Review of the *Dangerous Sexual Offenders Act 2006*
Overview ................................................................................................................................ 5
Introduction ........................................................................................................................... 6
   Past reviews .......................................................................................................................... 6
   Background to the 2014 Review ........................................................................................ 7
       The history of Mr TJD ...................................................................................................... 7
Scope of the 2014 Review .................................................................................................... 9
   Terms of Reference ........................................................................................................... 9
   Additional issues included in the 2014 Review ............................................................... 9
       The role of victims of crime in DSO Act proceedings .................................................... 9
       Dangerous sex offenders and the media ...................................................................... 9
       Suppression of Mr TJD’s name (Juveniles, juvenile offending, and anonymity) .......... 9
       21 day notice period before publication of information about offenders ................. 10
       Review of some other forms of indefinite detention .................................................... 10
       Exclusion of GPS monitoring in determining release ............................................... 10
   Process of the review ....................................................................................................... 10
Term of Reference 1: The process of applying to the Supreme Court for a continuing
detention or supervision order ............................................................................................ 12
   Current situation ............................................................................................................... 12
       Dangerous Sexual Offenders Review Committee .......................................................... 12
       Application ...................................................................................................................... 13
       Preliminary hearings ..................................................................................................... 13
       Information sharing ....................................................................................................... 13
   The Attorney General’s current role under the DSO Act ................................................ 15
       Interstate comparison: post-sentence applicant (serious sexual offenders) .............. 17
   The DPP’s current role under the DSO Act .................................................................... 20
       The role of the DPP in other jurisdictions .................................................................... 20
   Stakeholder views on other possible approaches for Western Australia ..................... 21
   Key reform options: determining post-sentence detention or supervision under the
   DSO Act .............................................................................................................................. 21
       Option 1: Attorney General to determine detention or supervision ............................. 21
       Option 2: The State of Western Australia applies to the Supreme Court for
detention or supervision .................................................................................................... 22
Option 3: PRB makes application to the Supreme Court for detention or supervision ................................................................. 22
Option 4: PRB determines periodic reviews ................................................................. 23
Conclusion .................................................................................................................. 24

**Term of Reference 2:** The length of time between periodic reviews of detention ...... 25
Current situation ........................................................................................................ 25
Calculating the period for reviews ............................................................................. 25
Interstate comparison ................................................................................................ 27
Comparison with prisoners sentenced to life terms or indefinite imprisonment .... 29
Conclusion .................................................................................................................. 29

**Terms of Reference 3 & 4:** Contraventions of supervision orders ......................... 30
Current Situation ........................................................................................................ 30

A quick note on terminology – breach versus contravention .................................... 30
Bail ............................................................................................................................... 31
Granting of bail ............................................................................................................. 32
Interstate comparison - bail ....................................................................................... 33
Prosecution of Section 40A offences ......................................................................... 34
Interstate comparison – contravening a supervision order ....................................... 36
Conclusion .................................................................................................................. 41

**Additional Issue:** The role of victims in DSO Act proceedings ............................ 43
Current review ............................................................................................................. 44
Conclusion .................................................................................................................. 46

**Additional Issue:** Dangerous sex offenders and the media .................................. 48
Conditions of supervision orders .............................................................................. 48
Contact with victims ................................................................................................... 48
Amending existing conditions of a supervision order ................................................ 49
Consideration of media interviews in supervision orders ............................................ 49
Conclusion .................................................................................................................. 51

**Additional Issue:** Suppression of Mr TJD’s name (Juveniles, juvenile offending, and anonymity) .......................................................... 52
Current situation .......................................................................................................... 52
Conclusion .................................................................................................................... 53

**Additional Issue:** 21 day notice period before publication of information about offenders .................................................................................. 54

**Additional Issue:** Review of some other forms of indefinite detention .................. 55
OVERVIEW

The Dangerous Sexual Offenders Act 2006 (WA) empowers the Director of Public Prosecutions or the Attorney General to apply to the Supreme Court for a continuing detention order or a supervision order against a person under sentence of imprisonment for a serious sexual offence, as defined by section 106A of the Evidence Act 1906 (WA). The orders are for control, care and treatment of offenders who have served or about to complete serving a term of imprisonment.

This review of the Dangerous Sexual Offenders Act 2006 was announced by the Attorney General on 20 March 2014 with the following terms of reference:

The Review of the Dangerous Sexual Offenders Act 2006 will investigate and report on the extent to which improvements could be made to:
1. The process of applying to the Supreme Court for a continuing detention or supervision order under the DSO Act.
2. The length of time between periodic reviews of detention.
3. The possible consequences of contravening a supervision order, including the granting of bail to a person charged with such a contravention.
4. The process and penalties for dealing with contraventions of supervision orders.

Other issues regarding the Dangerous Sexual Offenders Act 2006 that arose during the review period were also included in this review and became the subject of recommendations. These are as follows:

- A further review of the role of victims of crime in the dangerous sex offender process;
- On 11 June 2014, the Attorney General requested that the review of the Dangerous Sexual Offenders Act 2006 cover conditions that may be placed on released dangerous sexual offenders to prevent media interviews;
- Issues raised in the media regarding the suppression of Mr TJD’s name was also considered in the review;
- Whether the 21 day notice period that the Commissioner of Police is required to give a person, including a dangerous sexual offender, before publishing their photograph and locality (under Part 5A of the Community Protection (Offender Reporting) Act 2004 (WA) should be reduced; and
- Whether persons serving indefinite imprisonment under section 662 of the Criminal Code (WA) or section 96 of the Sentencing Act 1995 (WA) should be brought within the operation of the Dangerous Sexual Offenders Act 2006.

This report presents findings and recommendations of the 2014 Review of the Dangerous Sexual Offenders Act 2006.

With respect to the key options for reform of the DSO Act in relation to roles and responsibilities, this report has been drafted to be suitable as the basis for a Cabinet submission.
INTRODUCTION

The Dangerous Sexual Offenders Act 2006 (the DSO Act) forms part of a suite of legislation, enacted between 2004 and 2006, to protect the community against sex offenders. The DSO Act is directed at all sex offenders who are deemed to pose a serious danger to the community regardless of whether they have a history of offending against children or adults.

The DSO Act allows the Supreme Court, on application by the Director of Public Prosecutions (DPP) or the Attorney General, to order the post-sentence detention or supervision of sex offenders who pose a serious danger to the community. If the court is satisfied that the community can be adequately protected from the risk posed by the offender of committing a serious sexual offence by supervision in the community, the court subjects an offender to a supervision order. If the court is not satisfied that the community can be adequately protected by a supervision order from the risk posed by the offender, the offender is detained in custody. The DPP may make an application of this nature in relation to a person who is currently under sentence of imprisonment for a serious sexual offence – in broad terms, a sexual offence for which the maximum penalty is at least seven years imprisonment.

Before the court can make an order for continuing detention or supervision it must find that the person is a serious danger to the community, having regard to a variety of matters including psychiatric reports prepared under the DSO Act. In making the finding, the court must be satisfied that if no order was imposed there would be an unacceptable risk that the person would commit a serious sexual offence.

Continuing detention orders imposed under the DSO Act are indefinite, however, they are subject to annual review by the court. Supervision orders, on the other hand, must be finite (though there is no statutory limitation on their possible duration) and are not subject to regular review but may be brought back before the court in certain circumstances.

The DSO Act is largely based on the Queensland Dangerous Prisoners (Sexual Offenders) Act 2003 as originally passed, although the Western Australian Act also applies to people on parole, and not just persons in prison.

Past reviews

In July 2009, the operation and effectiveness of the DSO Act was called into question after the release from prison of a high-profile child sex offender. The Attorney General subsequently requested that the Department of the Attorney General commence a review of the DSO Act.

During the review process it became apparent that there were a number of issues that required immediate resolution; these were remedied with the enactment of the Dangerous Sexual Offenders Amendment Act 2011 on 1 March 2011.

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Background to the 2014 Review

In March 2014, the operation and effectiveness of the DSO Act was again called into question after the release from prison of a high-profile sex offender, Mr TJD.

The history of Mr TJD

Mr TJD has a history of offending that commenced when he was aged 15 years. His most recent sentence of imprisonment in respect of serious sexual offences was served in full, and he was due for release from prison in March 2011. Prior to his release, the DPP made an application for a continuing detention order or a supervision order under the DSO Act in respect of Mr TJD.

As outlined previously, the DSO Act allows the Supreme Court to order that a person remain in detention or be subject to a supervision order, despite the person having completed his or her sentence.

In a decision delivered on 31 March 2011, Commissioner Sleight found that, if Mr TJD was not subject to a continuing detention or a supervision order, there was an unacceptable risk that he would commit a serious sexual offence. Consequently, he ordered that Mr TJD be detained in custody for an indefinite term for control, care and treatment.2

As required by the DSO Act, the continuing detention order was reviewed after a year. At this review, Justice McKechnie concluded that:  

faced with the choice between a detention or a supervision order, the paramount consideration is the need to ensure adequate protection for the community. I am persuaded that the community can be adequately protected if Mr TJD is released on supervision for a period with conditions that include a condition mandating his continued counselling.3

Consequently, in April 2012, Mr TJD was released on a supervision order with strict conditions.

Following a number of contraventions of the supervision order, the DPP applied for the supervision order to be cancelled or amended because the pattern and nature of contraventions indicated that Mr TJD’s risk of reoffending had increased since the supervision order was imposed. Justice Corboy agreed with this assessment, concluding that:

the risk of TJD committing a serious sexual offence … is unacceptable and that an order should be made… for the continuing detention of TJD for care, custody and treatment having regard to the need to protect the community.4

2 Director of Public Prosecutions (WA) -v- TJD [2011] WASC 83
3 Director of Public Prosecutions (WA) -v-TJD [No 2] [2012] WASC 142
4 Director of Public Prosecutions (WA) -v- TJD [No 3] [2013] WASC 43
On 11 March 2014, after the annual review of the continuing detention order, Mr TJD was released on a 10-year supervision order with strict conditions. The conditions of the supervision order were as recommended by Dr Hall, Psychiatrist, who examined Mr TJD. As noted in the Supreme Court decision:

*Although Mr TJD is a serious sex offender, the level of supervision, monitoring and treatment is such that the risk factors identified earlier in this decision are substantially controlled and minimised. Further, the level of the supervision and monitoring is such that the opportunity to reoffend is substantially reduced.*

On 19 March 2014, Mr TJD was arrested for allegedly contravening a condition of his supervision order.

Mr TJD was released on bail and on 26 March 2014 he was fined $300 for the contravention of the supervision order.

The release and subsequent arrest of Mr TJD in March 2014 was the subject of public and media protest, calling the operation and effectiveness of the DSO Act into question. In response, the Attorney General announced a review of the DSO Act.

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5 Director of Public Prosecutions (WA) -v- TJD [No 4] [2014] WASC 71
**SCOPE OF THE 2014 REVIEW**

The Terms of Reference for the 2014 Review of the DSO Act were announced by the Attorney General on 20 March 2014. Following some minor amendments to wording, the final Terms of Reference were approved by the Attorney General on 5 May 2014.

**Terms of Reference**

The 2014 Review of the DSO Act will investigate and report on the extent to which improvements could be made to:

1. The process of applying to the Supreme Court for a continuing detention or supervision order under the DSO Act.
2. The length of time between periodic reviews of detention.
3. The possible consequences of contravening a supervision order, including the granting of bail to a person charged with such a contravention.
4. The process and penalties for dealing with contraventions of supervision orders.

Due to the significant overlap between Terms of Reference 3 and 4, the review considered these two issues together.

**Additional issues included in the 2014 Review**

Other issues regarding the DSO Act that arose during the review period were also included in this review.

**The role of victims of crime in DSO Act proceedings**

The Commissioner for Victims of Crime was nominated as a main stakeholder to the 2014 Review of the DSO Act. Given that the role of Commissioner has been created in the intervening period, the issue of the role of victims in DSO Act proceedings was revisited in this review.

**Dangerous sex offenders and the media**

On 10 June 2014, Channel Nine News aired an interview with Mr TJD. The television interview sparked further media coverage and controversy, in particular, whether the interview contravened a condition in the supervision order that Mr TJD must not have any direct or indirect contact with the victims of his sexual offending.

On 11 June 2014, the Attorney General requested that the review of the DSO Act cover conditions that may be placed on released dangerous sexual offenders to prevent media interviews.

**Suppression of Mr TJD’s name (Juveniles, juvenile offending, and anonymity)**

A further important issue that was raised in the media during the lead up to the review was the suppression of Mr TJD’s name. The issue has also been considered by the review.
21 day notice period before publication of information about offenders

The issue of whether 21-day notice period that the Commissioner for Police is required to give a person, including a dangerous sex offender, before publishing their photograph and locality (under Part 5A – Publication of information about Offenders, of the Community Protection (Offender Reporting Act) 2004 (WA) should be reduced was also considered in this review.

Review of some other forms of indefinite detention

The issue of whether persons serving indefinite imprisonment under section 662 of the Criminal Code (WA) or section 98 of the Sentencing Act 1995 (WA) should be brought within the operation of the Dangerous Sexual Offenders Act 2006 (WA) also received limited consideration during the 2014 review process.

