PORTFOLIOS: ATTORNEY GENERAL

ISSUE: DSO OFFENDERS RELEASED TO SUPERVISION ORDERS

KEY LINES:

- AS AT MARCH 2017 THERE WERE 25 DANGEROUS SEXUAL OFFENDERS ON SUPERVISION ORDERS;
- AS AT 7 OCTOBER 2019 THERE ARE 27 OFFENDERS ON SUPERVISION ORDERS, FOUR OF WHOM ARE PRESENTLY DETAINED;
- THERE HAVE ONLY BEEN NINE APPEALS SINCE THE ACT COMMENCED OF WHICH MY OFFICE IS AWARE – MOST DID NOT RELATE TO THE OFFENDER'S RISK;
- THE DPP NEVER CONCEDES OFFENDERS BE RELEASED TO COMMUNITY SUPERVISION UNLESS THERE ARE NO REASONABLE PROSPECTS OF SUCCESSFULLY ARGUING THAT A CONTINUING DETENTION ORDER IS APPROPRIATE;
- THERE HAS ONLY BEEN ONE OFFENDER WHO RE-OFFENDED IN A SEXUAL MANNER WHILE SUBJECT TO A SUPERVISION ORDER (BRADLEY WIMBRIDGE ON 25 JUNE 2016);
- THERE WAS NO REASONABLE PROSPECT OF ANY CONTRAVENTION APPLICATION SUCCEEDING IN THE CASE OF LATIMER;
- IF OFFENDERS CAN BE MANAGED IN THE COMMUNITY, THE DANGEROUS SEXUAL OFFENDERS ACT 2006 REQUIRES THEM TO BE RELEASED TO SUPERVISION.

BACKGROUND

The purpose of this Briefing Note is to provide information about the release of dangerous sexual offenders ("DSOs") to community supervision since March 2017 in response to comments made by the Hon Liza Harvey MLA, Leader of the Opposition, at a doorstop on 6 October 2019.

STATEMENTS MADE BY THE LEADER OF THE OPPOSITION

Number of DSOs Released to Community Supervision

During her doorstop, the Hon Ms Harvey MLA stated that *"…double the number of sex offenders have been released since the Labor Government came into office"*. That statement is inaccurate.

As at 9 March 2017, there were 25 DSOs released to community supervision orders ("SOs"). A further 22 DSOs were in custody on continuing detention orders ("CDOs").

As at 7 October 2019, there are 27 DSOs on community SOs. There are also 22 DSOs in custody on CDOs.

However, four of the 27 DSOs subject to SOs are presently in custody (for contravention, on interim detention orders or remand). My office has been unable to ascertain how many DSOs released to SOs in 2017 were held in detention AS AT 9 March 2017.

DPP Not Opposing Applications for Release to Supervision Orders

The Hon Ms Harvey MLA asserts that since the change of Government, my office has not appealed as many applications for release to community supervision, resulting in *"…double the number (of DSOs) in the community"*. That assertion is misleading and incorrect.

My office is only aware of nine appeals since the DSO Act commenced, most of which concerned statutory construction rather than a challenge to the court's assessment as to whether the person was an unacceptable risk.

In 2008, my office appealed the court's refusal to declare someone a DSO. That appeal was dismissed. In 2009 a person declared to be a DSO appealed that decision. That appeal was also dismissed. The last State appeal was in 2013. There have only been two appeals by DSOs since 2013.

As you are aware, my office does not appeal in any case if there are no reasonable prospects of successfully doing so.

The larger number of appeals in the period after the legislation was passed is explained by the fact that issues of statutory construction arose in the early stages of the operation of the legislation. As the majority of the statutory construction issues have now been resolved, the number of appeals has substantially diminished.

We have been requested to provide information as to the number of concessions my office has made for CDOs to be rescinded, and if information is available for previous years. This information could only be ascertained by physically reviewing each case, for each year, which is not practicable. However, my office never concedes a CDO should be rescinded and a SO imposed unless there are no reasonable prospects of successfully arguing that a CDO would be appropriate. Further, it is very rare for my office to not oppose the imposition of a SO instead of a CDO, although each individual case must be considered on its merits.

Importantly, no DSO has been released into the community after a CDO without supervision.

The very nature of the DSO Act is that if a DSO can be managed in the community, they should be. The absence of judicial consideration of current risk, and whether a person can be managed in the community, with a focus instead solely on past offending conduct as a determinative factor, particularly after a lengthy term in custody, would leave the entire legislative scheme open to challenge.

DSOs Are Not Being Appropriately Supervised in the Community

Throughout the doorstop, the Hon Ms Harvey MLA denounced the current accommodation arrangements for DSOs and their ability to travel by public transport within the community. While she was unwilling to provide specific details as to how the Opposition envisaged addressing her concerns, the Hon Ms Harvey MLA stated –

> *"…the best place for these individuals to be, in my view, is behind bars… ultimately, that's where they need to be because the reality is these people have a propensity to re-offend"*.

Since the commencement of the DSO Act, there has only been one DSO who has re-offended in a sexual manner while subject to a community SO. For your ease, below is a summary of the pertinent facts.

On 25 June 2016, Mr Mark Bradley Wimbridge breached his SO and was subsequently charged with the following contravention offences pursuant to s40A:

1. On 25 June 2016 Mr Wimbridge failed to keep on his person his electronic tracking handheld device. Attempts were made to contact Mr Wimbridge, but these were

unsuccessful. Mr Wimbridge was not in possession of the device for approximately 33 minutes. When police located Mr Wimbridge, he was not in possession of his device.

2. On the same date police seized Mr Wimbridge's phone. It was found to contain text messages and mobile phone calls to listed numbers of female sex workers. This was in contravention of a condition of the order preventing contact with sex workers. The content of the messages was requesting information of their services and to arrange meetings.

3. Police had also attended at the address in response to a complaint by Mr Wimbridge's stepdaughter-in-law, who is the complainant in relation to an allegation of aggravated sexual penetration without consent. Mr Wimbridge attended uninvited at the complainant's home where, after some discussion, Mr Wimbridge forced himself onto the complainant and indecently assaulted.

4. At the time of arresting Mr Wimbridge, police could smell alcohol on Mr Wimbridge's breath. A preliminary sample was taken and Mr Wimbridge tested positively for alcohol in contravention of the condition of his order prohibiting him from drinking alcohol.

On 1 September 2017, Mr Wimbridge was sentenced to a term of imprisonment of 3 years and 4 months, commencing on 26 June 2016. He was not made eligible for parole. That sentence will therefore conclude on 26 October 2019.

As a result, my office also commenced contravention proceedings. Those proceedings concluded on 9 March 2018 with Corboy J rescinding the SO and making a CDO. A review of the CDO was listed for 26 October 2020, being the first statutory review under the Act.

Latimer's Continued Community Supervision

The Hon Ms Harvey MLA referred to Mr Edward William Latimer's case and concluded that the Government ought to appeal the court's decision to allow him to remain on a SO following the two breach convictions. The particulars of that case are summarised in my Briefing Note dated 7 October 2019 (**attached**).

I reiterate my previous advice that the breaches are sufficiently minor (both in nature and duration) that there is no reasonable prospect of any contravention application succeeding. There is also, in my view, no amendment which can be made to his conditions to further reduce the risk of future breaches.

CONCLUSION

Submitted for your information and noting.

If you have any queries, please do not hesitate to contact me or Yanina Boschini, my Legal Administrator, on 9425 3747.

AMANDA FORRESTER SC
DIRECTOR OF PUBLIC PROSECUTIONS

9 OCTOBER 2019

Attach: Briefing Note dated 7 October 2019