

Submission to the Victorian Law Reform Commission’s inquiry into *Improving the Response of the Justice System to Sexual Offences*

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Introduction

Thank you for the opportunity to make a submission in relation to improving the response of the justice system to sexual offences in Victoria. This submission responds to *Issues Paper F: People Who Have Committed Sexual Offences*. In particular we are concerned here with post-sentence measures for sexual offending.

Circles of Support and Accountability

We note that the Commission has highlighted Circles of Support and Accountability (CoSA), and we want to further underscore the value of CoSA in preventing sexual violence.

What are CoSA?

CoSA are groups of trained volunteers who support a person convicted of a sexual offence (known as the ‘core member’) as they leave prison and re-join the community. Correctional Service Canada (2003: 12) describes the aim of CoSA as being ‘to substantially reduce the risk of future sexual victimization of community members by assisting and supporting released individuals in their task of integrating with the community and leading responsible, productive, and accountable lives’. The twin underpinning principles of CoSA are: ‘no one is

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dispensable' (or 'no one is disposable') and 'no more victims' (Fox, 2010). Since their emergence in Ontario, Canada in 1994, CoSA have spread across the globe and have been implemented across Canada and in parts of the USA, the UK, Western Europe, and South Australia (see Richards et al., 2020a for an overview).

CoSA are underpinned by a written agreement between the core member and volunteers, usually called a 'contract' or 'covenant'. This document establishes conditions of behaviour for the core member, procedures for dealing with any breaches of the agreement and failure to meet conditions set by the relevant correctional authority, safety procedures, and protocols for responding to 'warning signs' in the core member's behaviour (Heise et al., 1996: 17).

As the Commission notes in *Issues Paper F*, CoSA volunteers are supported by a range of criminal justice professionals (eg therapeutic professionals, probation and parole officers, police, CoSA program staff) to whom they can turn if issues arise in a Circle and/or they need to seek professional advice. Where necessary, volunteers report back to a Circle Coordinator about the activities of the Circle and the attitudes and behaviours of the core member. The Circle Coordinator may in turn report any concerns to the relevant authorities.

Do CoSA work?

The strongest evidence to date about the efficacy of CoSA comes from a Randomised Controlled Trial of the Minnesota CoSA program. It involved randomly assigning potential core members into either a CoSA or a control group, and comparing the recidivism of these two groups over time (Duwe, 2013; Minnesota Department of Corrections, 2010). In this study, Duwe (2018) was able to demonstrate statistically significant differences between core members and the control group by comparing 50 core members with 50 sexual offenders who were not assigned a CoSA, and measuring the recidivism of the two groups over an average of 6 years. Duwe (2018) found **lower rates of recidivism among core members than among the control group for all six measures of recidivism** (rearrest; rearrest for a sexual offense; reconviction; reconviction for a sexual offence; resentencing; and technical violation revocation). A statistically significant difference in sexual recidivism was found between the CoSA core members and the control group, with only one core member being rearrested for a new sexual offence compared with seven in the control group (Duwe, 2018: 475). The **rate of rearrest for a new sexual offence was 88 percent lower for core members** than control group members. No CoSA core members were reconvicted (or resentenced) compared with four from the control group (Duwe, 2018: 475) (see also Bates et al., 2014; Wilson et al., 2009; Wilson et al., 2005 for quasi-experimental research demonstrating similar reductions in sexual recidivism).

Other research studies have measured the impact that CoSA have on psychosocial outcomes for core members and document **significant improvements for core members** across the life of a CoSA. For example, studies have documented improvements in core members' relationships (Bates et al., 2012; Elliott et al., 2017), education and employment (Bates et al.,

2012; Clarke et al., 2017; McCartan et al., 2014), access to suitable accommodation (Bates et al., 2007; Clarke et al., 2017), health (Bates et al., 2012), prosocial attitudes (Höing et al., 2015), perceptions of social support (Elliott et al., 2017), participation in prosocial activities (McCartan et al., 2014), emotional regulation and self-esteem (Höing et al., 2015), and sense of hope and goal-setting (Elliott et al., 2017). These outcomes have all previously been demonstrated to protect against recidivism.

CoSA also **reduce criminal justice costs**. In the UK, Elliott and Beech (2012) demonstrated a cost-benefit ratio of £1.04 for every pound spent, and in the US, Duwe (2018) found that every dollar spent on the Minnesota CoSA program generated an approximate benefit of US\$3.73, a 273 percent return on investment.