Exclusion of GPS monitoring in determining release

The issue was also raised of whether GPS monitoring can be specifically excluded in the Dangerous Sexual Offenders Act 2006 (WA) as a relevant consideration when the Supreme Court is deciding whether to make a supervised release order.

Process of the review

As announced by the Attorney General on 20 March 2014, the Review of the DSO Act was conducted by the Department of the Attorney General, in consultation with the following stakeholders:

- the Director of Public Prosecutions;
- the Department of Corrective Services;
- WA Police; and
- the Commissioner for Victims of Crime.

The Department of the Attorney General held face-to-face meetings with all stakeholders in April 2014. Stakeholders were also invited to make a written submission to the review. Various written submissions were received, and other material was forwarded to the review by stakeholders during the review period. The stakeholders were also asked to comment on a draft review.

This report is based primarily on information gained from consultation with stakeholders, written information provided by stakeholders where appropriate, and research conducted by the
Department of the Attorney General, including comparisons with similar legislation in other jurisdictions.
TERM OF REFERENCE 1: THE PROCESS OF APPLYING TO THE SUPREME COURT FOR A CONTINUING DETENTION OR SUPERVISION ORDER

Current situation

If a person is under a sentence of imprisonment for a serious sexual offence and there is a possibility that they will be released from custody within six months, the DPP (or the Attorney General) may apply to the Supreme Court for a continuing detention or supervision order (a Division 2 order).

‘Under sentence of imprisonment’ is defined with reference to the Sentence Administration Act 2003 and, by virtue of that definition, includes persons released under early release orders (that is, parole orders and re-entry release orders).

‘Serious sexual offence’ is also defined in the DSO Act, in this case by reference to the Evidence Act 1906. In broad terms, a serious sexual offence is any sexual offence contained in the Criminal Code for which the maximum penalty is at least seven years imprisonment.

If the court is satisfied that the community can be adequately protected from the risk posed by the offender of committing a serious sexual offence by supervision in the community, the court subjects an offender to a supervision order. If the court is not satisfied that the community can be adequately protected by a supervision order from the risk posed by the offender, the offender is detained in custody.

Dangerous Sexual Offenders Review Committee

In order to make applications for Division 2 orders, the DPP must have access to information relating to offenders that fit the statutory criteria. The DSO Act makes no provision for the DPP to be notified regarding offenders that are approaching their possible release date; however, an administrative process is in place to ensure this occurs.

The Dangerous Sexual Offenders Review Committee (DSORC) is run by the Department of Corrective Services (DCS) and comprises four representatives from DCS, one representative from WA Police, a psychiatrist, and a forensic psychologist. It reviews offenders who are in custody for a serious sexual offence serving:

- a two year or greater finite (non-parole) term of imprisonment;
- a two year or greater term of imprisonment who have been deferred early release or denied release on a parole order by the Prisoners Review Board (PRB); or
- a two year or greater term of imprisonment who have been granted parole and have been referred to DSORC by the PRB.

In reviewing the offenders, DSORC considers a variety of information including the individual’s offending history (including the circumstances of the offending), treatment programs undertaken while in custody (including whether programs were completed and the content of the termination/completion report), actuarial risk-assessments, and psychological reports. WA Police also undertake intelligence reviews and prepare a report for all persons subject to a DSORC review.

Most of the reports and assessments considered by DSORC are pre-existing and have typically been prepared for some purpose other than the DSO process. The WA Police reports are prepared specifically for DSORC, but from existing information holdings. If DSORC considers that an offender is likely to pose a serious danger to the community if released, it refers that offender to the DPP. The Department of the Attorney General understands that DSORC also routinely advises the Attorney General of the outcomes of its
meetings, including which offenders were reviewed and which ones were referred to the DPP.

The DPP reviews the information provided by DSORC and accesses any available ODPP prosecution files regarding previous offending. If the DPP decides not to make an application in respect of an offender referred by DSORC, a reply is sent to DSORC setting out the reasons for the decision. The Minister for Corrective Services then briefs the Attorney General as to the DPP’s decision. This enables the Attorney General to review and determine whether to utilise section 6 of the DSO Act to make an application in respect of the offender.

Application
If the DPP decides, on the basis of the information contained in the prosecution files and provided by DSORC, that an application is warranted and has reasonable prospect of success, he will make an application under section 8 for orders under section 14 (preliminary hearing) and section 17(1) (Division 2 orders). The application is supported by an affidavit summarising the relevant information in the material provided by DSORC and the prosecution files – no new reports or assessments are produced at this stage of the process. The DPP may also file a separate application to the Supreme Court for a summons or warrant if the offender is not in custody or may be released prior to the preliminary hearing.

Preliminary hearings
A preliminary hearing must be held within 14 days of the DPP filing an application under section 8. The purpose of the preliminary hearing is to determine whether there are reasonable grounds for believing that the court might find that the offender is a serious danger to the community. If the court is satisfied that such grounds exist:
1. A date must be fixed for hearing the application for a Division 2 order.
2. The court must order that the offender be examined by two psychiatrists who will prepare reports for the hearing.
3. Orders may be made to ensure that the offender is detained in custody until the final hearing (this may occur if the offender was released from custody before the preliminary hearing, or if the offender is still in custody but may be released before the application is decided).

Information sharing
There is no statutory basis for DSORC, or for the information sharing between DCS, WA Police, the DPP, and the Attorney General prior to the application being made. Section 38 of the DSO Act requires the CEO of DCS to provide reports and information to psychiatrists preparing reports for the purposes of the DSO Act. The same information must be provided to the DPP and, once the DPP receives the psychiatric report, the DPP must provide a copy of the information to the offender along with a copy of the report. The DSO Act also provides protection to persons who provide such information. However, it is noted that these provisions are not broad enough to cover the operation of DSORC: the information flows in only one direction rather than permitting general discussion and sharing; the provisions only apply once a psychiatric report has been ordered rather than prior to an application being made; and no provision is made for information to be shared with WA Police.
the DPP proposed that the DSO Act also be amended to state that sentences relevant to applications under the DSO Act include corresponding Commonwealth offences. This proposal was based on the expectation that prosecutions under the Commonwealth Criminal Code will become more frequent.\(^6\) Having been consulted regarding the DPP's

\(^6\) The expected increase is a result of the decision of the High Court *Dickson v The Queen* [2010] HCA 30.
proposal, DCS suggested that sentences for offences committed interstate should also be included.

The Attorney General’s current role under the DSO Act

Section 6 of the DSO Act gives the Attorney General the capacity to make an application (or give a consent) in any situation that the Act empowers the DPP.

How the Attorney General is to exercise power under section 6 of the DSO Act in practice has been central to the recent controversy regarding this legislation.

The submission from the DPP to this review referred to the original procedure for applications for DSO orders, formulated by the State Government in 2006. Under this procedure, the DPP would provide advice on applications being made to the Attorney General, and also provide advice and all documentation on offenders against whom the DPP had decided not to make an application. In the latter circumstances, the Attorney General would consider the level of risk posed by the offender, and could initiate the DSO process himself. At that stage, the State Solicitor would make an application to the Supreme Court and provide advice to the Attorney General of the outcome of the application.

As stated by the DPP in his submission to the current review:

The difficulty with the entire approach is that it conflates the role of the Director of Public Prosecutions as the independent prosecution agency of the State and as a legal office such as the State Solicitor’s Office undertaking non-prosecutorial work.

The controversy that surrounded the release of Mr TJD on a supervision order largely centred on a view that the Attorney General should have exercised his powers under section 6 of the DSO Act and taken over the role of the DPP in the court proceedings.
In the case of Mr TJD, the perspective of some members of the community, the Opposition, and some sections of the news media, was that the decision of the DPP to not oppose the application, at the annual review of Mr TJD’s continuing detention order for a supervision order, should have led to the Attorney General exercising his powers and taking over the application from the DPP. That is, that the Attorney General should have applied for a continuing detention order under the DSO Act in respect of Mr TJD.

To ensure all avenues are covered, it would be possible to initiate a process whereby the Attorney General is provided with all the information currently provided to the DPP in respect of a specific offender. However, such a process, if initiated, would lead to considerable duplication of effort, with an officer of the State Solicitor’s Office replicating the work done in the ODPP. The process would also be fraught in those instances, no matter how rare, where the different offices form different judgements with respect to a Division 2 order. It is clear that whether the process remains as is or is amended, the performance of functions under the DSO Act should ideally be positioned with one body only.
Interstate comparison: post-sentence applicant (serious sexual offenders)

Aside from Western Australia, five of the other States and Territories now have legislation providing for the post-sentence detention and/or supervision of serious sexual offenders. Typically applications may be made within a set period before an offender is likely to be released from custody or from sentence. Jurisdictions differ as to who makes the application; however in almost all cases the application is made to and/or dealt with by the Supreme Court.

Each jurisdiction's applicant, criteria and relevant court is outlined in Table 1.
Table 1: Interstate comparison of legislation for dangerous sex offenders

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Applicant</th>
<th>Criteria</th>
<th>Relevant Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>QLD</td>
<td>Attorney-General (s 5(1))</td>
<td>Applications may be made in respect of prisoners (as defined – i.e. serving a period of imprisonment for a serious sexual offence) during the final 6 months of period of imprisonment (s 5).</td>
<td>Supreme Court (s 5)</td>
</tr>
<tr>
<td>Vic</td>
<td>The Secretary to the Department of Justice determines whether or not to apply for supervision order or refer matter to the DPP to determine whether application should be made for detention order (s 104). If the DPP decides not to apply, he may refer the matter back to the Secretary (s 105(6)). The Secretary makes applications for supervision orders (s 7(2)). The DPP makes applications for detention orders (s 33(2)).</td>
<td>Applications may be made in respect of eligible offenders (as defined – i.e. over 18 years of age and serving a custodial sentence for a relevant offence or already subject to an order under the Act). In considering whether to make an application for supervision order or a referral to the DPP, the Secretary must have regard to an assessment report in respect of the eligible offender; and may have regard to any other report, information or matter the Secretary considers relevant (s 104). In determining whether or not to make an application for a detention order, the DPP is to have regard to similar material (s 105). Assessment reports are made by medical experts and must assess the risk that the offender will commit another relevant offence if released in the community and not made subject to a detention order or supervision order (s 109).</td>
<td>Applications for supervision orders are made to the court that sentenced the offender for the relevant offence (if that court was the Supreme Court or the County Court). If the Magistrates' Court sentenced the offender for the relevant offence, applications are made to the County Court (s 7(3)). Applications for detention orders are made to the Supreme Court (s 33(2)).</td>
</tr>
<tr>
<td>NSW</td>
<td>The State of New South Wales may apply for a supervision order (s 5H) or detention order (s 13A). [note: the legislation originally provided for the Attorney General to make applications, this was changed to the 'State of New South Wales' in 2007. The same Act inserted s 24A permitting the AG to act on]</td>
<td>Applications for supervision orders may be made in respect of supervised sex offenders (as defined – i.e. in custody or under supervision for sex offence or subject to existing order) during the final 6 months (s 6). Applications for detention orders may be made in respect of detained sex offenders (as defined – i.e. in full-time detention for sex offence or subject to</td>
<td>Supreme Court (s 5H, s 13A).</td>
</tr>
<tr>
<td>State</td>
<td>Section(s)</td>
<td>Application Procedure</td>
<td></td>
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<td>-------</td>
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<tr>
<td>SA</td>
<td>23(1)</td>
<td>Application for indeterminate sentence may be made by the prosecutor (at time of conviction) (s 23(2)(b)) or by Attorney-General (while person under sentence) (s 23(2a)). Applications may be made in respect of persons convicted of a relevant offence (as defined) (s 23(1)). Applications may be made either before the person is sentenced (s 23(2)(b)) or while in prison serving a sentence of imprisonment (s 23(2a)). The court may also deal with a person under the DSO-type provisions of its own motion (s 23(2a)). Prior to sentencing, prosecutor may apply to the court which convicted the person for offender to be dealt with in Supreme Court (s 23(2)). If person is serving sentence, Attorney-General may apply to Supreme Court (s 23(2a)).</td>
<td></td>
</tr>
<tr>
<td>NT</td>
<td>23(1)</td>
<td>Application for final continuing detention order or final supervision order may be made by Attorney-General (s 23(1)). Applications may be made in respect of qualifying offender (as defined – i.e. under sentence of imprisonment for a serious sex offence) who is due to cease being a qualifying offender within 12 months and will be over 18 years of age when he or she ceases to be a qualifying offender (s 23(2)).</td>
<td></td>
</tr>
<tr>
<td>WA</td>
<td>8(1)</td>
<td>Application for Division 2 order (for supervision or continuing detention) may be made by the DPP (s 8(1)). Attorney General may perform the functions of the DPP (s 6). Applications may be made in respect of a person who is under sentence of imprisonment wholly or in part for a serious sexual offence if there is a possibility that the person will be released from custody within six months (s 8).</td>
<td></td>
</tr>
</tbody>
</table>

**Review of the Dangerous Sexual Offenders Act 2006**

19
The DPP’s current role under the DSO Act

The role of the DPP under the DSO Act may be seen as a departure from the DPP’s normal functions. In DSO matters, the DPP is asked to make predictions about future risk. In other matters, the DPP’s role involves making decisions based on past behaviour (although there is a good argument that settling sentencing submissions involves the making of predictions about future risk).

