



GOVERNMENT OF
WESTERN AUSTRALIA

Department of
Justice

Dangerous Sexual Offenders Review Committee Case Review

Mr Nicholas Rodney Troy Faulkner (alias McDonald)

Document status: Final approved

Date: 22 July 2020

Division: Corrective Services

Approved by:
Dr Adam Tomison
Director General
22 June 2020

Contents

1	Executive Summary.....	3
2	Term of Reference 1: History of Mr Nicholas Rodney Troy Faulkner (alias McDonald)	4
2.1	Offending history	4
2.2	Rehabilitative programs during imprisonment	4
2.3	Parole.....	4
2.4	Post-Sentence Supervision Order (PSSO).....	5
3	Term of Reference 2: History and Governance of the Dangerous Sexual Offenders Committee (DSORC)	5
3.1	Background to the <i>Dangerous Sexual Offenders Act 2006</i>	5
3.2	DSORC – Roles, functions and responsibilities.....	5
3.3	Historic governance of the DSORC.....	5
4	Term of Reference 3: DSORC Governance Conduct on 19 June 2018.....	6
4.1	Committee membership	6
4.2	The DSORC process.....	6
5	Term of Reference 4: Compliance in Assessment Criteria for Referral Decision	6
5.1	Static-99R assessment tool.....	7
5.2	Assessment of Mr Faulkner related to the eligibility criteria for referral to the DPP	7
5.3	Findings in the assessment of Mr Faulkner	7
5.4	Conclusion	7

1 Executive Summary

This Case Review of Mr Nicholas Rodney Troy Faulkner (alias McDonald) was commissioned by the Office of the Premier, the Hon. Mark McGowan MLA, on 13 May 2020. This followed the release of Mr Faulkner upon completion of his term of imprisonment, not being subjected to an application under the *Dangerous Sexual Offenders Act 2006* (WA). The *Dangerous Sexual Offenders Act 2006* (the DSO Act) empowers the Director of Public Prosecutions (DPP) or the Attorney General to apply to the Supreme Court for a continuing detention order or supervision order against a person under sentence of imprisonment for a serious sexual offence as defined in the *Evidence Act 1906*¹, who is serving parole².

The post-sentence release of Mr Faulkner was the subject of parliamentary and media attention in terms of the DSORC's decision to not refer Mr Faulkner's case to the DPP, for consideration of an application under the DSO Act.

In response, the Commissioner Corrective Services initiated a review into the DSORC's decision to not refer Mr Faulkner's case to the DPP for consideration under the DSO Act prior to his release, following completion of his term of imprisonment.

Mr Faulkner had no prior sexual offences and is not known in any other states.

On 12 July 2011 in the Perth District Court, Mr Faulkner was sentenced to 9 years and 6 months imprisonment for serious violent and sexual offences committed against three women over two days in November 2010: Aggravated Indecent Assault; two counts of Sexual Penetration without Consent; three counts of Aggravated Sexual Penetration without Consent; two counts of Attempted Sexual Penetration without Consent; Assault Occasioning Bodily Harm; two counts of Deprivation of Liberty; Indecent Assault; two counts of Breach of Protective Bail Conditions; three counts of Common Assault; and Threats to injure, endanger or harm any person. The sentence was backdated to commence 5 November 2010 with an earliest eligible date of release as 4 May 2018.

Mr Faulkner was released to Parole on 25 January 2019. Mr Faulkner was returned to custody for a one month period (31 January 2020 to 26 February 2020) having breached his parole, for testing positive to alcohol on two occasions. On 26 February 2020 Mr Faulkner was re-released to parole, which he completed without further breaches.

Following completion of his sentence of 9½ years imprisonment, the Prisoners Review Board released Mr Faulkner on a Post-Sentence Supervision Order (PSSO) placing him under supervision in the community for a two-year period, after giving due consideration to all matters³, with the purpose of providing adequate protection to the community. Mr Faulkner's PSSO did not necessitate electronic monitoring due to his full compliance with the previously imposed curfew conditions of his Parole Order.

Mr Faulkner was reviewed and assessed by the Dangerous Sexual Offenders Review Committee (DSORC) on 19 June 2018, seven months prior to his eligible date for parole. DSORC is operated by Corrective Services within the Department of Justice and was established in May 2006 after the DSO Act commenced operation on 13 May 2006. . Having regard to the matters set out in section 7 (3) of the DSO Act and the supporting material put before the Committee (and especially the three matters set out below) there was not a sufficient basis to refer Mr Faulkner's case to the DPP for the DPP to consider whether to make an application for a continuing detention order or a supervisor order under the DSO Act did not have any prior sexual offending;

1. completed multiple rehabilitative programs based on his treatment needs with multiple positive gains documented; and
2. did not have a demonstrated pattern of sexual offending behaviour or sexual deviancy.

