parole decision making and effective parole supervision, as well as rehabilitative and post-release (re-entry) support interventions.

Arguments for more individualised decision making are strengthened when the status of current evidence relating to important subgroups of the SVO population is considered. For example, this review identified very little evidence relating to the management of women who have committed serious offences. This is despite a body of work articulating the need for gender-responsive justice policy and practice. A similar observation might be made about age, with the cohort of serious young adult offenders (aged 18 to 25 years) serving long sentences also likely to require specialist responses. Most notably, there is insufficient evidence available regarding issues relating to cultural identification, in particular the over-representation of people from Aboriginal and Torres Strait Islander communities across all levels of the criminal justice system. There is very little empirical research in this area that examines responses to serious offences, although some relevant government reports have been commissioned (e.g., an unpublished report for Queensland Corrective Services on the management of Indigenous people convicted of sexual offences; Day et al., 2019). The specific circumstances arising when those who have committed serious offences return to home communities that are both remote and discrete (including the Torres Strait communities) clearly require careful consideration when setting a parole eligibility date. Standardised decision making of the type required when mandatory conditions are in place is unlikely to be able to be responsive to some of these contextual determinants of parole success (including the availability of adequate housing and family support).

Other questions remain regarding 'who' an SVO scheme or similar should be applied to. Currently, the scheme predominately targets offenders who have been convicted of three main offence types: serious violent offences; serious sexual offences; and serious drug offences. Even though the key criterion for inclusion relates to offence *seriousness,* this concept has proven difficult to define. Legal definitions can be used to identify a core set of offences that can be categorised as 'serious' (and thus potentially subject to the provisions of the SVO legislation), but offence codes do not necessarily relate to ongoing risk, dangerousness, and likely harm. Day et al. (2021) have also argued that the boundaries between different violent offence classifications are often blurred such that, in practice, simply knowing whether (or not) a person has committed an offence that is legally classified as one that is 'serious' is not especially helpful when determining effective interventions. The development of harm indices offers an alternative method of defining serious offences, although these are criteria-based classifications that do not readily translate into criminal code categories (i.e., the impacts of offences vary across individual cases). More work is needed to arrive at clear and consistent definitions that can be operationalised in determining eligibility for any SVO-type scheme, in terms of both eligible offences and the characteristics of those who are convicted. When the SVO definition is not explicitly articulated or cannot be meaningfully

operationalised, the possibilities for tailoring or matching intervention to meet the expectations of the community that ongoing levels of risk will be adequately managed reduce considerably.

It is important to note some of the limitations of the review methodology. Whilst the searches were conducted according to recognised scoping review standards, relatively little evidence speaks directly to the Queensland context and the strength of available evidence is generally weak. For example, there were no experimental studies identified that directly compare the outcomes of the SVO scheme to other measures, whether in Queensland or elsewhere. The comments made in the report of Harper about the challenge of providing effective programmes in the context of "rapidly changing knowledge and diverse and sometimes conflicting advice" and the absence of "consistent evidence about effectiveness" (Harper et al., p.148) seem apposite. The NSW Sentencing Council (2012) also commented that recommendations about effective treatment were difficult to make given the "limited quantity of empirical evidence" (p.26), and that research in relation to the reduction of violent recidivism is "new and underdeveloped" (p.143). Research evidence has also been viewed as subject to change, leading to the conclusion that it would be wrong to recommend "changing direction in response to every shift in evidence and/or trend" (Harper et al., p.143). Related to this is a practice reality in which research evidence is not always systematically applied. For Harper et al. this includes the delivery of case management and the prediction of violent sexual and criminal risk in Victoria.

The NSW Sentencing Council (2012) viewed the evidence on risk assessment of those who are high-risk and have committed violent offences as inherently problematic. This was on the basis that assessments give rise to "substantial numbers of 'false positive' and 'false negative' predictions of risk" (p. 24). Whilst such conclusions do provide a rationale for preferencing jurisdiction-specific evidence (such as from local stakeholder submissions), a common conclusion is nonetheless that more local research is required (e.g., assessment tool validation) and that evaluation capacity needs to be strengthened to allow a sounder evidence-base to develop. At the same time, not curating the evidence that is currently available in a systematic manner leaves government agencies, as Harper describes, 'open to criticism'.

It is important to consider the extent to which research knowledge should inform the development of more effective public policy in this area. Hanley et al. (2016) have proposed that empirical research contributes to criminal law reform by supporting problem identification and justifying the need for reform, as well as by identifying and evaluating options for reform. However, they conclude that a range of factors and actors will inevitably shape the processes and outcomes of any single measure, highlighting that law reform is ultimately a political and context-driven activity. Freiberg and Carson (2010) describe the relationship between policy, knowledge, and research in terms of the following five typologies:

i) *knowledge driven,* policy which is characterised by the abandonment of political choice in favour of scientific expertise;
ii) *problem solving,* where policy directions shape research priorities;
iii) *interactive,* in which research forms one part of a complex array of items that are used to inform policy decision making;
iv) *political*, where policy and research directions are an outcome of the political process; and
v) *enlightenment* where research and evidence address the context in which

policy decisions are made by engaging with the landscape and context in which decisions are made, rather than the policy decision itself.