The DPP submitted that the dangerous sex offender legislation is flawed as it creates an obvious underlying tension between the DPP and the Attorney General through the co-sharing of powers under the DSO Act. Further, the DPP commented that the DSO Act interacts and clashes with Part 4 of the Director of Public Prosecutions Act 1991 (the DPP Act).

Part 4 of the DPP Act concerns the relationship between the Director and the Attorney General. Under Section 27 of the DPP Act, the Attorney General may issue the Director directions as to the general policy to be followed in the performance of any function, but may not issue directions in respect of a particular case.

This is reflected in the schema of the DSO Act whereby if the Attorney General disagrees with the decision of the DPP not to make an application for a specific offender, the Attorney General may request the State Solicitor to make an application on his behalf.

Under section 28(1), where the Attorney General has performed a function that is vested in both the Attorney General and the Director, the Director shall not, without the consent of the Attorney General, perform that function inconsistently with the action of the Attorney General.

This suggests that if the Attorney General initiates an application for an order, the Director must then perform any future functions under the DSO Act consistent with the Attorney General’s intent with respect to that offender. In instances where the DPP has made the decision not to make an application under the DSO Act, this would seem to be inconsistent with the independence of the Director.

The role of the DPP in other jurisdictions

As indicated in the section entitled ‘Interstate comparison’, the role of the DPP in dangerous sex offender matters varies with jurisdiction.

In some jurisdictions (for example, New South Wales), the DPP does not play a role at all.

In South Australia, the DPP’s involvement in the initial application for a detention order is dependent on when the application is made – if the person has already been sentenced, the Attorney General makes the application; whereas applications prior to sentence are made by the DPP.

In Victoria, some initial applications may be made by the Secretary of the Department of Justice while the DPP may make others – the division in Victoria is based on the nature of
the order sought (detention or supervision) rather than the time at which the application is made.

Subsequent applications (for example, for periodic review) are all made by the DPP in South Australia, whereas in Victoria the Secretary of the Department of Justice makes all subsequent applications for supervision orders and the DPP retains responsibility for subsequent applications relating to offenders subject to detention orders.

**Stakeholder views on other possible approaches for Western Australia**

The submission from the DPP supports legislative amendment to address what the DPP obviously characterises as tension in the DSO Act between the roles of the Attorney General and the DPP.

During consultation meetings, the DPP suggested that the current process could be changed so that the DPP receives referrals from DSORC and makes a recommendation as to whether an application should be made, with that the final decision (and the applications themselves) being made by the Attorney General. However, the discussion was purely speculative. In subsequent correspondence, the DPP clarified that he does not support such a model as it conflates “the role of the DPP as an independent prosecution agency with a role as a legal office providing legal advice to the Attorney General” and “it would only perpetuate the underlying flawed nature of … the DSO Act”.

The Department of Corrective Services put forward the view during consultation that, given the assessment of dangerous sexual offenders is centred on the risk to the community, it is a function that would be better placed with the Prisoners Review Board (PRB). Under the model proposed by DCS, the role of the DPP as it currently exists within the DSO process would be removed, and the PRB would make recommendations on Division 2 orders to the Attorney General (who would then make the application to the Supreme Court). Under this proposal, many of the existing functions of DCS and DSORC would be transferred to the PRB. The Department of Corrective Services would only be involved in the management of dangerous sex offenders under a continuing detention or supervision order, not the initial assessment of risk.

These proposals were not presented in the formal written submissions from either agency, and, as indicated above, the DPP opposes the model discussed during consultation. However, they are included here for consideration of alternative models for the operation of the dangerous sex offender process in Western Australia.

**Key reform options: determining post-sentence detention or supervision under the DSO Act**

The main impetus for this review is encapsulated in the first term of reference - the process of applying to the Supreme Court for a continuing detention or supervision order under the DSO Act. This Term of Reference goes directly to the role and responsibility of the various bodies under the DSO Act. The review identified four key options for reform:

**Option 1: Attorney General to determine detention or supervision**

The nature of the public controversy regarding supervised release decisions by the Supreme Court under the DSO Act prompts comparison between decision making under that legislation, and the role that the Attorney General has in advising the Governor whether prisoners sentenced to life terms or indefinite imprisonment should be released on parole.
With respect to a prisoner serving a life term or indefinite criminal sentence, the Attorney General, having received a report from the Prisoners Review Board, has powers under the Sentence Administration Act 2003 (WA) regarding whether to release the prisoner on parole.

Option 2: The State of Western Australia applies to the Supreme Court for detention or supervision

Under Option 2, the Attorney General and the DPP retain their respective roles under the DSO Act. The roles are properly characterised as “reserve power” for the Attorney General, and decision making power over individual applications under the DSO Act for the DPP.

The relationship between the Attorney General and the DPP has its origins in the Director of Public Prosecutions Act 1991. The interests of justice – and the best interests of the community generally – require continuing bipartisan support for the fundamental separation between these roles.

The 2014 Review has thus been an opportunity to clarify the nature of the roles under the legislation.

The applicant under the DSO Act could become the State of Western Australia. During consultation, the DPP noted that, in all other matters, the DPP brings proceedings in the name of the State of Western Australia. The DPP questioned why this is not the case for dangerous sexual offender matters, given that it is the State of Western Australia detaining the offender due to risk to the community, and it is the State that allocates resources to the detention or supervision of the offender.

The DPP therefore recommends that: “If the review determines that the DPP should continue to be the Office conducting the DSO litigation then the legislation should be amended to provide that the applications are brought by the State (and not the DPP).”

Option 3: PRB makes application to the Supreme Court for detention or supervision

As recommended by DCS, given that the assessment of dangerous sexual offenders is centred on the risk to the community, it is a function that would be suited to the specialism of the PRB. Under this proposal, many of the existing functions of DCS and DSORC would be transferred to the PRB.

There is merit in this proposal in the sense that the PRB will likely already have considerable insight and understanding into offenders in relation to whom orders may be sought under the DSO Act based on the PRB’s oversight of release processes when the offenders are serving their term of imprisonment.

Unfortunately, this model would still involve complex legal proceedings before the Supreme Court for any order or contravention under the DSO Act. That is, the PRB would not be able to exercise its specialist skills in preparing offenders for release, or speedily and effectively returning offenders to custody in the case of breach or contravention of supervision orders, in the same way that the PRB can in relation to offenders serving a criminal sentence.
It is recommended, however, if this model is to be pursued that the PRB would instruct the DPP to appear as counsel in the Supreme Court for DSO Act matters. That is, the high degree of skill of the criminal law lawyers at the DPP is necessary given the complexity of the task.

**Role of DSORC**

The submission from DCS questioned the operation of DSORC, and suggested that its functions should be carried out by the Interagency Public Protection Committee (IPPC). In their submission, DCS stated that:

*Absorption into the IPCC will enable wider interagency consultation amongst agencies which in effect have joint responsibility in a DSO's management e.g. WA Police (Sex Offender Management Squad), Departments of Housing and Health.*

With respect, the Department of the Attorney General does not support this proposal. The role of DSORC is to review eligible prisoners for recommendation for consideration of an application under the DSO Act. In contrast, the IPPC, which consists of representatives from DCS, WA Police, the Department of Health, the Department of Housing, and the Department for Child Protection and Family Support, has a much broader role in the overall management and rehabilitation of dangerous offenders.

There would appear to be much benefit in maintaining the specialist approach of DSORC, including the additional expertise and knowledge brought to the committee by its current membership (in particular, the psychiatrist and forensic psychologist). The broader membership and scope of the IPCC may offer some advantages in terms of the case management of dangerous sex offenders once released on a supervision order, but it is questionable whether the IPCC, as it stands, would offer the required expertise to provide referrals to the DPP for consideration of an application under the DSO Act.

That said, DSORC is an administrative body, whose role and membership is not defined in the DSO Act. The transfer of existing DSORC functions to another DCS committee is a matter for DCS to determine, with consultation and support from relevant stakeholders (in particular, WA Police and the DPP and, potentially, the PRB).

**Option 4: PRB determines periodic reviews**

The current Western Australian DSO Act is based on the Queensland *Dangerous Prisoners (Sexual Offenders) Act 2003*. The Queensland legislation was upheld as constitutionally valid, even though it provides for preventative detention at the end of a criminal sentence.

The WA DSO Act contains rigorous processes and tests for the Supreme Court to determine whether a person is a dangerous sexual offender, and equally rigorous processes for determining whether continued detention or supervision is required to adequately protect the community from the risk posed by the dangerous sexual offender.

The general schema of legislation in Australia for the preventative detention of dangerous offenders at the end of their criminal sentence has remained fundamentally unchanged since introduction due to the fact that the risk of constitution invalidity is perceived as high. That is, if the legislation is amended and held to be invalid, there may be an obligation on the State to immediately and unconditionally release offenders detained under the amended regime.

The expectations of the community with respect to being protected from ongoing risks by offenders – whether their criminal sentence has expired or not – is bringing increasing pressure to bear on governments in relation to post-sentence offender management.
The apparently increasing expectations of the community in this regard is running counter to the relatively static legislation space regarding post-sentence offender management, given the risks of constitutional invalidity outlined above.

Conclusion

This Term of Reference goes directly to the impetus for this review. Four key reform options for decision making under the DSO Act have been outlined for consideration by the Attorney General. With respect to the four key options for reform of the DSO Act with respect to roles and responsibilities, this report has been drafted to be suitable as the basis for a Cabinet submission.
TERM OF REFERENCE 2: THE LENGTH OF TIME BETWEEN PERIODIC REVIEWS OF DETENTION

Current situation

If the court makes an order for continuing detention, the order will have effect until it is rescinded by a further order of the Supreme Court. Although detention is indefinite, it is required to be reviewed annually under the DSO Act.

Part 3 of the DSO Act provides for annual reviews of detention. Section 29 requires the DPP to apply to the Supreme Court for periodic reviews of detention. The first review must be carried out when the continuing detention order has been in effect for a year. Subsequent reviews must be carried out each time a year has elapsed since the order was last reviewed. Section 30 permits the offender to apply for a review of the continuing detention order. The offender may only apply for a review with leave of the Supreme Court, and cannot apply for a review in the first year after the continuing detention order is imposed.

The DSO Act contains no express provision for a review to be deferred (by consent or otherwise), to occur early (unless the offender applies under section 30), or for a hearing to be adjourned. Although the DSO Act specifies that the period of a supervision order is extended if the offender is in custody under a sentence of imprisonment, there is no similar provision in respect of reviews of detention. The absence of specific provisions combined with the terminology of section 29 – which requires the reviews to be carried out ‘as soon as practicable after’ the year has elapsed – leaves little scope for the review schedule to be amended.

Although the DSO Act does not expressly provide for deferral of reviews or adjournment of hearings, these things do occur in practice.

The most common reason for adjournment of review hearings is accommodation issues. The hearing may be adjourned to allow evidence to be obtained regarding available accommodation rather than to ‘make arrangements and put in place resources to reintegrate [the offender] into the community’ – the amount of time it would take is important. Hearing adjournments are viewed as undesirable in dangerous sex offender matters, particularly due to the effect on review dates.

Calculating the period for reviews

The timing of the next annual review is calculated by reference to the Supreme Court’s decision, that is, the next 12-month period commences on the date the judgement is delivered by the court. For example, if there is extended legal argument over an annual review, the next annual review date is calculated by reference to the date the judgment is delivered, not the date the hearing commenced.

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DPP v Pindan [No 2] [2012] WASC 234

DPP v Williams [No 6] [2011] WASC 33
Interstate comparison

Each jurisdiction that has dangerous sex offender legislation provides for a system of periodic reviews of detention. However, the nature of the reviews, the interval between reviews, and the flexibility of the review schedule vary between jurisdictions. The most common interval between reviews is one year, with only Queensland and the Northern Territory providing for a longer interval. In Queensland, the first review is held after two years, with subsequent reviews occurring every year thereafter. The maximum interval between reviews in the Northern Territory is two years; however, the court may order that reviews be conducted more frequently (but not more than once per year). The Victorian legislation requires the court to specify the maximum interval between reviews, though the interval may not exceed one year.

Table 2 provides a detailed comparison of the periodic reviews of detention across Australian jurisdictions.

