

# Variations on a theme: An introduction to preventative detention across the world

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# Overview

- International “Dangerous Sex Offender” legislation
- The Australia landscape
- Queensland
- Lessons Learned
- Next Steps
- Questions, comments, suggestions

# United States: Civil Commitment

- Civil commitment introduced in 1930's
- Washington State first to enact 'Sexually Violent Predator' laws (*Community Protection Act, 1990*)
- To date, 20 jurisdictions have similar 'SVP' or 'SDP' legislation in place
- Civil commitment requires:
  - (1) diagnosis of a mental health disorder (or abnormality)
  - (2) the provision of treatment
- Indefinite (until rescinded) when they are found to be no longer sexually dangerous



# New Zealand

- Introduced in 1954
- High profile case, public fear, penal-populist responses led to a preventive detention 'renaissance' (Anderson, 2016)
- Eligible age decreased and eligible offences increased
- A minimum of 5 years and no review during this period

## 2025 Law Commission report:

- 149 recommendations
- Interviews with individuals in preventive detention

## Report

### *Here ora: Preventive measures in a reformed law* (NZLC R149, 2025)

On 19 March 2025, Te Aka Matua o te Ture | Law Commission submitted its report to the Minister to complete its review of preventive detention and post-sentence orders. The report has been presented to Parliament.

The Commission concludes that an overhaul of the law governing preventive detention, extended supervision orders and public protection orders is required. The Commission recommends changes to prevent serious sexual and violent reoffending while managing high-risk offenders more humanely.

The report contains 149 recommendations. They include the introduction of a new Act to replace the current law and to bring the fragmented measures into a single, cohesive and coherent regime.

# Norway: Forvaring

- Known for “exceptional” prison conditions (Pratt, 2008; Sandbukt, 2021)
- Restriction of liberty the *only* type of punishment
- Requires a conviction of a serious violent or sexual offence that has:
  - (1) “infringed upon the life, health, or freedom of another person”
  - (2) presents an “imminent risk” of committing another offence
- No standardised use of psychiatric risk assessments
- No explicit mention of formal reviews in legislation

# England and Wales: 2005 - 2012

## Imprisonment for Public Protection (IPP)

- Latrogenic and resource-intensive
- Lacked the resources to rehabilitate the individuals
- Emotional, mental and physical deterioration (akin to wrongful conviction)
- Disproportionately high self-harm and suicide rates

*“...One of the least carefully planned and implemented pieces of legislation in the history of British sentencing”*

(Jacobsen & Hough, 2010)

# England and Wales: 2012 - Present

## Life Sentence for Dangerous Offenders

- Need to commit a specified offence (violent or sexual in nature)
- Can be released at two thirds of the sentence
- Cannot exceed statutory maximum for offences (automatic release regardless of board's opinion)

## Automatic Life Sentence

- Essentially a two-strikes system
- If a second specified offence is committed, dangerousness is assumed and an automatic life sentence is applied

Both measures have a **lifelong** release conditions and recall to custody

# International 'DSO' Legislation

	United States	New Zealand	England & Wales	Norway
<b>Preventive Detention Type</b>	Civil Commitment	PSPD	PSPD	PSPD
<b>Preventive Detention Length</b>	Indefinite (until rescinded)	At <i>least</i> 5 years, until rescinded	Up to statutory maximum, then automatic release	Minimum = 10 years at most Maximum = 21 years (Indefinite extensions)
<b>Review Period</b>	Annually (if requested)	Every 2 years, not in first 5 years	At least every 2 years	"Regular review"
<b>Non-Custodial Measure?</b>	No	Yes	Yes	Yes
<b>Lifelong Reporting?</b>	Yes	Yes	Yes	No
<b>Risk Assessment Requirement</b>	Examination by a psychiatrist and a psychologist	Examination by 2 psychiatrists or psychologists	Allowed, but not required	None. Up to court's discretion
<b>Notification of Preventive Detention</b>	After conviction, upon referral	After conviction, prior to sentence	At time of original sentencing	At time of original sentencing

# What can we learn?



# We can learn:



Exceptionally stringent community management conditions can increase risk, interrupt successful reentry and induce trauma (PCTS)



Rehabilitative and reintegrative focus; a humane approach consistent with international human rights; increased cultural consideration and sensitivity prioritised and embedded in regimes



The indefinite and 'unknown' nature of the sentences can have detrimental health effects (psychologically and physically)



Even the most holistic, humane and ambitious policies will not work in practice without appropriate resources