These different typologies reflect a range of underlying views about the nature of knowledge and the type of evidence that is required to develop effective public policy. It seems apparent (at least as far as can be judged by expert commentaries on the setting of MNPPs) that current policy has emerged from a highly politicised process in the context of punitive narratives about the purpose of the criminal justice system. From a knowledge-driven perspective, however, the findings of this review suggest that there are more effective ways to achieve the objectives of the Queensland SVO scheme. One way forward may be moving towards a more problem-solving approach to policy making, whereby the knowledge described in this report is judiciously applied to the specific problems and risks posed by those who have committed serious offences. This type of approach will require, in our view, a detailed analysis of those who are currently subject to the SVO scheme to understand their specific risks, needs, and circumstances which is followed by the identification of a series of management measures that can reasonably (from any independent assessment) be expected to mitigate future risk for each individual. This, it might be argued, would help to meet community expectations by introducing a high level of accountability for discretionary decision making at each stage of the criminal justice process.

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Endnotes

[i] see, for example the Harper Review findings about risk assessment practices [p.153] and offending behaviour programs [p.140]), supplemented by reference to selected research studies and sources.

[ii] Parole is a form of conditional release from prison which allows a person to serve the whole or part of the sentence in the community, typically under supervision. It plays a significant role in the Australian criminal justice system, with Freiberg et al. (2018) noting that, in September 2017, there were 15,402 people on parole across the country, compared to overall prisoner numbers of around 41,000.

[iii] Domestic and family violence can be conceptualised as a process rather than an event, suggesting that prediction efforts based on the 'reoffence' may lack validity.

[iv] This is comparable with the findings of general population surveys conducted in other countries, such as those the United States, which demonstrate that relatively large proportions of the public are punitive with respect to sentencing (Cullen et al., 2000), especially when sexual offences are considered (Levenson et al., 2010). Dodd (2018), for example, has reported that international research on public attitudes toward parole has generally returned mixed findings, with some studies reporting that people's views on parole are largely favourable and others that attitudes are overwhelmingly negative. For example, Samra-Grewal and Roesch (2000) found that less than half of Canadian respondents (47.4%) believed the parole system was too lenient. Roberts, Briker, Clawson, Doble, and Selton (2005) also reported that 78% of Massachusetts's residents favoured the early release of selected, non-violent inmates. In another US survey, however, 81% of respondents felt that parole was granted too frequently (Zamble & Kalm, 1990), while in another, a similar proportion (82%) felt that parole processes were too lenient (Cumberland & Zamble, 1992). More recently, Johnson (2009) reported that close to 72% of respondents believed US parole boards needed to be stricter.

[v] In 2016, for example, the Victorian Sentencing Advisory Council also rejected mandatory sentencing in favour of a system of guideline sentencing or standard (i.e., presumptive) sentences that preserved judicial discretion. In 2011 the NSW Sentencing Council report on standard Non-parole Periods noted that a view commonly expressed was that the SNPP scheme was founded on a 'flawed premise' that the community expected there to be higher penalties for serious crimes.

[vi] Phase I includes house arrest and electronic monitoring, and requires a minimum of three face-to-face contacts per week; Phase II involves house arrest and face-to-face contacts are modified to reflect progress that has been made, and the number of required face-to-face contacts per week is reduced to two; Phase III replaces house arrest with a curfew, and one face-to-face contact is required weekly; Phase IV is where a curfew is set, face-to-face contacts are required at least monthly, and participants are required to submit to polygraph testing.

[vii] This is not an official sentencing purpose in Queensland. See https://www.sentencingcouncil.qld.gov.au/about-sentencing/sentencing-adult-offenders

[viii] Kennard (2004) has described a therapeutic community (TC) as "a 'living- learning situation' where everything that happens between members (staff and patients) in the course of living and working together, in particular when a crisis occurs, is used as a learning opportunity" (p.296). In essence, the TC model uses the community to provide a range of life situations in which members can re-enact and re-experience their relationships in the outside world, with opportunities provided through a group and individual therapy process to examine and learn from any difficulties that are experienced. Two distinct types of TC have, however, been described in the literature: the democratic TC; and the concept-based TC. A prison-based democratic TC environment emphasises mutually supportive relationships between members, a free flow of communication between residents and staff, an atmosphere of safety, and an acknowledgement that the TC is different from general prison (Genders & Player, 2003). Concept based TC's have generally been developed as specialist units to treat addiction. Drug using individuals are seen as experiencing relational problems as immature, and as unable to delay gratification and this is counteracted in the TC by the setting of therapeutic goals that promote social adjustment. The primary goal of treatment is to promote independence and self-responsibility, again making the individual the active agent in their recovery. Small encounter groups are seen as a key therapeutic component of the concept TC, and there is a progression through the community as those who have been in the community for longer are expected to serve as positive role models for newer members.