Even though the standard review period is one or two years across all jurisdictions, there are subtle differences in calculating the review periods:

- Queensland – hearing (and all submissions) for first review to be completed within two years. Subsequent reviews must start within 12 months of completion of previous review hearing.
- Victoria – application for review must be made not less than one year after detention order made and at intervals of no more than one year thereafter.
- New South Wales – reports must be provided at intervals of not more than 12 months.
- South Australia – progress and circumstances must be reviewed at least once in each period of 12 months.
- Northern Territory – application must be made before expiry of review period calculated from date order came into force (first review) or date previous review was concluded.
- Western Australia – reviews must be carried out as soon as practicable after the end of the period of one year commencing when person is first in custody under order (first review) or when detention was most recently reviewed.
### Table 2: Interstate comparison of periodic reviews of detention

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>First Review</th>
<th>Subsequent</th>
<th>Variable Schedule (Exceptional Reviews)</th>
<th>Applicant</th>
<th>Reviewer</th>
</tr>
</thead>
<tbody>
<tr>
<td>QLD</td>
<td>2 years*</td>
<td>1 year*</td>
<td>No flexibility for periodic reviews. Application for review may be made by prisoner any time after first review (if court gives leave).</td>
<td>Attorney General</td>
<td>Supreme Court</td>
</tr>
<tr>
<td>Vic</td>
<td>1 year (or any earlier date specified in the order)</td>
<td>1 year (or any shorter intervals specified in the order)</td>
<td>Detention order must specify latest date for first review, and maximum interval between reviews. DPP or offender may apply to SC for leave to apply for unscheduled review.</td>
<td>DPP</td>
<td>Supreme Court</td>
</tr>
<tr>
<td>NSW</td>
<td>1 year*</td>
<td>1 year*</td>
<td>Reports may be provided more often. No frequency limits on application to Supreme Court for variation/revocation (by offender or State).</td>
<td>AG on behalf of the State of NSW</td>
<td>AG / Supreme Court</td>
</tr>
<tr>
<td>SA</td>
<td>1 year*</td>
<td>1 year*</td>
<td>Progress reviews may occur more frequently. No apparent limit on offender or DPP applying to SC for discharge. No time limit on DPP application for release on licence, offender not more than once every 6 months (or as directed by Court).</td>
<td>DPP</td>
<td>Supreme Court</td>
</tr>
<tr>
<td>NT</td>
<td>2 years (or shorter period of 1-2 years stated in the order)</td>
<td>2 years (or shorter period of 1-2 years stated in the order)</td>
<td>Order may require more frequent reviews. Detainee may apply (with leave) any time after order has been in force for 2 years.</td>
<td>AG</td>
<td>SC</td>
</tr>
<tr>
<td>WA</td>
<td>1 year</td>
<td>1 year</td>
<td>No flexibility for periodic review. Offender may apply for review (with leave) at any time after first review has occurred.</td>
<td>DPP</td>
<td>SC</td>
</tr>
</tbody>
</table>

*In its review of the QLD DPSO Act in 2008, an Inter-departmental Working Group recommended that the review schedule be amended so that the first review still occurs after one year but subsequent reviews occur once every two years. The rationale behind the proposal is that reviews can be disruptive to the offender, are resource-intensive, and that a one year period between reviews does not provide sufficient time for the offender to engage in the intensive sex offender treatment program and consolidate treatment gains. The eventual form of the amendments to that Act provided for the first review to occur after two years and subsequent reviews to occur every year thereafter. The author was unable to find any explanation of the reason for this.

b Reports must be provided to the Attorney General (by Commissioner for Corrective Services) at intervals of not more than 12 months. However, the Supreme Court only ‘reviews’ the detention order if the Attorney General decides, on the basis of the Commissioner’s report, to apply for variation or revocation of the order (or if the offender applies for variation/revocation). Continuing detention orders are finite so if the AG does not apply for variation/revocation, detention will cease when order expires (5 years or less).

c Progress must be reviewed by the Parole Board (or equivalent) at least once every 12 months for purpose of determining whether person is suitable for release on licence. Written reports must include recommendation about release on licence and be provided to offender, AG and Minister for Correctional Services. No apparent requirement for DPP to apply for release on licence (or for discharge) even if Parole Board recommends such release.
Comparison with prisoners sentenced to life terms or indefinite imprisonment

The PRB is required to report to the Minister regarding prisoners serving life terms or indefinite imprisonment. Sections 12 and 12A of the *Sentence Administration Act 2003* require the PRB to provide periodic reports to the Minister about certain prisoners:

- in the case of a Governor’s pleasure detainee, reports must be made at least once in every year (section 12(2)(c));
- for persons sentenced to life imprisonment for an offence other than murder, the first report must be made seven years after the term commenced, subsequent reports must be made every three years thereafter (section 12A);
- in the case of prisoners serving life imprisonment for murder where a minimum period has been set, the first report must be made at the end of the minimum period, subsequent reports must be made every three years thereafter (section 12A); and
- in respect of persons sentenced to imprisonment, the initial report must be made one year after the day on which the sentence began, further reports must be made every three years after that (section 12A).

The PRB must also report to the Minister:

- whenever it gets a written request to do so from the Minister (section 12(2)(a)); and
- whenever it thinks there are special circumstances which justify doing so (section 12(2)(b)).
TERMS OF REFERENCE 3 & 4: CONTRAVENTIONS OF SUPERVISION ORDERS

- The possible consequences of contravening a supervision order, including the granting of bail to a person charged with such a contravention.
- The process and penalties for dealing with contraventions of supervision orders.

Current Situation

The DSO Act provides two different avenues for responding to a contravention of a supervision order:

1. Under Division 4 of Part 2, a person may be brought before the Supreme Court if they are likely to contravene, are contravening, or have contravened, a condition of the supervision order. The court may amend the conditions of the order or may order that the person be detained in custody for an indefinite term for control, care, or treatment (that is, be placed on a continuing detention order).

2. Under section 40A, a person who, without reasonable excuse, contravenes a requirement of the order commits an offence. This is a simple offence, punishable by imprisonment for two years.

A quick note on terminology – breach versus contravention

Although the DSO Act refers to ‘contravention’ of a supervision order in both contexts, there is a tendency to use the term ‘breach’ in reference to section 40A, and ‘contravention’ in respect of Part 2 Division 4 proceedings. This distinction is not, however, applied consistently by all individuals working in the field.

Section 40A was not included in the DSO Act as originally passed - it was inserted into the DSO Act in 2011 in response to the lack of adequate penalties for contravening a supervision order. Although Division 4 permits the Supreme Court to modify the order or return a person to custody in response to a breach, the court also has the option of making no order even where a contravention is proven. The court may amend the supervision order to enhance the offender’s ability to comply with the conditions. Otherwise, it will only modify the supervision order or make a continuing detention order where the contravention indicates an elevated level of risk. In that case, the modified conditions must serve to reduce the risk or the imposition of a continuing detention order must be the only viable way to manage an unacceptable risk. Neither the modification of conditions nor the imposition of a continuing detention order are punishments for contravention.

Prior to the introduction of section 40A, contraventions of supervision orders, were sometimes prosecuted under section 178 of the Criminal Code. It was the Supreme Court ruling of that approach as invalid (and the DPP’s unsuccessful appeal) that prompted section 40A being inserted into the DSO Act.

As Division 4 contravention proceedings are commenced in the Supreme Court, they are always brought by the DPP. Proceedings under section 40A, on the other hand, may be

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11 The distinction was observed during consultation with the DPP and is evident in a number of Supreme Court decisions. See, for example, Jenkins J in DPP v Narrier [No 3][2014] WASC 131 at [1]-[3] and McKechnie J in DPP v Brown [No 6] [2013] WASC 148 at [4], [10], [11].
12 See, for example, Corboy J in DPP v TJD [No 3] [2013] WASC 43 and DPP v Corbett [No 2] [2013] WASC 474, who predominantly uses the term ‘contravention’ in both contexts.
14 This may include the relaxation of the terms of the supervision order (see, for example, WA v O’Rourke [2010] WASC 72).
commenced in the Magistrates Court and prosecuted by WA Police. Where the same conduct is the subject of proceedings under both Division 4 and section 40A, the section 40A proceedings may be commenced in the Supreme Court (if the Division 4 proceedings have already commenced there) or transferred from the Magistrates Court to the Supreme Court.

The two options for responding to contraventions are complementary rather than representing unnecessary redundancy. Division 4 proceedings are typically brought where the contravention (or a pattern of contraventions) represents an increase in the risk of the offender committing a serious sexual offence. As they may lead to the modification of the supervision order, they may also be brought where the contravention is an artefact of the order itself. On the other hand, section 40A proceedings may be viewed as a management tool, used to punish offenders for non-compliance and to ensure that they take their order seriously.

The Division 4 and section 40A provisions are also different (and complementary) in respect of the conduct that enlivens their operation and the standard of proof required to make out the contravention. Under section 40A, an offence is committed when a person contravenes a requirement of their supervision order. For the person to be convicted of an offence, the contravention must be proved beyond reasonable doubt. The circumstances in which Division 4 operates are much broader and the standard of proof is lower – the court may make an order under Division 4 if it is satisfied, on the balance of probabilities, that the offender is likely to contravene, is contravening, or has contravened, a condition of the order.

**Bail**

Section 5 of the DSO Act provides that the *Bail Act 1982* (the Bail Act) does not apply to a person detained under the DSO Act unless they are in custody solely in connection with the charge of an offence under section 19C or section 40A. In its original form, section 5 excluded the operation of the Bail Act in respect of all persons detained under the DSO Act. The exceptions with respect to offences under section 19C and section 40A were introduced with the enactment of those sections.

Where a person is charged with an offence under section 40A and Division 4 proceedings are also commenced, a warrant will be issued under section 21 (unless there are exceptional circumstances or the applicant consents to a summons being issued instead). In that case, the offender would be in custody due to both the warrant and the section 40A charge (not solely the section 40A charge), therefore bail would be unavailable.

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*Section 19C deals with the enforcement of electronic monitoring and curfew requirements and has general application (rather than applying to the person subject to the order). Section 40A deals with the offence of contravening a supervision order.*

*Section 19C was inserted by section 6 of the *Dangerous Sexual Offenders Amendment Act 2012*. Section 40A was inserted by section 13 of the *Dangerous Sexual Offenders Amendment Act 2011*. 

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**Review of the Dangerous Sexual Offenders Act 2006**

31
2011 Amendment Act

The Dangerous Sexual Offenders Amendment Act 2011 (the 2011 Amendment Act), made amendments to the DSO Act that included the insertion of the offence provision in section 40A (as discussed above), changing the way offenders are returned to the Supreme Court on contravention of a supervision order, and giving the court power to detain the offender if proceedings are adjourned.

Prior to the amendments made by the 2011 Amendment Act, a police officer or Community Corrections Officer (CCO) could apply to a magistrate for a summons or warrant in respect of a contravention of supervision order. The magistrate could issue a warrant for the arrest of the offender only if satisfied that the offender was a flight risk. In all other cases, including where there was overwhelming evidence that the offender was at risk of reoffending, the magistrate was only empowered to issue a summons. The 2011 Amendment Act amended section 21 of the DSO Act to provide that issue of a warrant is the default option, a summons may only be issued with the consent of the applicant, or if there are exceptional circumstances which justify not issuing a warrant for the arrest of the person.

The 2011 Amendment Act also inserted section 24A into the DSO Act, giving the court the specific power to detain an offender while contravention proceedings are pending, or to release the person on an amended supervision order. Again, the presumption is in favour of the person being detained – the court may only release the person if the DPP consents, or if it is satisfied that there are exceptional circumstances that justify the offender’s release. Prior to the insertion of section 24A, the power for the court to detain the person was not articulated in the DSO Act, and could only exist where the offender was a flight risk.

Granting of bail

Prior to the DSO Act being amended in 2011, the operation of the Bail Act was excluded for all purposes by section 5 of the Act. The 2011 Amendment Act made it an offence to contravene a supervision order (s 40A) and amended section 5 to allow the Bail Act to apply in respect of persons charged with such an offence. Similarly, the Dangerous Sexual Offenders Amendment Act 2012 introduced the offences of:

- failing to comply with a direction to return an electronic monitoring device or hindering a community corrections officer who is retrieving the device (section 19C(2));
- interfering with the operation of an electronic monitoring device (section 19C(3));
- hindering a community corrections officer verifying compliance with curfew (section 19C(6)(a)); and
• failing to answer or providing false/misleading answer to a question regarding curfew compliance (section 19C(6)(b)).

Particularly as these offences do not apply to the person subject to a supervision order, an exemption to the Bail Act exclusion was introduced in respect of these offences also.

Where a person is charged solely with a contravention of the offence provisions under section 40A, they may be granted bail. However, if proceedings are commenced:
• solely under Part 2 Division 4; or
• under both section 40A and Part 2 Division 4 (in respect of the same contravention),
the Bail Act will not apply. Although this may appear complex and perhaps even contradictory, it is consistent with the likely outcome of the proceedings, and the rationale for bringing the different types of proceedings.

As mentioned previously, section 40A, when used on its own, can be viewed as a management tool. If it is expected that the offender will be fined if convicted of the contravention under section 40A, it is logical (and fair) that he be eligible for bail rather than disrupting the supervision by remanding the offender in custody. If the contravention points to the offender being at increased risk of committing a serious sexual offence, Division 4 proceedings will be commenced as well as (or instead of) section 40A proceedings and the offender will be ineligible for bail.

As part of the stakeholder consultation for this review, the Department of the Attorney General discussed the operation of the Bail Act with the DPP. The DPP noted that the Bail Act addresses the circumstances of the offender and the circumstances of the breach. The Director commented that it would be highly unusual for someone to be denied bail. However, he did not view this as a problem or shortcoming, expressing the view that the existing system works well.

Interstate comparison - bail

Some jurisdictions exclude the operation of bail in a similar manner to Western Australia, while others specifically provide for it and others are silent on the matter. Table 3 outlines the bail provisions for dangerous sex offenders across jurisdictions. In addition, Attachment A provides a summary of summonses, warrants and interim orders in dangerous sex offender legislation across Australia.

Queensland is the only jurisdiction whose dangerous sex offender legislation ensures the relevant Bail Act does not apply in respect of offence provisions, and provisions seeking amendment to conditions or imposition of detention. Other jurisdictions appear to apply the relevant Bail Act for offence provisions under the dangerous sex offender legislation, whilst most jurisdictions (except Victoria) do not apply the Bail Act in respect of offenders detained under provisions seeking amendment to conditions or imposition of a detention order.