¹ Set out in *Evidence Act 1906* (WA) s106A.

² Set out in *Dangerous Sexual Offenders Act 2006* (WA) s8.

³ Set out in *Sentence Administration Act 2003* (WA) s74B.

The purpose of this Case Review was not to attribute fault or failure of any particular individuals or justice sector agencies involved in the justice pipeline systems and processes. Rather, the terms of reference required this Case Review to:

1. Examine Mr Faulkner's history of offending behaviours, circumstances and time spent in prison for those offences, including assessments and programs completed for those offences;
2. History and governance of the DSORC;
3. Compliance of DSORC's governance in the assessment of Mr Faulkner's matter; and
4. Compliance of the DSORC's assessment criteria in the decision not to refer Mr Faulkner's matter to the DPP for consideration.

This report presents the findings in accordance with these Terms of Reference into the Case Review of Mr Nicholas Rodney Troy Faulkner. Any information that might identify Mr Faulkner's victims, and details of Mr Faulkner's rehabilitation and medical or other personal information pertaining to him, have not been included in this report.

In summary, based on the assessment of all eligible factors for consideration as per the DSO Act⁴, including psychological and rehabilitative programs' assessments and reports, the DSORC determined Mr Faulkner did not meet the criteria for referral to the DPP for consideration of an application for DSO Orders. The DSORC's decision to not refer Mr Faulkner to the DPP complied with Section 7(3) of the DSO Act, based on the following supporting evidence put before the Committee:

1. Mr Faulkner did not have any prior sexual offending;
2. Mr Faulkner completed multiple rehabilitative programs based on his treatment needs with multiple positive gains documented (detailed in Term of Reference 1, section 2.2 of this report); and
3. Mr Faulkner did not have a demonstrated pattern of sexual offending behaviour or sexual deviancy.

2 Term of Reference 1: History of Mr Nicholas Rodney Troy Faulkner (alias McDonald)

2.1 Offending history

Mr Faulkner had no prior sexual offences and is not known in any other states.

On 12 July 2011 in the Perth District Court, Mr Faulkner was sentenced to 9 years and 6 months imprisonment for serious violent and sexual offences: Aggravated Indecent Assault; two counts of Sexual Penetration without Consent; three counts of Aggravated Sexual Penetration without Consent; two counts of Attempted Sexual Penetration without Consent; Assault Occasioning Bodily Harm; two counts of Deprivation of Liberty; Indecent Assault; two counts of Breach of Protective Bail Conditions; three counts of Common Assault; and Threats to injure, endanger or harm any person. The sentence was backdated to commence 5 November 2010 with an earliest eligible date of release as 4 May 2018.

Mr Faulkner was noted to instil significant fear in his victims. These offences were committed whilst Mr Faulkner was subject to Protective Bail Conditions.

2.2 Rehabilitative programs during imprisonment

During the term of his imprisonment, Mr Faulkner complied with his overall treatment program, successfully completing three departmental programs with positive gains documented:

- Pathways Program (completed 30 August 2012)
- Intensive Sexual Offender Treatment Program (completed 22 October 2014)
- Stopping Family Violence Program (completed 25 July 2017).

2.3 Parole

Mr Faulkner was released from custody to his Parole Order on 25 January 2019. Mr Faulkner was returned to custody for a one month period (31 January 2020 to 26 February 2020) having breached his parole, for testing positive to alcohol on two occasions. On 26 February 2020 Mr Faulkner was re-released to parole.

2.4 Post-Sentence Supervision Order (PSSO)

As Mr Faulkner was serving a term of imprisonment for serious violent offences, the PRB was required to consider whether a PSSO should be made in respect of Mr Faulkner before the end of his term. PSSOs are provided for by *Part 5A of the Sentence Administration Act 2003* and allow for the supervision of a serious violent offender after they have finished their sentence. If made, a PSSO takes effect on the day after the day when a prisoner's term of imprisonment ends.