CoSA in South Australia

Recent research on Australia's first CoSA program, operated by the Offenders' Aid and Rehabilitation Service of South Australia (OARS) (see generally Centre for Innovative Justice, 2017) found that this program is successfully undertaking a range of activities with core members that could be expected to reduce sexual reoffending (ie are aligned with current knowledge about reducing sexual recidivism) (Richards et al., 2020a). For example, the OARS CoSA program provides core members with social and welfare support systems that they often lack. CoSA volunteers help address areas of stress in core members' lives, including those stressors (e.g. family issues, isolation) that research shows can lead to reoffending (see Bonnar-Kidd, 2010), as well as supporting them to achieve health, social and other goals and to meet their conditions of release. CoSA volunteers also challenge core members' inappropriate thoughts and behaviours (eg minimisations of their offending), support them to avoid trigger behaviours, and report any concerns to the program. The researchers concluded that the OARS CoSA program is: "undoubtedly contributing to the safety of the community" and by supporting core members to avoid technical breaches of their release requirements may also be contributing towards criminal justice cost savings (Richards et al., 2020a: 9).

What do victim/survivors think about CoSA?

Only one study has examined the views of victim/survivors of sexual violence about CoSA. The study (Richards et al., in press) involved interviewing 33 female victim/survivors from south-east Queensland. It found that victim/survivors held diverse views about CoSA. In the main, however, they were supportive of CoSA on two grounds:

1. they saw CoSA as providing valuable social support to people who sexually offend, which they recognised was necessary following prison; and
2. they invited the increased scrutiny and monitoring of offenders' behaviour that CoSA facilitate.

Victim/survivors were aware that almost all people who offend sexually will be released into the community, and were in favour of the assistance that CoSA would provide in this context. This research echoes previous research on victim/survivors' broader justice needs that shows that victim/survivors want offender needs to be addressed in order to better protect the community (Jülich, 2006; McGlynn & Westmarland, 2019).

It is important to note that victim/survivors of sexual violence often serve as volunteers alongside other members of the community in CoSA programs (Kerr et al., 2018; McCartan et al., 2014; Richards et al., 2020a; Wilson et al., 2005, 2007). Indeed, Wager and Wilson (2017) estimate that up to one in four of all CoSA volunteers in the UK are victim/survivors of sexual violence (see further Almond et al., 2015; Kerr et al., 2018; Lowe et al., 2017; McCartan, 2016). While there is much diversity among victim/survivors, and not all victim/survivors will support CoSA, the existing evidence clearly shows that CoSA can be aligned with the interests of victim/survivors of sexual violence.

In summary, CoSA offer support to people who have sexually offended during a critical stage in their re-entry into the community, and have been shown to enhance community safety. We urge the Commission to support their implementation across Victoria.

The Cultural Mentoring Program

Aboriginal and/or Torres Strait Islander people who sexually offend may have unique requirements in the post-sentence context (Richards, 2020; Richards et al., 2020a). As such we would like to draw your attention to the Cultural Mentoring Program, a unique Townsville-based initiative that provides support to Aboriginal and/or Torres Strait Islander men who have sexually offended.

What is the Cultural Mentoring Program?

The Cultural Mentoring Program (CMP) involves the provision of support to Aboriginal and/or Torres Strait Islander men who have sexually offended and have been released from prison into the community under Queensland's *Dangerous Prisoners (Sexual Offenders) Act 2003 (DPSOA)*. Elders engage with men who have sexually offended (who volunteer to participate) in six one-on-one sessions focusing on cultural and spiritual mentorship (see Richards et al., 2020a for an overview). Elders pass on traditional knowledge through a wide range of activities including bushwalking and art, and guide the men to adopt culturally-informed law-abiding identities (Richards et al., 2020b). The program is funded, but not managed, by Queensland Corrective Services.

What can culturally-safe practices achieve for Aboriginal and/or Torres Strait Islander men who have sexually offended?

Recent research (Richards et al., 2020a, 2020b) found that the CMP helps participants to accept the value of adhering to their conditions of release, and supports them in culturally-safe ways to do so. By helping participants to avoid the behaviours that can precipitate their offending, and by supporting offenders to avoid technical breaches of their release requirements, the CMP may also contribute to reducing recidivism and reducing criminal justice expenditure by decreasing the work of the courts and the volume of returns to prison. The research also found that the CMP may be useful in preparing Aboriginal and/or Torres Strait Islander men to engage with other evidence-based measures (such as cognitive-behavioural programming) (Richards et al., 2020a). Perhaps most critically, the program's recognition of the trauma in the life histories of CMP participants and the context of colonisation that shapes this trauma is important for addressing the offending-related needs of Aboriginal and/or Torres Strait Islander offenders.