17 Where the person subject to a supervision order acts in a manner that contravenes any of the offence provisions of s 19C, s 19C(7) requires it to be treated as a contravention of the supervision order rather than a contravention of s 19C. Section 19C(7) provides that “An act or omission of a person subject to a supervision order that is a contravention of subsection (2), (3) or (6) —
(a) does not constitute an offence under this section; but
(b) is, for the purposes of this Act, to be taken to be a contravention of a requirement of the order (if it is not otherwise).”
### Table 3: Interstate comparison of bail provisions for dangerous sex offenders

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Bail – offence provisions</th>
<th>Bail – provisions seeking amendment to conditions or imposition of detention</th>
</tr>
</thead>
<tbody>
<tr>
<td>QLD</td>
<td>No - No exception to <em>Bail Act 1980</em> exclusion in respect of offence provisions.</td>
<td>No - The <em>Bail Act 1980</em> does not apply to a person detained under the Act. (s 4)</td>
</tr>
<tr>
<td>Vic</td>
<td>Yes - An offender who is arrested for breach of supervision order must as soon as practicable be remanded in custody or released on bail in accordance with the requirements of the <em>Bail Act 1977</em>. (s 171)</td>
<td>Yes - If offender is arrested to attend a hearing under Part 2, 3, 4 or 5 (arrest only if offender has previously failed to attend hearing for same proceedings or if court satisfied offender is unlikely to attend) and hearing is adjourned, the <em>Bail Act 1977</em> applies (s 86).</td>
</tr>
<tr>
<td>NSW</td>
<td>Yes - Exception to <em>Bail Act 2013</em> exclusion in respect of proceedings for specified offences including failure to comply with supervision order under section 12. (s 28)</td>
<td>No - The <em>Bail Act 2013</em> does not apply to or in respect of a person who is a defendant in proceedings under this Act. (s 28)</td>
</tr>
<tr>
<td>SA</td>
<td>Single process for dealing with contraventions, relationship with bail provisions not specified.</td>
<td></td>
</tr>
<tr>
<td>NT</td>
<td>Not specified</td>
<td>No - supervisee arrested under Div 2 cannot be granted bail under the <em>Bail Act</em>. (s 51)</td>
</tr>
<tr>
<td>WA</td>
<td>Yes – The <em>Bail Act 1982</em> applies unless offender is detained under the Act for some other reason (e.g. under warrant issued in respect of Div 4). (s 5)</td>
<td>No - The <em>Bail Act 1982</em> does not apply to a person detained under this Act except in specified circumstances. (s 5)</td>
</tr>
</tbody>
</table>

### Prosecution of Section 40A offences

As mentioned above, section 40A makes it an offence to contravene a supervision order, and was inserted into the Act by the 2011 Amendment Act. The DSO Act empowers a police officer who suspects on reasonable grounds that a person has contravened a supervision order to, without a warrant, arrest the person. There is no power for DCS to arrest offenders on suspicion of a contravention, or to bring proceedings in respect of an offence.

WA Police suggested that the DSO Act should be amended to permit DCS staff to proceed for minor contraventions. The proposal was raised with the ODPP at the time and met with substantial opposition on the basis that police are far better equipped (in terms of training, resources, discretion, experience) to prosecute section 40A offences than CCOs.

It was noted that, although DCS can commence prosecutions for breaches of conditional release orders and community orders under Part 18 Division 4 of the *Sentencing Act 1995*, this isn't sufficient precedent for allowing DCS to commence prosecutions for breaches of DSO supervision orders under section 40A. The ODPP reinforced the fact that, unlike people subject to conditional release orders and community orders, dangerous sex offenders are not under sentence so the same rules and principles won't automatically apply.
In addition to the concerns raised by the ODPP, the argument that CCOs’ powers under the Sentencing Act 1995 are sufficient justification for the granting of similar powers under the DSO Act, is further weakened by the fact that penalties for breach under the DSO Act are far greater than under the Sentencing Act 1995 (for example, a penalty of mandatory imprisonment if the breach involves interfering with an electronic monitoring device).

The possibility of DCS bringing proceedings for section 40A offences was again raised by WA Police in consultation for the current review. WA Police noted that under section 21 of the DSO Act, DCS staff may apply to a magistrate for the issue of a summons or a warrant because of a contravention, and therefore should also be able to apply for a summons or a warrant under section 40A. Given the opposition the proposal met with previously, WA Police suggested a compromise position in which DCS would only bring proceedings in instances where the offender failed to comply with a lawful direction of a community corrections officer (in breach of a condition imposed in satisfaction of section 18(1)(d), section 19A or section 19B).

In their submission, DCS raised the issue that the inability of DCS staff to prosecute a contravention in the Supreme Court may result in delays while DCS negotiates with WA Police or the DPP as to whether the criteria for a contravention has been met. The submission raised similar concerns with the prosecution of section 40A offences, noting that under the DSO Act, DCS staff are unable to prosecute in the Magistrates Court, with contraventions prosecuted by police officers. The DCS submission noted the perceived anomaly with the Sentencing Act 1995 whereby, as outlined above, DCS staff have delegated authority to issue arrest and return to court warrants for contraventions of pre-sentence orders, conditional bail, and early release orders.

As stated in the DCS submission:

Ideally, DCS seeks similar provisions under the Act in the case of a supervision order; the intent is for DCS to be able to issue a warrant to have a DSO brought before a court ... Note that an amendment to the Act to provide the additional prosecuting/investigating powers to DCS staff would require significant resources.

The resources issues were also considered by WA Police, which indicated that transferring the responsibility to DCS ‘would release 5 police FTE from a role for which police have never been funded’ and suggested that the required public servants would be less costly to employ than sworn officers. However, this has not been confirmed by DCS, and would not necessarily translate to cost savings to Government. WA Police also indicated some support for DCS’ submission that DCS’ inability to prosecute contraventions would lead to delays, stating that transferring responsibility from WA Police to DCS ‘would probably be more effective than the current process, as the interaction between agencies (police and DCS) to obtain the necessary evidence for police to take action can be a few weeks’.

The ODPP was consulted on the more limited proposal for DCS to conduct prosecutions where the dangerous sex offender failed to comply with a direction of a community corrections officer. The ODPP noted that, even with prosecutions limited to these specific circumstances in summary hearings, it would still involve the collection of evidence or expert evidence in the case of electronic monitoring - WA Police have the expertise to conduct the prosecutions, whereas DCS may not have such expertise and may also require the assistance of the State Solicitor for such hearings.
Interstate comparison – contravening a supervision order

Most jurisdictions have a specific provision making it an offence to contravene a supervision order, as well as provisions for returning the offender to court for the supervision order to be amended or for a detention order to be made.

Typically, the offence of contravening a supervision order attracts a penalty of two years imprisonment (only Victoria has a greater maximum term, at five years). Northern Territory and New South Wales also prescribe a maximum fine of 200 and 100 penalty units, respectively.

The procedure for dealing with contraventions varies significantly between jurisdictions. Table 4 outlines the processes and consequences in place in other Australian states and territories for contravention of a supervision order. Further information on the comparison is also contained in Attachment B.
Table 4: Process in other jurisdictions for contravention of a supervision order

<table>
<thead>
<tr>
<th>Process(es)</th>
<th>Consequence of Contravention</th>
<th>Actual / predicted contravention</th>
<th>Burden and Standard of Proof</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>QLD</strong></td>
<td>Dual process:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Part 2 Div 5 -</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Contravention of supervision order</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>s 43AA - Contravention of relevant order</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Div 5 Presumption in favour of detention order. Offender must satisfy court that adequate protection of community can be ensured if court is to permit offender to remain on supervision order (with any necessary amendments). (s 22).</td>
<td>Div 5 proceedings on basis of “likely to contravene, is contravening, or has contravened, a requirement of the supervision order”</td>
<td>Div 5 Court must make order if satisfied, on balance of probabilities, re contravention (s 22(1)&amp;(2)). Order must be for detention unless prisoner satisfies the court, on balance of probabilities, that the adequate protection of the community can be ensured by (amended) supervision order (s 22(2)).</td>
</tr>
<tr>
<td></td>
<td>s 43AA Maximum penalty—2 years imprisonment.</td>
<td>s 43AA must not contravene the relevant order without reasonable excuse.</td>
<td>s 43AA Prosecution bears burden of proof. Criminal standard of proof (beyond reasonable doubt).</td>
</tr>
</tbody>
</table>

Vic

Part 11 – Breach of supervision order - includes s 160 – offence to breach order.

However, breach may be
- dealt with by Parole Board;
- referred to Secretary/DPP for return to court (review conditions or seek detention order); or
- dealt with as an offence.

If Adult Parole Board is satisfied that the offender has breached a condition of the supervision order, Board may do one or more of the following—
(a) take no action;
(b) give a formal warning to the offender;
(c) vary any directions that it has given to the offender under any condition of the order;
(d) recommend that the Secretary apply to the court under Part 5 to review the conditions of the supervision order;
(e) recommend to the Secretary to refer the matter to the Director of Public Prosecutions to consider whether or not to apply to the Supreme Court for a detention order in respect of the offender; or
(f) recommend that the Secretary bring proceedings in respect of the offence. (s 163)

If conditions reviewed under Part 5, the court may—
(a) vary, add or remove any conditions of the supervision order; or

s 160 offence - “must not, without reasonable excuse, fail to comply”
Inquiry and subsequent action by Adult Parole Board base on whether offender “has breached” the order. (s 163)

However, Div 3 of Part 11 provides holding power in case of imminent risk of breach (s 164-170)

Any proceeding on an application under Part 2 (supervision orders), 3 (detention orders), 4 (interim orders) or 5 (review of orders and conditions) and any appeal relating to an application under Part 7 (appeals) are civil in nature. (s 79) Therefore, civil standard of proof assumed to apply except where otherwise indicated.

Before making an order or a detention order, court must be satisfied that offender poses unacceptable risk of committing a relevant offence (s 35 & 36): “Supreme Court may determine … that an offender poses an unacceptable risk of committing a relevant offence even if the likelihood that the offender will commit a relevant offence is less than a likelihood of more likely than not.”

In respect of making detention order (in response to contravention of SO or otherwise, s 35(5) specifies that DPP has the burden of
(b) confirm the conditions of the supervision order; or
(c) review the supervision order in accordance with this Part. (s 78)

If order reviewed under Part 5, the court must revoke the supervision order unless it is satisfied that the offender still poses an unacceptable risk of committing a relevant offence if a supervision order is not in effect and the offender is in the community. Or, if court or the Director of Public Prosecutions considers that a detention order should be made in respect of the offender, the Director may apply to the Supreme Court for the detention order. (s 73)

If Secretary refers matter to DPP to consider applying for detention order, DPP may apply for order or refer the matter back to the Secretary (s 105). If DPP applies for detention order (under Part 3), and the Supreme Court is satisfied that the risk would otherwise be unacceptable, it may make detention order (for period of up to 3 years) (s 36(3)). If satisfied of unacceptable risk without order, but not satisfied of unacceptable risk without detention order, it may make a supervision order (s 36(4)). Court may make no order even where empowered to make detention or supervision order (s 36(6)).

If proceedings brought and offender found guilty of offence under s 160 - Penalty: Level 6 imprisonment (5 years maximum).

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**NSW**

**Dual process.** Finding of guilt in respect of offence under s 12 opens possibility of (but does not automatically lead to) application for

Failure to comply is an offence, penalty: 100 penalty units, 2 years imprisonment, or both. (s 12)

If found guilty of contravention under s 12, application may be made for continuing detention order. (s 13B(4)(a))

**Actual contravention constitutes offence under s 12.**

Conviction for s 12 offence necessary for application for detention

**Proceedings under this Act are civil proceedings and, to the extent to which this Act does not provide for their conduct, are to be conducted in accordance with the law (including the rules of evidence) relating to civil proceedings. (s 21)**
<table>
<thead>
<tr>
<th>SA</th>
<th>Single process for return to detention (no offence provisions contained in Act).</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Appropriate board may cancel release of person on licence (resulting in person being returned to detention under detention order) if satisfied that person has contravened or is likely to contravene a condition of the licence. (s 24(5)(b)). Board also empowered to vary or revoke a condition, or impose further conditions at any time. (s 24(5)(a)). No offence provisions for failing to comply with release conditions (except failure to comply with direction to surrender firearm under s 24A).</td>
</tr>
<tr>
<td>NT</td>
<td>Dual process: Part 5 (Supervision orders – compliance and enforcement) includes Div 1 (Offence) and Div 2 (contravention of supervision order). Div 2 applies in relation to an alleged contravention whether or not specified</td>
</tr>
<tr>
<td></td>
<td>Under s 46 (Div 1), engaging in conduct that results in a contravention of order is an offence punishable with a fine of 200 penalty units or imprisonment for 2 years. If contravention dealt with under Div 2, Supreme Court may amend supervision order (even if not satisfied of contravention). If satisfied contravention occurred or likely to occur, Court must impose continuing detention unless supervisee satisfies Court that detention order</td>
</tr>
<tr>
<td></td>
<td>Div 1 applies to conduct that results in a contravention. (s 46) Div 2 applies if supervisee &quot;has contravened, is contravening or is likely to contravene&quot; (s 48)</td>
</tr>
</tbody>
</table>

### Review of the Dangerous Sexual Offenders Act 2006

- **detention order. (s 13B)** Not entirely clear whether application for detention order can be made under s 13B(4)(b)) without finding of guilt under s 12.
- Suspected breach or anticipated breach may or may not also constitute ‘altered circumstances’ under which offender cannot be provided with adequate supervision under supervision order and therefore application for detention may be made. (s 13B(4)(b)) Supreme Court may vary supervision order at any time on application by State (s 13(1))
- Predicted contravention arguably grounds for application for detention under s 13B(4)(b), or application for variation of supervision order under s 13(1).
- Person may be made subject to detention order if they are high risk sex offender and court is satisfied that adequate supervision will not be provided by an extended supervision order (s 5D); offender is high risk sex offender if Court is satisfied to a high degree of probability that the offender poses an unacceptable risk of committing a serious sex offence if he or she is not kept under supervision (s 5B(2)); Supreme Court is not required to determine that the risk of a person committing a serious sex offence is more likely than not in order to determine that the person poses an unacceptable risk of committing a serious sex offence (s 5B(3)).

