

# REVOCATIONS OF EXTENDED SUPERVISION ORDERS IN NEW SOUTH WALES

BEST PRACTICE IN UPDATING THE COURTS  
WHEN EXTENDED SUPERVISION IS NO LONGER NECESSARY  
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Signal, noise and expertise: The challenge of validity in a shifting landscape

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# Acknowledgement of Country



This presentation was prepared on the lands of the Darug and Wallumedegal people, for delivery on the lands of the Wurundjeri Woi-wurrung peoples.

Corrective Services NSW acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to Elders past and present, and I extend that respect to all Aboriginal and Torres Strait Islander peoples today, especially those gathered today at this ANZAPPL Congress.

*Always was, always will be, Aboriginal land*

# DISCLAIMER

The opinions and findings expressed herein represent those of the investigator (Mr Sam Ardasinski) and pertain to his research into cases under the *NSW Crimes (High Risk Offenders) Act 2006*.

They do not necessarily reflect the official policy or position of Corrective Services NSW, although the research and presentation have been reviewed by the senior executive of CSNSW Strategy and Policy prior to this presentation.

This research has been deemed to fall outside the scope of the NSW Corrective Services Ethics Committee (Corrections Research Evaluation and Statistics CSNSW) since it has utilized publicly available Court materials only and looks at professional practices broadly rather than individual client information.

# Overview

- A short history of Post-Sentence Detention and Supervision legislation in Australia and NSW
- The current state of affairs, and how we do things in NSW
- Use of dynamic risk assessment generally in extended supervision matters – the current landscape
- Revocations of ESOs
- Conclusions
- Questions, comments, suggestions

# A short history of Post-Sentence Detention and Supervision legislation in Australia and NSW

# 1

# The NSW 'CHRO Act' (in a nutshell)



Allows for the continuing detention and/or extended supervision of offenders who have been serving a custodial sentence for a serious sexual or violence offence – either Order can be up to 5 years

CDOs (continuing detention orders)

ESOs (extended supervision orders)

## **Serious sexual offences**

Many sexual offences punishable by 7 or more years' imprisonment

Or an offence against a child in circumstances of aggravation

## **Serious violence offences** (only inserted into Act in 2013)

Murder, Manslaughter (caused by unlawful/dangerous act), GBH and Wounding (intending to murder or cause GBH), plus Attempted etc; choking/strangulation offences added into the Act in 2023

# *Crimes (High Risk Offenders) Act 2006 NSW*

- (1) The primary object - to ... ensure the safety and protection of the community
- (2) Another object - to encourage high risk sex offenders and high risk violent offenders to undertake rehabilitation

Post-sentence preventive detention and supervision orders straddle the civil–criminal divide – hybrid civil-criminal order: it is issued in civil – not criminal – proceedings, but attracts criminal liability on breach.

Currently 133 individuals subject to ESOs in NSW – counting both those 123 made subject to ESOs pursuant to the *Crimes (High Risk Offenders) Act 2006*, as well as the 10 through the *Terrorism (High Risk Offenders) Act 2017*



# The current state of affairs

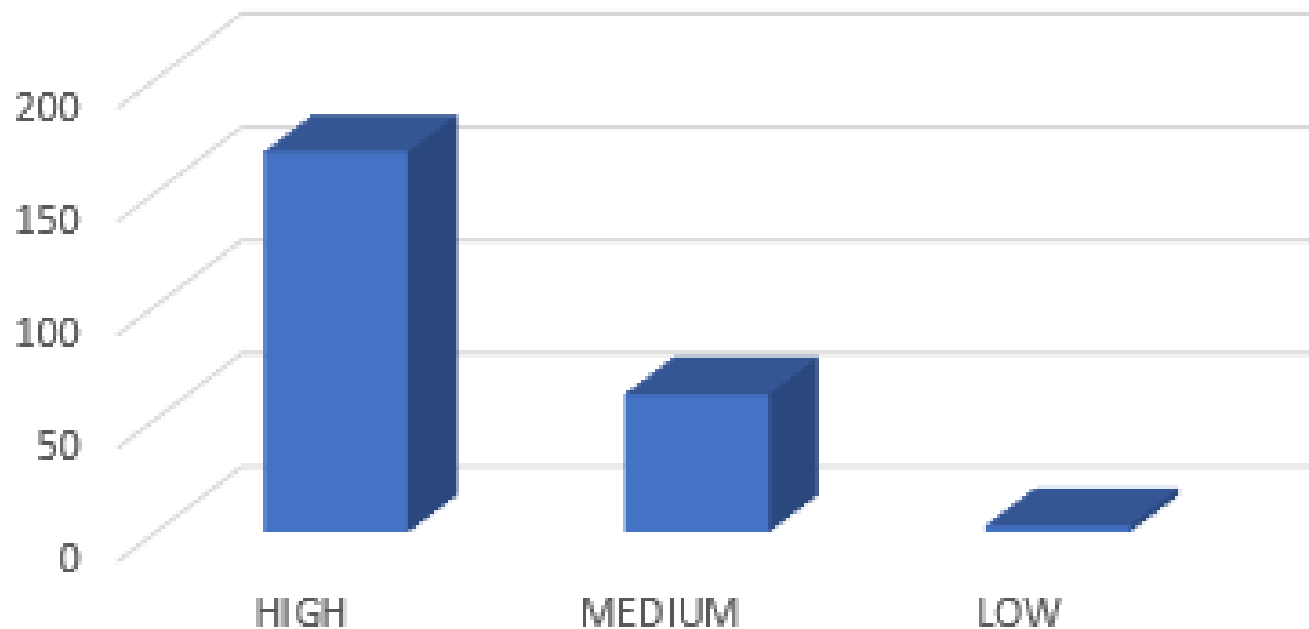
Some numbers, and how we do things in NSW