In summary, it is vital to consider the needs of Aboriginal and/or Torres Strait Islander people who have committed sexual offences, as well as the emerging evidence base about appropriate and effective ways of supporting this often-overlooked cohort.

Public sexual offender registers

We note that a Parliamentary Inquiry is underway into whether Victoria's sexual offender register should be made public. We argue strongly against making the register public on the following grounds:

It has been convincingly established that **public sex offender registers do not reduce reoffending**. The large body of evidence amassed from the USA's public sex offender registers clearly demonstrates that they do not prevent sexual violence (Napier et al., 2018). There are a number of reasons for this. As sexual offences are infrequently reported (Bouhours & Daly, 2008; Kelly et al., 2005) and have a high rate of attrition from the criminal justice system (Bouhours & Daly, 2008; Eastwood et al., 2006), the overwhelming majority of people who perpetrate sexual violence will not appear on a sexual offender register. As a result, such registers can create a false sense of security among members of the public (Bonnar-Kidd, 2010), who may believe that an individual's absence from a register is evidence that they have not perpetrated a sexual offence. Moreover, measures such as public registers are counter-intuitive in that by stigmatising sexual offenders, they threaten offenders' prospects of rehabilitation and their likelihood of desistance. Stigma exacerbates the risk of sexually violent behaviour (Jahnke et al., 2015; Seidler, 2010); public registers prevent offenders from crafting new lives and adopting prosocial identities that are incompatible with continued offending. The environment in which a person who has sexually offended lives is key in determining the likelihood of reoffending, with a positive environment reducing stress, anxiety, risk of substance abuse and reoffending, while improving their chances of securing

stable accommodation, employment and much-needed social network. Furthermore, it would appear likely that an offender in a positive environment is more likely to accept their culpability and acknowledge their wrongdoing while beginning to empathise with their victims and those wronged by their actions (see generally Agan, 2011). In short, public sex offender registers serve only a symbolic function, permanently shaming perpetrators. They do not, however, serve an instrumental function by reducing sexual recidivism.

While the majority of the American public support the use of public sex offender registers (Koon-Magnin, 2015; Levenson et al., 2007), recent research of public views in Australia (Bartels et al., 2020) reached different conclusions. It found general support among the public for the use of registers, especially in cases involving sexual offending against children. However, this research found much less support for sex offender registers being made available to the general public, with only one-third of respondents believing this should be the case (Bartels et al., 2020).

While it is often assumed that victim/survivors of sexual violence hold extremely punitive attitudes towards perpetrators, this is not borne out by research. Indeed, victim/survivors' attitudes towards sexual offenders either vary little from the general public's (Sahlstrom & Jeglic, 2008; Willis et al., 2013), or tend to be *more positive* than the general public's (DeLuca et al., 2018; Ferguson & Ireland, 2006; Nelson et al., 2002; Socia et al., 2019; Spoo et al., 2018). This is likely because personally knowing a sexual offender results in victim/survivors having a more balanced picture of perpetrators and therefore relying less on stereotypes than the general public.

Victim/survivors favour approaches to sexual offender reintegration that are pragmatically-oriented, and will prevent future harm to others (Richards et al., 2020a; Richards et al., in press). To this end, they generally support measures that will reduce an offender's risk of reoffence over stigmatising measures that may be counter-productive (Herman, 2005; McGlynn & Westmarland, 2019; Richards et al., 2020a). While some victims' groups have expressed support for a public register, and it is heartening to see an increased voice for victim/survivor groups in these discussions, it must be noted that victims' groups that are afforded a public platform in such debates have often formed in the wake of an especially extreme and heinous crime. While the views of these groups must be included, the overwhelming majority of victim/survivors of sexual violence are abused by people they know, usually in a familial context. Their views and needs may therefore differ considerably from the policy positions of such organisations, which are often erroneously assumed to represent all victim/survivors.

The public release of personal information about people who have sexually victimised children also results in a range of "collateral consequences". As the majority of sexual offending against children occurs in families, public registers containing the personal details of sexual offenders typically **expose the victim/survivors** of these offences. Further, offenders' families (including child victims and other children) face significant consequences as a result of public registers, including severe stress, shame, isolation and other psychological impacts, and being physically attacked (Levenson & Tewksbury, 2009).

In closing, programs such as CoSA and the CMP are preferable to highly punitive and stigmatising measures such as public registers. We urge the Commission to act based on the best available evidence, and to consider such promising measures.

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