### SA
- Person may be made subject to detention order if they are high risk sex offender and court is satisfied that adequate supervision will not be provided by an extended supervision order (s 5D); offender is high risk sex offender if Court is satisfied to a high degree of probability that the offender poses an unacceptable risk of committing a serious sex offence if he or she is not kept under supervision (s 5B(2)); Supreme Court is not required to determine that the risk of a person committing a serious sex offence is more likely than not in order to determine that the person poses an unacceptable risk of committing a serious sex offence (s 5B(3)).

### NT
- Attorney-General has the onus of satisfying the Supreme Court that the supervisee has contravened, is contravening or is likely to contravene, his or her supervision order. (s 60(1)) Supervisee has the onus of satisfying the Court that it would not be appropriate to make detention orders in response to contravention.
not the supervisee is charged with, or convicted of, an offence under Div 1. (s 47)

would not be appropriate.

<table>
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<td>s 40A - Offence of contravening supervision order</td>
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<td>Div 4 and s 40 may be pursued in isolation, or together. If 40A alone, proceedings in Mag Crt, if Div 4 or both, proceedings in SC.</td>
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**Div 4**

- Court may
  - make order amending SO and any other order required for compliance/protection;
  - make CDO (return offender to custody); or
  - make no order.

May only make CDO if satisfied that there is an unacceptable risk that, if CDO not made, person would commit serious sexual offence. (s 23)

**s 40A**

Contravention of supervision order is an offence punishable with imprisonment for 2 years. (40A(1))

If offence is also a contravention of s 19C(3) (unlawfully interfering with operation of electronic monitoring device), penalty of mandatory imprisonment for at least 12 months. (40A(2A))

**s 60(2)**

- Nature of proceedings, except prosecution for offence, are civil (s 94)
- Standard of proof, except for determining whether person is serious danger to community and prosecution for offence, is balance of probabilities. (s 95)
- Part IIAA of Criminal Code applies to offences (i.e. prosecution bears burden of proof, standard of proof is beyond reasonable doubt) (s 5)

**Div 4**

- Order – may be made if court is satisfied, on balance of probabilities, re contravention. (s 23)
- s 40A beyond reasonable doubt

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**Div 4**

- Order – may be made if court is satisfied, on balance of probabilities, re contravention. (s 23)
- s 40A beyond reasonable doubt
The contravention provisions in all jurisdictions apply in respect of an actual contravention of the order. Most jurisdictions also permit the offender to be returned to court (for amendment of order or imposition of detention order) if they are deemed likely to contravene the order.\(^{18}\) Only Victoria and New South Wales do not refer to the offender being likely to contravene the order as justification for return to court.

The prosecution/applicant bears the onus of proving that the offender has contravened (or is contravening, or is likely to contravene) a term of their supervision order. However, in some jurisdictions, once the contravention has been established, the presumption is in favour of detention and the onus is on the offender to satisfy the court that adequate protection of the community can be ensured under a supervision order.

Whilst the existing Western Australian model appears comprehensive, a presumption in favour of detention could be introduced for a contravention of any condition, even if that contravention did not indicate increased risk. A reverse onus of proof would also ensure that the offender has to satisfy the court that adequate protection of the community can be assured if they are to continue under a supervision order.

The ODPP was the only stakeholder to provide specific comment on this issue, and noted that such a proposal may be problematic. As stated in their submission:

\[
\text{The presumption (without increased risk) creates a form of mandatory detention for the breach alone, unless, it is contended that any breach raises a presumption of increased risk.}
\]

The reverse onus of proof also does not offer a particular advantage to prosecutors in court. A hearing for a contravention would still require the prosecutor to prove the contravention allegation beyond reasonable doubt and/or prove increased risk by the leading of evidence. As such, incorporating this provision in the DSO Act does not appear to strengthen or improve the existing legislation.

**Conclusion**

The existing provisions, process and penalties with regard to contraventions of supervision orders work well. Stakeholders did not identify any areas of concern with respect to the existing consequences of contravening a supervision order, the current penalties, or the application of the Bail Act under the DSO Act.

The existing application of the Bail Act to offenders charged with a contravention under the DSO Act is consistent with the identification and potential escalation of risk of offending. Whilst the DSO Act could be amended to ensure the Bail Act does not apply when an offender is charged solely with a contravention of the offence provisions under section 40A, such an amendment is not consistent with the likely outcome of court proceedings. As contraventions under section 40A typically result in a fine, it is logical and fair that offenders are eligible for bail. If a contravention points to the offender being at increased risk of committing a serious sexual offence, Division 4 proceedings will be commenced, and the offender will be ineligible for bail, ensuring that community protection is paramount.

\(^{18}\) Likely breach is only ever a trigger for return to court for amendment of supervision order or imposition of a detention order (the equivalent of WA’s Div 4 proceedings), never an offence (under the equivalent of s 40A).
One area identified as a potential for reform was that of the prosecution of section 40A offences, namely, whether the DSO Act should be amended to permit DCS staff to prosecute for specific contraventions. However, this proposal is not without its shortcomings. The ODPP has questioned whether DCS staff have the expertise to conduct hearings under the DSO Act.

DCS, whilst advocating for such an amendment, submitted that they would require significant resources to provide investigative and prosecuting powers under the DSO Act. Consequently, such an amendment would require increased funding to implement – and it would seem that the substantial cost associated with the proposal would not necessarily result in significant gains in efficiencies or effectiveness for the existing contravention process.
**ADDITIONAL ISSUE: THE ROLE OF VICTIMS IN DSO ACT PROCEEDINGS**

The DSO Act does not currently make any mention of the offender’s victims. As the DSO Act stands, victims are not entitled to appear at hearings, no provision is given for victims to make statements, and the court is not specifically enabled to have regard to victims when making a Division 2 order. This can be attributed, at least in part, to the fact that the DSO Act is not concerned primarily with the offender’s past offences, but with possible future offences.

As outlined under “Scope of the 2014 Review” this review also involved consultation within the Department with the Commissioner for Victims of Crime. As the role of the Commissioner for Victims of Crime is not involved directly in the application or contravention process for orders under the DSO Act, the Commissioner was not in a position to comment directly on the Terms of Reference for the review. However, the Commissioner for Victims of Crime did provide a number of comments that related to victims issues as associated with the DSO Act.

The main issue raised by the Commissioner for Victims of Crime was that a previous victim of a dangerous sex offender should be given the opportunity to be directly protected by the conditions applied by the court to the release of a dangerous sex offender. That is, a previous victim should be given the opportunity to make a submission on the conditions of a supervision order. However, in doing so, any amendments to the DSO Act must shut down the capacity for victims to be subject to court proceedings.

The Commissioner for Victims of Crime is also of the strong view that, should the DSO Act be amended to allow victims to make submissions on release conditions, and to insert mandatory conditions to prohibit media comment by a dangerous sex offender in relation to their offending or victims (see chapter in this report titled ‘Dangerous sex offenders and the media’), then there should be reference to victims in the objects of the legislation, and in section 18(2) of the DSO Act. With regard to the objects of the DSO Act, the Commissioner for Victims of Crime proposed that the first object be amended:

*From:*

(a) to provide for the detention in custody or the supervision of persons of a particular class to ensure adequate protection of the community -

*To:*

(a) to provide for the detention in custody or the supervision of persons of a particular class to ensure adequate protection of the community and previous victims of such offenders.
Current review

As noted above, during consultation for the current review, the main issue raised by the Commissioner for Victims of Crime was that any past victim of a dangerous sex offender should be given the opportunity to be directly protected by the conditions applied by the court to the release under a supervision order of a dangerous sex offender. The Commissioner for Victims of Crime noted that when an offender is being considered for parole, the victim may be heard (in the form of a submission) and that a similar process should apply when a dangerous sex offender is to be released on a supervision order.

The Commissioner for Victims of Crime noted that there is a capacity for victims in other jurisdictions (for example, Queensland and New South Wales) to make a submission generally on whether a person should be declared a dangerous sexual offender or whether a dangerous sex offender should be released on conditions. The Commissioner for Victims of Crime did not think that this should be the case in Western Australia, given that the declaration of a person as a dangerous sex offender is properly made in reliance on expert opinion as to the current risk posed by the offender, and decisions about release of a dangerous sex offender relate essentially to current risk and capacity to manage that risk.

The Commissioner’s view is that it would be improper to raise expectations of victims that their views of the offender, based on the previous offending, would be relevant to the court’s consideration of these matters. The DPP was pleased that the Commissioner for Victims of Crime has proposed a narrower view in respect of the role to be undertaken by victims.
The Commissioner for Victims of Crime also noted the fraught nature of trying to determine which victims may have relevant views, particularly where the offender has a long and/or diverse history of offending. For instance, in Queensland, only the victim of the crime for which the offender is currently imprisoned can make a submission.

In this vein, the Commissioner for Victims of Crime is of the view that the community is likely to (rightly) have an expectation that:

- a victim who wishes to should have the capacity to be heard by the court (in the form of a submission) in relation to the conditions attached to a supervision order; and
- a victim should not be required to appear in person or subject to any cross-examination in the Supreme Court, and any victim involvement must be strictly optional.

The Commissioner’s view is that the role of victims in this respect should be to submit any relevant considerations for the conditions of supervision order, but the actual conditions would be determined by the court. There may be issues with managing expectations in such a process as the Supreme Court is not necessarily going to craft conditions for a supervision order that directly respond to a victim’s submission. However, this is also the case with victim submissions to the PRB regarding release on parole.

At the request of the Commissioner for Victims of Crime, the review team met with the Victims Mediation Unit (VMU)\(^{19}\) and the Victims Notification Register (VNR)\(^{20}\) to clarify the existing process with respect to victims of dangerous sex offenders and to consider the need for change. During consultation it became apparent that there are existing administrative procedures that seek to allow a limited class of victim of the offender to have involvement in the supervision of dangerous sex offenders.

With respect to existing process, the VMU receives notification from the ODPP of an application for an order under the DSO Act. The VMU will review the case relevant to the sentence the offender is serving, and also review other sentences in the preceding 20 years to determine historic victims (sexual offences only).

VMU monitor the DPP application and seek to inform known sexual offence victims of an offender when the order for a supervision order is made. Victims are not advised of court dates, and do not make submission to dangerous sex offender hearings unless a court specifically requests it (this is not a common occurrence).

Once the order for a supervision order is made, the VMU sends a letter to known sexual offence victims, notifying them of the order and informing the victim that the VMU are able to recommend that specific conditions be attached to an offender’s supervision order. At this stage, these victims are invited to contact the VMU to convey their thoughts or wishes on the supervision order for the offender.

VMU routinely request a condition that the offender cannot have direct or indirect contact with any victims. Additional conditions that are incorporated in supervision orders at the sexual offence victim’s request usually relate to exclusion zones. Exclusion zones may also be included under the condition of an order that “an offender must comply with any written lawful condition in CCO directives”.

\(^{19}\) Department of Corrective Services (DCS)
\(^{20}\) Department of Corrective Services (DCS)
The VMU also voiced concerns about any potential for victims being subject to court hearings, or the information that victims provide becoming part of the court record. The Commissioner for Victims of Crime also noted that any amendments to the DSO Act in relation to victim submissions should prohibit victim submissions being retained by the offender or his representatives, and should prohibit the victim submission being viewed by the offender or his representatives in appropriate cases (with "appropriateness" to be determined by the Court). The DPP has concerns about victim submissions being withheld from the offender or his representatives.

Conclusion
At present, administrative procedures of the VMU may allow a known victim of sexual offences of a dangerous sex offender to be notified of the release of an offender under a supervision order. Within this limited process, these victims are offered the opportunity to provide feedback to the VMU to influence submissions with respect to the conditions attached to a supervision order under the DSO Act.

It is noted that other victims of the dangerous sex offender, including victims of violent offending, indecent exposure or a key secondary victim of homicide, for instance, are not included in the VMU process.

The Commissioner for Victims of Crime is supportive of the fact that there is generally a condition in supervision orders restricting direct or indirect contact with victims administered by the VMU, and felt that this should continue regardless of the outcome of this review. While some involved with the review thought this administrative process adequate, the view of the Commissioner for Victims of Crime is that the existing practice does not in any way adequately deal with the issue of victims of crime and DSOs in its entirety.