# 2



# Individuals subject to ESOs in NSW

STATIC99R/VRS RISK RATINGS



236 individuals have been made subject to some form of order pursuant to the CHRO Act since it was enacted (up until 2024).

This chart includes a small number of individuals who were made subject to CDOs as well as ESOs.

168 scored 6+ on STATIC-99R, or 50+ on VRS

61 scored between 2-5 on STATIC-99R (or were Medium risk on VRS or VRAG-R)

3 were assessed as Low risk, and 3 were N/A

# Individuals subject to ESOs in NSW

OFFENDER TYPE	NUMBER
Child sex offender	82
Violent offender	61
Adult rapist	53
Mixed (may include those with both sexual and violent offences, or those who do not exclusively target adults or children)	40
TOTAL	236

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The majority of offenders made subject to ESOs are child sex offenders, but there is a sizeable proportion that are violent offenders or have adult sex offence victims only.

Many violent offenders who are considered for possible ESOs have concerns about the stigma associated with wearing electronic monitoring (EM) anklets, since they associate these with child sex offenders due to the history of the CHRO Act and the profile of ESOs in the past

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# REOFFENDING



Of the 236 individuals who have been made subject to ESOs since 2006:

- 16 have reoffended with serious offences
- 11 of those reoffended seriously whilst subject to their ESO
- 3 of those reoffended AFTER their ESO had expired
- (not included were those sex offenders who reoffended with possession of child abuse material or similar offences of a sexual nature; or violent offenders whose most serious violence post-ESO was AOABH)
- The vast majority of offenders subject to ESOs have only had Fail to Comply with ESO offences since being made subject to their ESOs – no new victims

# Use of dynamic risk assessment generally in extended supervision matters

The current landscape

3

# Dynamic risk assessment – it is important!



Recent research indicates that (in sex offenders, at least), the most recent dynamic risk assessment is the most predictive of risk for sexual recidivism:

Babchishin, K. M., Hanson, R. K., & Lee, S. C. (2024). Risk to reoffend changes over time: Improving correctional programming through progress monitoring. *Psychological Assessment*, 36 (10), 595–605

Lee, S. C., Babchishin, K. M., Mularczyk, K. P., & Hanson, R. K. (2024). Dynamic risk scales degrade over time: Evidence for reassessments. *Assessment*, 31 (3), 698-714.

So, how often are dynamic risk scales being used and relied on in ESO matters?

# Dynamic risk scales used in ESO applications and hearings in NSW

SCALE/RISK TOOL	NUMBER
Risk for Sexual Violence Protocol	66
Stable-2007	58
VRS (Violence Risk Scale)	30
HCR-20	26
OTHER TOOLS MENTIONED	SARA (Spousal Assault Risk Assessment) SAPROF (Structured Assessment of Protective Factors) PCL-R (Psychopathy Checklist-Revised) SVR-20 ARMIDILO-S VRAG-R (not a dynamic tool*)

Most court-appointed psychologists used one other risk tool, aside from STATIC-99R (for sex offenders), while court-appointed psychiatrists tended to only refer to STATIC-99R and no other formal risk measures.