# Notable NZLC recommendations

No open-ended application periods, must be made prior to the sentence expiry

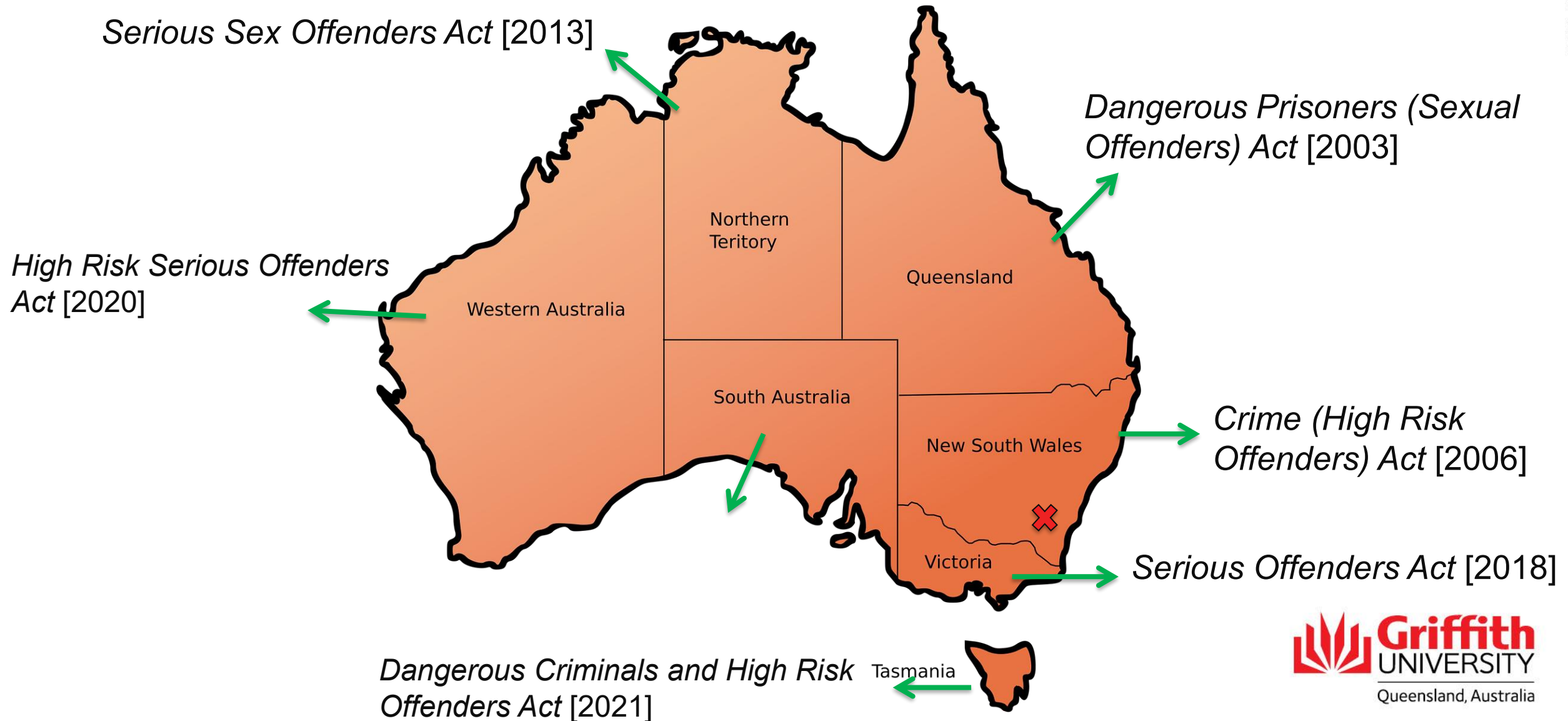
Notified of possibility of post-sentence measures at sentencing

Entitle victims to make written or oral statements

Facilities should be subject to regular examination of torture prevention inspections

Post-sentence facilities must be separate from prison and have separate rooms that are materially different from prison cells

# Australian Post-Sentence Preventive Detention



# Key Considerations

- High profile crimes and penal populism
- Net widening
- Perpetual harm of indefinite detention – can we make it more humane?
- Policy and practice gap (i.e. budget cuts, strained service delivery, delays)
- Independent oversight
- *“[their] freedom is predicated upon ‘the system’ working...”*

# Next Steps

- Australian post-sentence prevention detention measures
- Professionals interviews! (21 completed so far)
- Please find me during the conference if you're interested



The human and human rights consequences of the Dangerous Prisoners (Sexual Offenders) Act [2003]

## PARTICIPANT INFORMATION

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### The Research Team

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### Why is the research being conducted?

Most countries have a form of "Dangerous Sex Offender" legislation for individuals convicted of violent sexual offences, providing preventive detention after the original sentence, to avoid crimes that *may* be committed in the future. However, international literature consistently suggests these policies fail to improve society safety and do more harm than good. Queensland introduced the Dangerous Prisoners (Sexual Offenders) Act (DPSOA) in 2003. 20 years have passed with no publicly available evaluation of the legislation or examination of its progress. There is little research exploring the effects of this

# Thank you!

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**Questions, comments or suggestions?**