The opinion of the Commissioner for Victims of Crime is that any victim of a person declared a dangerous sex offender should expect that if a court is considering and making conditions on the release of such an offender, then orders to protect victims "should not be relegated in all cases to an administrative process."

The DPP expressed concerns over the possibility of a victim submission being provided to the Court and not to the offender and his representatives.

The Commissioner for Victims of Crime:
- does support a legislative mechanism for a victim who so wishes to make a submission to the court regarding appropriate release conditions to provide for the protection of the victim, but noting that a victim is not to be called to give evidence or be otherwise examined.

Review of the Dangerous Sexual Offenders Act 2006
46
by the court in relation to such protective conditions, and also for suppression of the
identity of any victim; and
• proposes amendments to the first object of the DSO Act to refer to victims, and an
amendment to section 18(2) to refer to conditions for the protection of victims.

The Commissioner for Victims of Crime is of the strong view that there should not be
arbitrary limitations based on the category of offending by which victims of the dangerous
sexual offender can be a “victim” for the purposes of the DSO Act.
ADDITIONAL ISSUE: DANGEROUS SEX OFFENDERS AND THE MEDIA

On 10 June 2014, Channel Nine News aired an interview with Mr TJD. The television interview sparked further media coverage and controversy, in particular, whether the interview contravened the condition in the supervision order that Mr TJD must not have any direct or indirect contact with the victims of his sexual offending.

On 11 June 2014, the Attorney General announced that the review of the DSO Act would investigate whether supervision orders could include a condition prohibiting an offender from speaking publicly to the media.

Although the DSO Act has been in operation since 2006, this was the first reported incidence of a dangerous sex offender speaking to the media. The DPP described the situation as “unprecedented” and noted that most dangerous sex offenders, when allowed back in the community on a supervision order, are as low-visibility as possible.

Conditions of supervision orders

Section 18(1) of the DSO Act outlines the standard conditions that a person under a supervision order must comply with. The standard conditions are that the supervision order must require that the person:

a) report to a community corrections officer at the place, and within the time, stated in the order and advise the officer of the person’s current name and address; and

b) report to, and receive visits from, a community corrections officer as directed by the court; and

c) notify a community corrections officer of every change of the person’s name, place of residence, or place of employment at least 2 days before the change happens; and

d) be under the supervision of a community corrections officer, which includes, comply with any reasonable direction of the officer (including a direction for the purposes of section 19A or 19B); and

e) not leave, or stay out of, the State of Western Australia without the permission of a community corrections officer; and

f) not commit a sexual offence as defined in the Evidence Act 1906 section 36A during the period of the order; and

g) be subject to electronic monitoring under section 19A.

In addition to these standard conditions, section 18(2) enables the court to outline any other terms that the court thinks appropriate to

a) ensure adequate protection of the community; or

b) for the rehabilitation or care or treatment of the person subject to the order.

Contact with victims

Most supervision orders contain a condition that restricts contact and indirect contact with the victims of their sexual offending; however, the issue of media interviews by the offender has not previously been covered by a supervision order. Whilst media interviews by an offender do not legally constitute direct or indirect contact with victims, it was raised whether such coverage could still be equally as damaging and traumatising for victims of the offender had such contact been made. In this respect, one of the issues raised by Mr TJD’s interview was whether such media interviews could constitute a breach of the supervision order.
Amending existing conditions of a supervision order

The standard conditions of an order under section 18(1) do not reference media contact, and any additional conditions under 18(2) must be linked to either ensuring adequate protection of the community, or providing for the care, rehabilitation or treatment of the offender.

However, feedback from the DPP on this issue confirmed that a condition prohibiting Mr TJD from giving media interviews would not fall within section 18(2) as such a prohibition could not be characterised as either for the rehabilitation, care or treatment of Mr TJD, or as ensuring adequate protection of the community (that is, to protect against reoffending).

Consequently, it was the opinion of the DPP that any application to amend a supervision order to contain a condition to prohibit media interviews would be dismissed by the Supreme Court.

Consideration of media interviews in supervision orders

Given the existing legislative provisions do not cover the situation with regard to media contact and dangerous sex offenders, Mr TJD’s interview raised the issue whether a prohibition on media contact should be included as a standard condition of a supervision order under section 18(1) of the DSO Act, or whether the issue should be left as discretionary for the court to apply as an additional condition under section 18(2).

As noted above, the scope of section 18(2) is not considered adequate by the DPP to cover the issue of media interviews. In the submission to the current review, the DPP noted that in January 2010, the office had proposed an amendment to section 18(2) to:

*insert the power for the court to order other appropriate terms to “minimise trauma and inconvenience to any person who has been a victim of a serious sexual offence committed by the person subject to the order”.*

Such a provision would enable the court to take into account the victim when setting the conditions for a supervision order. Such a provision may cover the issue of media interviews, provided such an interview caused trauma or inconvenience to a victim who watched it.
The Commissioner for Victims of Crime expressed a preference for amendments to be made to section 18(1) of the DSO Act to require the court to impose mandatory conditions on dangerous sex offenders, as follows (1) prohibiting an offender from contacting the media without prior written approval from a CCO; and (2) prohibiting an offender from providing any comment to the media, intended for publication or broadcast, in relation to their offending, or in relation to any victim or victims of their offending.
Conclusion

Media comment and interviews by dangerous sex offenders have the capacity to negatively impact on victims of their offending. Whilst the television interview by Mr TJD was the first known instance of such media contact, and whilst we have no direct evidence that the interview caused trauma to any of the victims of his offending, the community and political reaction to the interview suggests that such behaviour carries with it a risk.

The review considered the existing conditions of supervision orders and the provisions in the DSO Act that prescribe both the mandatory conditions that supervision orders must require of offenders, and the matters which the court must have regard to in setting additional conditions for supervision orders.

In order to implement a restriction on media contact by dangerous sex offenders, legislative reform is required.

The possibility of implementing an absolute prohibition on media contact was explored, however, such a prohibition would likely be challenged as a burden on an individual's freedom of communication about government and political matters. Consequently, it is recommended that there be a provision prohibiting media contact that is balanced by introducing a mechanism which provides that media contact by a dangerous sex offender is prohibited unless such contact is sanctioned through an official procedure. Such a mechanism enables the consideration of individual circumstances prior to approving or declining an offender's request for media contact.

It is also recommended that there be an express prohibition on an offender providing any comment to the media, intended for publication or broadcast, in relation to their offending, or in relation to any victim or victims of their offending. The additional provision provides clear guidance as to the government's policy intention in seeking to prevent media contact by an offender. The first condition regarding "sanctioned contact with the media" provides a fallback should the second provision be too broad.

In the case of the DSO Act, restrictions on media contact could be implemented through amendment to either section 18(1) or section 18(2) of the DSO Act. Amendment to section 18(1) would require the court to impose a condition on all dangerous sex offenders, whilst amendment to section 18(2) would make such a condition discretionary for the court to apply.
ADDITIONAL ISSUE: SUPPRESSION OF MR TJD’S NAME (JUVENILES, JUVENILE OFFENDING, AND ANONYMITY)

An issue that was raised by the media during the initial coverage of the court’s decision with regard to Mr TJD was that of the suppression of the offender’s name.

Current situation

The DPP indicated that there is currently no consistent application of section 36 of the Children’s Court of Western Australia Act 1988 (the CCWA Act) in dangerous sex offender matters. If an application were to be made in respect of person under sentence of juvenile detention the application of section 36 would be relatively clear. However, where the most recent offence was committed as an adult, but the offender’s record of offending as a juvenile is considered in making decisions under the DSO Act the relevance of section 36 is less certain. As such, the issue may or may not be raised depending on the nature of the case, the views of the prosecutor, and the views of counsel for the defendant.

The rationale behind section 36 is protection of reputation, limiting capacity for childhood mistakes to affect adult prospects, and facilitating rehabilitation. Where an offender has a (significant) offending history as an adult, there are questions as to whether the rationale behind section 36 is relevant.

the ODPP expressed the view that the suppression of the identity of a dangerous sex offender respondent should be left to the Supreme Court to decide on a case-by-case basis applying the general law regarding suppression orders, and any case law that develops around section 18(3)(b) of the DSO Act.
Conclusion
Current practice is that the Supreme Court will readily suppress the street address of a dangerous sex offender respondent, but not usually other information. The suppression of the name of Mr TJD was an unusual occurrence and, due to the extensive media coverage of the case, fuelled anger that an unidentified dangerous sex offender had been released into the community.

Suppression of identifying information also has ramifications for the VMU who are unable to provide their usual level of detail when notifying a victim of the pending release of a dangerous sex offender on a supervision order.

Given the lack of consistency in the application of section 36 of the CCWA Act in dangerous sex offender matters, it is recommended that the Department of the Attorney General conduct further work on this issue.

Amendments concerning the suppression of an offender’s name could be further explored in the context of this recommendation, with a view to proposing additional amendments to the DSO Act to provide some clarity on the issue of the suppression of identifying information for dangerous sex offenders with a record of juvenile offending.
**ADDITIONAL ISSUE: 21 DAY NOTICE PERIOD BEFORE PUBLICATION OF INFORMATION ABOUT OFFENDERS**

Another matter that arose during the recent controversies regarding dangerous sexual offenders was whether the 21 day notice period that applies prior to publication of an offender’s photograph or locality should be reduced. The basis for the proposed reduction is the enhancement of community safety – that is, that communities may have to live with a dangerous sexual offender in their neighbourhood for 3 weeks prior to being able to identify the offender on the community protection website.

The *Community Protection (Offender Reporting) Act 2004 (WA)* (CPOR Act) is, as noted at the outset of this review report, part of the suite of legislation enacted between 2004 and 2006, to protect the community against sex offenders.

Part 5A of the CPOR Act provides for the publication of information about offenders (including their photograph and locality, accessible in some circumstances). Part 5A came into effect on 1 July 2012. Section 85G of the CPOR Act allows the Commissioner of Police to publish the photograph and locality of certain DSOs, subject to the strict provisos in the legislation.

One of these provisos is that the Commissioner for Police must give the DSO a 21 day period in which to be heard on the matter of whether the identifying information can be published. There are sound bases for allowing an offender to be heard prior to publishing their photograph and locality on a publicly available website, including possibilities of mistaken identity and other matters involving risk of harm, including of vigilantism.

The provisions in Part 5A of the CPOR Act are due for statutory review on 1 July 2015. The issues regarding whether the 21 day notice period that applies prior to publication of the photograph and locality of a dangerous sexual offender should be reduced could be referred to the Minister for Police for canvassing in the statutory review of these provisions.
ADDITIONAL ISSUE: REVIEW OF SOME OTHER FORMS OF INDEFINITE DETENTION

Western Australia has a number of prisoners detained under repealed legislation providing for indefinite detention (section 662 of the Criminal Code (WA) or section 98 of the Sentencing Act 1995 (WA)) following convictions for serious sexual offences, in addition to those who are subject to continuing detention orders under the DSO Act. Those who are the subject of “old” indefinite detention orders are not detained under the DSO Act and are therefore not assessed by the Supreme Court in the same way as detainees under the DSO Act.

Legislative change would be required to bring these prisoners within the operation of the DSO Act.

While consistency may be desirable (or not, given that these prisoners are still under criminal sentence as opposed to preventative detention post-criminal sentence), it is proposed that this issue, which arose late in the progress of 2014 Review of the DSO Act, be considered separately to this review. Given that these prisoners are likely to have been under the management of the PRB for some time, until the outcomes of the DSO Act review processes are clarified, it is likely to be preferable to not disturb the current arrangements for their review.
EXCLUSION OF GPS MONITORING IN DETERMINING RELEASE

The issue was also raised of whether GPS monitoring can be specifically excluded in the DSO Act as a relevant consideration when the Supreme Court is deciding whether to make a supervised release order.

The DSO Act was amended in 2012 to provide for a mandatory condition of supervised release orders that an offender is subject to electronic monitoring.
RECOMMENDATIONS AND CONCLUSIONS

The 2014 Review of the DSO Act investigated the extent to which improvements could be made to:
1. The process of applying to the Supreme Court for a continuing detention or supervision order under the DSO Act.
2. The length of time between periodic reviews of detention.
3. The possible consequences of contravening a supervision order, including the granting of bail to a person charged with such a contravention.
4. The process and penalties for dealing with contraventions of supervision orders.

The Review also re-considered the role of victims in the dangerous sex offender process; considered whether supervision orders could include a condition prohibiting an offender from speaking publicly to the media; in the context of the suppression of Mr TJD’s name, looked at the issue of juvenile offending and anonymity; considered whether the 21 day notice period required before publishing the photograph and locality of DSOs should be lengthened; also considered the issue regarding whether other indefinitely imprisoned sexual offenders should be brought within the operation of the DSO Act.

Recommendations

Term of Reference 1

Detention and supervision: roles and responsibilities

The main impetus for this review is encapsulated in the first term of reference - the process of applying to the Supreme Court for a continuing detention or supervision order under the DSO Act.