NB – it is standard practice within CSNSW to assess all violent offenders with the VRS, with the VRAG-R and HCR-20v3 or SARA (or ODARA/DVRAG) as supplementary tools

# So, dynamic risk scales ARE being used

But are they being relied on to determine if an ESO is no longer necessary?

Only four (4) individuals have had their ESOs successfully revoked prior to order expiry.

Given the importance of reassessing risk over time, should there have been more than FOUR individuals (out of the total of 236) whose risk had diminished sufficiently to warrant consideration of ESO revocation prior to the expiry of their Orders?

By way of comparison, NO offenders subject to the same legislation in Queensland have had their Orders revoked, while in Victoria, 15 offenders had their ESOs revoked or they expired in 2023-2024 (the Post-Sentence Authority Annual Report collapsed these figures)

# REVOCATIONS



Discussion of the four individuals who have had their ESOs revoked:

1. 'Shannon' had committed intrafamilial child sex offences many years ago, had done treatment, but his main problem was Ice use. He was in and out for drug use breaches for many years, extending his five-year order into about twelve years.
2. 'Edward' was a young Aboriginal offender who was made subject to an ESO after committing two separate sexual offences as a juvenile. He had an intellectual disability and drug issues. The Courts revoked his ESO at the request of the State, since his ESO had become punitive instead of protective due to his frequent breaches for drug use and absconding.
3. 'Paul' was a recidivist adult rapist, who was in his 60s by the time he was made subject to an ESO. He had consistent work, his own home and wanted to relocate interstate to be closer to his family, so he initiated the revocation application – which was successful in 2019.
4. 'Michael' was made subject to an ESO on the back of a string of robbery rapes, during a drug-fuelled lifestyle. He spent 19 years in continuous custody from age 25-44, and had his ESO revoked at age 50 since his lifestyle by then did not resemble that of his mid-twenties.



# Conclusions, and Recommendations

It has taken the courageous actions of a few individuals within the teams responsible for managing ESOs to bring these four cases to light and have the ESOs revoked – but we can all do more.

Use risk tools alongside tools which assess PROTECTIVE FACTORS;

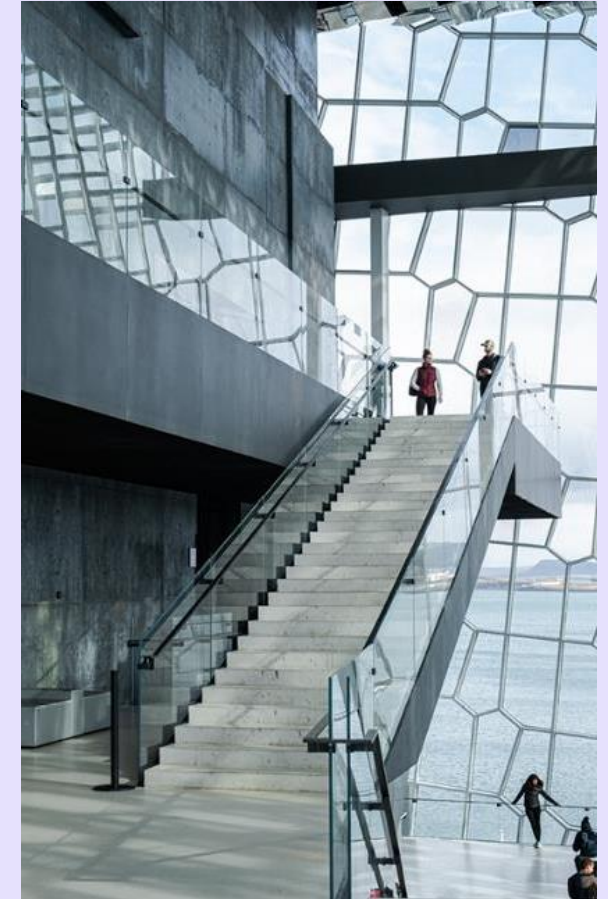
The SAPROF, and now the SAPROF-SO, are useful measures to help inform an assessment and balance your judgment of an individual's current circumstances.

While there is empirical

evidence that averaging is an acceptable method for deriving overall risk ratings (e.g., Lehmann et al, 2019), this research was for averaging the results of two *static* tool results – not for averaging a static tool with a dynamic one.

The Court is already required to have regard to an

offender's criminal history (CHRO Act s9(3)(h)), so over-reliance on static factors and risk results may bias decisions or lead to an over-weighting of unchangeable historical factors in making ESOs.



# QUESTIONS?