The PRB considered whether a PSSO should be made in respect of Mr Faulkner on 1 April 2020 and determined that a PSSO should be made. The conditions of Mr Faulkner's PSSO enable Corrective Services to undertake continued intervention and monitoring in the community. Whilst electronic monitoring is an option for a PSSO, it was not recommended as Mr Faulkner was fully compliant with the previously imposed curfew conditions of his Parole Order. Mr Faulkner was released to freedom on 4 May 2020 and remains in the community subject to a PSSO until 4 May 2022. The Department continues to monitor and assess the risk of harm he poses to the community.

3 Term of Reference 2: History and Governance of the Dangerous Sexual Offenders Committee (DSORC)

In assessing this Term of Reference, it was necessary to investigate the historical governance of all corresponding legislation and policies under which the DSORC operates, including corresponding policy framework, ministerials, agencies annual reports and internal former Department of Corrective Services (DCS) documentation to understand the involvement of the two former justice agencies (Department of the Attorney General and DCS, now collectively the Department of Justice), their roles, functions and responsibilities along with the ensuing decisions made.

3.1 Background to the *Dangerous Sexual Offenders Act 2006*

Any consideration of whether to make an application for a continuing detention order or a supervision order under the *Dangerous Sexual Offenders act 2006* will require consideration of detailed information and assessments which sufficiently address the requirements of the Act and, in particular, the matters to which the Supreme Court must have regard under the section 7 of the Act in deciding whether to find that a person is a serious danger to the community. That material is created or gathered during the course of imprisonment of a prisoner who could be the subject of an application under the Act by the Department of Justice Corrective Services and made available to the DSORC

3.2 DSORC – Roles, functions and responsibilities

DSORC is operated by Corrective Services within the Department of Justice and was established in May 2006 after the DSO Act commenced operation on 13 May 2006. The DSORC facilitates implementation of the processes required for an application for a continuing detention order or a supervision order under the DSO Act. The DSORC meet and review information on offenders to determine whether an offender is likely to pose a serious danger to the community if released, and whether a continuing detention or supervision order is required under the DSO Act. The DSORC then refer those cases recommended for consideration to the DPP, together with complete information on offenders that DSORC consider pose a significant risk of re- offending in the community, and should be considered for an application under the DSO Act

3.3 Historic governance of the DSORC

Since its establishment in May 2006, the Committee has undergone amendments to its membership and reporting structure, indicative of the impact of its changing governance following division of the historic Department of Justice on 1 February 2006 into two separate agencies; the Department of the Attorney General (DotAG) and Department of Corrective Services (DCS). Recently, as part of its election commitment to public sector reform, the McGowan Government's Machinery of Government changes resulted in subsequent re-amalgamation of these two former agencies into the present day Department of Justice, which came into effect 1 July 2017.

4 Term of Reference 3: DSORC Governance Conduct on 19 June 2018

Mr Faulkner's case was considered by the DSORC at its quarterly meeting on 19th June 2018. Mr Faulkner was the subject of a detailed assessment and review for decision, due to the nature of his offending history and level of risk, as assessed by the Static-99R tool (detailed in Section 5.1 of this report).

4.1 Committee membership

- On this day, the DSORC membership comprised the following members:
 - Chair and Acting Assistant Commissioner Adult Community Corrections;
 - Executive Director Offender Management;
 - Acting Superintendent Hakea Prison;
 - State Coordinator ANCOR Western Australia Police Force;
 - External Forensic Psychologist; and
 - Department of Health Forensic Psychiatrist.
- The Committee was chaired by the current Assistant Commissioner Adult Community Corrections. In recent years the designated DSORC Chair had been delegated from the Deputy Commissioner to the Assistant Commissioner. This delegation was in response to the historic governance amendments to the DSORC (as outlined in Section 3.3), arising from a number of restructures which have impacted on governance within Corrective Services.

4.2 The DSORC process

The DSORC processes on this day were as follows:

- All Committee members were provided with a hard copy file of cases and corresponding materials, two weeks before the meeting.
- Committee members reviewed the materials, aided by a structured template outlining Section 7(3) of the DSO Act in deciding whether to find that a person is a serious danger to the community and having regard to the considerations outlined as (a) to (j) of the DSO Act. The template additionally provided for each member to document any issues/concerns, questions related to the offender being assessed, their recommendation to refer or not to refer to the DPP, together with their reasons.
- At the Committee meeting, members advised of their vote with their corresponding justifications. The decision not to refer to the DPP for consideration of an application for orders under the DSO Act was made.
- A decision sheet was completed by the Team Leader Community Offender Monitoring Unit, outlining the Committee's votes with justification provided.
- The DSORC decision sheet was signed by the Chair and current Assistant Commissioner Adult Community Corrections, and forwarded for endorsement to the then Deputy Commissioner Adult Justice Services following this meeting, via an internal memorandum on 28 June 2018. It is noted that at this time, the DSORC operated within the Adult Community Corrections Business Area under the Adult Justice Services Directorate, within the Corrective Services Division of the Department of Justice.
- A letter were sent to Mr Faulkner confirming he had been considered by DSORC and was not referred to DPP.