This Term of Reference goes directly to the role and responsibility of the various bodies under the DSO Act. The review identified four key options for reform (detailed above):

Option 1: Attorney General to determine detention or supervision

Option 2: The State of Western Australia applies to the Supreme Court for detention or supervision

Option 3: PRB makes application to the Supreme Court for detention or supervision

Option 4: PRB determines periodic reviews

The four key reform options have been outlined above for consideration by the Attorney General.
Other matters for recommendation under Term of Reference 1:

The DPP proposal that the DSO Act be amended to state that sentences relevant to applications under the DSO Act include corresponding Commonwealth offences is recommended. This proposal was based on the expectation that prosecutions under the Commonwealth Criminal Code will become more frequent.\(^\text{22}\)

Having been consulted regarding the DPP’s proposal about the inclusion of Commonwealth offences, DCS suggested that sentences for offences committed interstate should also be included in this review. Given recent legal proceedings against the State of Western Australia regarding an offender convicted outside of Western Australia seeking to transfer to Western Australia, it is recommended that amendments be drafted to allow, if possible, for persons convicted interstate to be within the jurisdiction of the DSO Act if they are residing in Western Australia.

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Term of Reference 2

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Terms of Reference 3 & 4

The review found that the existing provisions, process and penalties with regard to contraventions of supervision orders work well. Stakeholders did not identify any areas of concern with respect to the existing consequences of contravening a supervision order, the current penalties, or the application of the Bail Act under the DSO Act.

One area identified as a potential for reform was that of the prosecution of section 40A offences, namely, whether the DSO Act should be amended to permit DCS staff to prosecute for specific contraventions. However, this proposal is not without its shortcomings.

The DPP has questioned whether DCS staff have the expertise to conduct hearings under the DSO Act, and DCS, whilst advocating for such an amendment, submitted that they would require significant resources to provide investigative and prosecuting powers under the DSO Act. Conversely, WA Police suggests that its costs savings would exceed the costs borne by DCS, and that the efficiency gains would be significant. Given the conflicting perspectives on this issue, and the lack of detailed costings, it is recommended that the Department of the

\(^\text{22}\) The expected increase is a result of the decision of the High Court Dickson v The Queen [2010] HCA 30.
Attorney General, in consultation with DCS and WA Police, further explore and cost this proposal to enable the Government to make an informed decision.

The role of victims in DSO Act proceedings

The review recommends that:

- Amendments be made to the first object of the DSO Act to refer to victims, an amendment to section 18(2) to refer to conditions for the protection of victims.

The Commissioner for Victims of Crime is of the strong view that there should not be arbitrary limitations based on the category of offending by which victims of the dangerous sexual offender can be a “victim” for the purposes of the DSO Act.

Dangerous sex offenders and the media

Media comment and interviews by dangerous sex offenders have the capacity to negatively impact on victims of their offending. The review considered the existing conditions of supervision orders and the provisions in the DSO Act that prescribe both the mandatory conditions that supervision orders must require of offenders, and the matters which the court must have regard to in setting additional conditions for supervision orders.

In order to implement a restriction on media contact by dangerous sex offenders, legislative reform is required.

The review recommends that restrictions on media contact be implemented as mandatory conditions in supervision orders – that is, by way of amendments to section 18(1) of the DSO Act.

The review also recommends that there should also be a second section 18(1) condition that expressly prohibits an offender providing any comment to the media, intended for publication or broadcast, in relation to their offending, or in relation to any victim or victims of their offending. The first condition regarding “sanctioned contact with the media” provides a fallback should the second provision be determined to be too broad.

Suppression of Mr TJD’s name (Juveniles, juvenile offending, and anonymity)

This review found a lack of consistency in the application of section 36 of the CCWA Act in dangerous sex offender matters. The review recommends that the Department of the Attorney General conduct further work on this issue, with a view to proposing additional amendments to the DSO Act to provide some clarity on the issue of the suppression of identifying information for dangerous sex offenders with a record of juvenile offending.
21 day notice period before publication of information about offenders

Another matter that arose during the recent controversies regarding dangerous sexual offenders was whether the 21 day notice period that applies prior to publication of an offender’s photograph or locality should be reduced. The basis for the proposed reduction is the enhancement of community safety – that is, that communities may have to live with a dangerous sexual offender in their neighbourhood for 3 weeks prior to being able to identify the offender on the community protection website.

The Community Protection (Offender Reporting) Act 2004 (WA) (CPOR Act) is, as noted at the outset of this review report, part of the suite of legislation enacted between 2004 and 2006, to protect the community against sexual offenders. Part 5A of the CPOR Act provides for the publication of information about offenders (including their photograph and locality, accessible in some circumstances).

The provisions in Part 5A of the CPOR Act are due for statutory review on 1 July 2015. It is recommended that the issue regarding whether the 21 day notice period that applies prior to publication of the photograph and locality of a dangerous sexual offender should be reduced be referred to the Minister for Police for canvassing in the statutory review of these provisions.

Review of some other forms of indefinite detention

Western Australia has a number of prisoners detained under repealed legislation providing for indefinite detention (section 662 of the Criminal Code (WA) or section 98 of the Sentencing Act 1995 (WA)) following convictions for serious sexual offences, in addition to those who are subject to continuing detention orders under the DSO Act. Those who are the subject of “old” indefinite detention orders are not detained under the DSO Act and are therefore not assessed by the Supreme Court in the same way as detainees under the DSO Act.

While consistency may be desirable (or not, given that these prisoners are still under criminal sentence as opposed to preventative detention post-criminal sentence), it is recommended that this issue, which arose late in the progress of 2014 Review of the DSO Act, be considered separately to this review. Given that these prisoners are likely to have been under the management of the PRB for some time, until the outcomes of the DSO Act review processes are clarified, it is recommended that the preferable course is to not disturb the current arrangements for their review.

Exclusion of GPS monitoring in determining release

The issue was also raised of whether GPS monitoring can be specifically excluded in the Dangerous Sexual Offenders Act 2006 (WA) as a relevant consideration when the Supreme Court is deciding whether to make a supervised release order.
Conclusion

With respect to the key options for reform of the DSO Act with respect to roles and responsibilities, this report has been drafted to be suitable as the basis for a Cabinet submission.
## ATTACHMENT A: SUMMONSES, WARRANTS, AND INTERIM ORDERS

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Summons, Warrant</th>
<th>Interim Orders</th>
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</thead>
<tbody>
<tr>
<td>QLD</td>
<td>Application for warrant on reasonable suspicion (s 20(1)), no mention of summons. Warrant issued if magistrate satisfied grounds exist (20(3)).</td>
<td>Presumption in favour of detention. Court may release prisoner only if the prisoner makes application (s 21(3)) and satisfies the court, on the balance of probabilities, that detention in custody not justified (s 21(4)).</td>
</tr>
<tr>
<td>Vic</td>
<td>On filing charge, application may be made for summons or warrant. (s 172(4))</td>
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</tbody>
</table>
| NSW          | Member of appropriate board may issue summons for person to appear; (with concurrence of another member) issue a warrant; or apply to a justice for a warrant. (s 24(6))  
If person fails to appear on summons, board may determine proceedings in person’s absence, or issue/seek warrant. (s 24(7))  
A member of the appropriate board may apply to a justice for a warrant for the apprehension and return to custody of a person whose release on licence has been cancelled by the board. (s 24(7)) | Court may make interim detention order if custody will expire before proceedings determined, and matters alleged in supporting docs would justify making of order. (s 18A) |
| SA           | Police or parole officer who suspects contravention may apply to magistrate for warrant or summons. (s 48)  
Magistrate may not issue summons on application for warrant unless exceptional circumstances or applicant consents. (s 49) | If supervisee has been arrested on warrant, Court must, at first appearance, make interim detention order or release on (amended) supervision order (s 52). However, to be released on supervision order pending determination of contravention proceedings; the supervisee has the onus of satisfying the Court that there are exceptional circumstances. (s 53(4))  
Court may make interim detention order in respect of supervisee who appears on summons. (s 54) |
<p>| NT           | Div 4: Police/CCO may apply to magistrate for summons or warrant. Presumption in favour of warrant – summons only in | During proceedings under Div 4, court may order person be detained in custody or may release person on (amended) interim SO. Presumption in favour of detention - release on interim SO only in exceptional |</p>
<table>
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<tr>
<th>Exceptional circumstances or with applicant’s consent. (s 21)</th>
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<tbody>
<tr>
<td><strong>s 40A</strong>: Police officer may arrest person without warrant on reasonable suspicion that person has contravened order. (s 40A(2))</td>
</tr>
<tr>
<td>Circumstances or with DPP consent.</td>
</tr>
</tbody>
</table>
ATTACHMENT B: PROCEDURE FOR DEALING WITH CONTRAVENTION OF SUPERVISION ORDER

Queensland
Div 5
DCS or Police may apply to magistrate for warrant in respect of contravention or likely contravention. (s 20)

Once offender returned to SC on warrant, presumption for interim detention until final decision made (s 21), release only on application by offender and in exceptional circumstances (21(3)&(4)).

s 43AA
A proceeding for an offence against this Act is a summary offence. (s 43AC)

Victoria
Adult Parole Board may inquire into alleged breach (s 161)

APB may consider that conduct constitutes serious breach if it: creates a risk to community safety; is a repeated failure to comply; may increase the offender's risk of committing a relevant offence or is preparatory to a relevant offence; or seriously compromises the offender's rehabilitation or treatment. (s 162)

If satisfied that offender has breached, APB may take no action; give warning; vary directions; and/or make recommendation to Secretary. (s 163)

Police may arrest offender on reasonable suspicion of breach. (s 171)

Proceedings for an offence against section 160 may be brought by the Secretary or a member of the police force; offender to be given 14 days' notice of intention to charge (subject to exceptions). (s 172(1)-(3))

On filing charge, application may be made for summons or warrant. (s 172(4))

Offender returns to court that made order (Supreme or County) which may grant summary hearing of offence. (s 172(5))

Pt 11 Div 3
Police may detain offender for up to 10 hours if there are reasonable grounds to suspect offender is about to breach order (s 164, 168); police must notify Secretary if offender being detained, Secretary must notify APB (s 169).

New South Wales
Proceedings for offence under s 12 may be dealt with summarily before the Local Court or the Supreme Court. (s 25A)

If offender found guilty of contravention under s 12, State may apply to Supreme Court for continuing detention order. (s 13A, 13B(4)(a))

Application must be supported by report assessing likelihood of offender committing a further serious sex offence. (s 14)
Preliminary hearing to be held within 28 days of application being filed; if satisfied at prelim
hearing, court must order reports from psychologists and/or psychiatrists. (s 15)

Court may make interim detention order if custody will expire before proceedings
determined, and matters alleged in supporting docs would justify making of order. (s 18A)

**South Australia**

Release on licence may be cancelled by board on application by the Director of Public
Prosecutions, or of its own motion. (s 24(5)(a))

If acting on its own motion, board cannot cancel release unless the person and the Crown
have had opportunity to make submissions. (s 24(5a))

Member of appropriate board may issue summons for person to appear; (with concurrence
of another member) issue a warrant; or apply to a justice for a warrant. (s 24(6))

If person fails to appear on summons, board may determine proceedings in person’s
absence, or issue/seek warrant. (s 24(7))

A member of the appropriate board may apply to a justice for a warrant for the apprehension
and return to custody of a person whose release on licence has been cancelled by the
board. (s 24(7))

**Northern Territory**

Div 2

Police or parole officer who suspects contravention may apply to magistrate for warrant or
summons. (s 48)

Magistrate may not issue summons on application for warrant unless exceptional
circumstances or applicant consents. (s 49)

Supervisee arrested on warrant not eligible for bail (s 51), court must make interim detention
order or release on (amended) supervision order on first appearance (s 52).

Supervisee arrested on warrant may be released on (amended) supervision order pending
court’s consideration of alleged contravention only if supervisee makes application and
satisfies court that there are exceptional circumstances (s 53); court may make interim
detention order if it ceases to be satisfied re exceptional circumstances prior to completing
consideration (s 54).

Court *may* make interim detention order in respect of supervisee who appears on summons.
(s 54)

Correctional Services must provide supervision report (s 56), court may order medical
assessment (s 57).

If court is satisfied that supervisee has contravened, is contravening or is likely to contravene
supervision order, it must revoke supervision order and impose detention order unless
satisfied that it would not be appropriate to do so. (s 58)

Supervisee has the onus of satisfying the Court that it would not be appropriate to make
detention order. (s 60)

If court not satisfied re contravention, or if it decides not to make detention order, it must
revoke any interim detention order and may amend the supervision order. (s 59)
Western Australia

Div 4

Police/CCO may apply to magistrate for summons or warrant. Presumption in favour of warrant – summons only in exceptional circumstances or with applicant’s consent. (s 21)

Once offender returned to SC on warrant/summons, DPP applies for order amending SO or imposing CDO. (s 22)

After DPP application made, SC may order psychiatric assessments. (s 23A)

During proceedings, court may order person be detained in custody or may release person on (amended) interim SO. Presumption in favour of detention - release on interim SO only in exceptional circumstances or with DPP consent. (s 23A)

s 40A
Police officer may arrest person without warrant on reasonable suspicion that person has contravened order. (s 40A(2))

Police officer who charges person must inform DPP as soon as practicable. (s 40A(3))

If s 40A offence pursued in isolation (i.e. without Div 4 contravention), procedure is that applicable to and in relation to a charge of any other simple offence. (s 40B(1))