5 Term of Reference 4: Compliance in Assessment Criteria for Referral Decision

To be eligible for consideration under the DSO Act, the offender must be serving a sentence for a serious sexual offence⁵ and fall within any of the following criteria:

1. Sex offenders with a two year or greater finite term of imprisonment;
2. Sex offenders with an effective two year or greater term of imprisonment who have been denied, deferred or are due to be reviewed by the Prisoners Review Board in relation to Parole; and
3. Sex offenders with an effective two year or greater term of imprisonment who have been granted parole and have been referred to for review by the PRB or Adult Community Corrections to the DSORC.

⁵ Set out in *Evidence Act 1906 (WA) s106A.*

At the DSORC meeting, members convene to review and assess offenders and make decisions on whether to refer offenders to the DPP for consideration of an application for DSO Orders. In deciding whether to refer a person to the DPP for the DPP to consider whether to make an application under the DSO Act in relation to that person the Committee gives regard to those considerations on which the Supreme Court have regard to [as per Section 7(3) of the DSO Act], and are detailed as follows:

- a) Any report that a psychiatrist prepares as required by section 37 for the hearing of the application and the extent to which the person cooperated when the psychiatrist examined the person; and
- b) Any other medical, psychiatric, psychological, or other assessment relating to the person; and
- c) Information indicating whether or not the person has a propensity to commit serious sexual offences in the future; and
- d) Whether or not there is any pattern of offending behaviour on the part of the person; and
- e) Any efforts by the person to address the cause or causes of the person's offending behaviour, including whether the person has participated in any rehabilitation program; and
- f) Whether or not the person's participation in any rehabilitation program has had a positive effect on the person; and
- g) The person's antecedents and criminal record; and
- h) The risk that, if the person were not subject to a continuing detention order or a supervision order, the person would commit a serious sexual offence; and
- i) The need to protect members of the community from that risk; and
- j) Any other relevant matter.

5.1 Static-99R assessment tool

Relating to b) of the above factors, the Committee are provided with an offenders Static-99R score, which is a validated actuarial risk assessment tool used to evaluate the risk of sexual and violent recidivism in sexual offenders. Based on the offender's level of risk and history of offending, the DSORC members are provided with varying depth of information on which they base their assessment and decision upon when assessing this factor. As Mr Faulkner was assessed with a Static-99R score of 'above average' or higher, the Committee were provided with: a detailed report and supporting source materials, including his current and past sexual offences; psychological reports including assessments and recommendations; rehabilitative programs completion reports; and sentencing remarks, parole, victim, and any other information pertaining to Mr Faulkner.

To note, most of the reports and assessments considered by the DSORC are pre-existing and have typically been prepared for some purpose other than those pertaining specifically to the DSO Act processes.

5.2 Assessment of Mr Faulkner related to the eligibility criteria for referral to the DPP

Mr Faulkner's case met all the above criteria for consideration for review, with a valid assessment made by the Committee at this DSORC meeting on 19 June 2018.

5.3 Findings in the assessment of Mr Faulkner

Having regard to the matters set out in Section 7 (3) of the Act and the supporting material put before the Committee (and especially the three matters set out below) there was not a sufficient basis to refer Mr Faulkner to the DPP for the DPP to consider whether to make an application for a continuing order or a supervision order under the Act.

1. Mr Faulkner did not have any prior sexual offending;
2. Mr Faulkner completed multiple rehabilitative programs based on his treatment needs with multiple positive gains documented (detailed in Term of Reference 1, section 2.2 of this report); and
3. Mr Faulkner did not have a demonstrated pattern of sexual offending behaviour or sexual deviancy.

5.4 Conclusion

This report has presented the findings in accordance with the Terms of Reference into the Case Review of Mr Faulkner. The DSORC's decision to not refer Mr Faulkner to the DPP complied with all eligible factors for consideration according to the DSO Act whereby Mr Faulkner did not meet the criteria for referral to the DPP for consideration of an application for DSO Orders.