GOVERNMENT INQUIRY INTO TONY DOUGLAS ROBERTSON'S MANAGEMENT BEFORE AND AFTER HIS RELEASE FROM PRISON IN 2013

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SECTION 1: INTRODUCTION

1.1 Background to the inquiry

The rape and murder of Auckland mother of three Blessie Gotingco on 24 May 2014 provoked widespread consternation, but the rapid arrest of Tony Robertson and subsequent disclosure of his past turned that consternation to disbelief.

That an individual could commit such a "bestial" crime so soon after his release from prison for another deeply repugnant crime, child sex offending, aroused suspicions of inadequacy in the way government agencies had managed his imprisonment and then managed him after release.[1]

In response, but only after Robertson's eventual conviction, the Government set up this inquiry. On 14 August 2015, the Hon Amy Adams, Minister of Justice, and the Hon Peseta Sam Lotu-Iiga, then Minister of Corrections, established the inquiry under section 6(3) of the Inquiries Act 2013 and appointed me to examine Robertson's management by the Department of Corrections and other state sector agencies before and after his release from prison on 11 December 2013. The inquiry's full terms of reference can be found in appendix A. The procedure followed by the inquiry can be found in appendix B.

Before anything else, however, I wish to put on record, both personally and on behalf of those assisting me in this inquiry, my sympathy to Mr Gotingco and his family for the tragic loss of a loved wife and mother. For them, the inquiry's findings are not ultimately about matters of public administration but about their loss. That loss, I have observed, affects them deeply and will undoubtedly continue to do so. It goes without saying that nothing arising from this inquiry can undo the family's loss. I can only repeat the comments of the trial judge, Justice Brewer, who observed when sentencing Robertson that "only time and their love for each other will achieve any healing for the family".

During the inquiry, I spoke to Mr Gotingco and others who had been supporting him after his wife's murder and during the subsequent court proceedings. The family raised a number of issues with me, all of which the inquiry considered and, where within its terms of reference, addressed in this report.

One matter raised in strong terms, that I considered relevant to provide a complete report, was the assistance given to the family was not sufficiently supportive or appropriate, especially during the court process. I accept without reservation the sincerity of those views.

I considered it important to pass on those concerns to the chief executive of the New Zealand Council of Victim Support Groups Incorporated. The chief executive was very concerned to learn of their discontent. He emphasised to me that the organisation is deeply committed to supporting victims, and that its commitment includes continually improving how it works with victims to ensure it can make available the best support possible. He also met with Mr Gotingco to discuss the issues they raised with me, as well as other matters identified from Victim Support's own internal review.

1. "Bestial": Justice Brewer's word in his decision of 6 August 2015 sentencing Robertson for the rape and murder of Mrs Gotingco.

I am hopeful that the willing response expressed to me by the chief executive, and that the subsequent internal review and the discussions with Mr Gotingco, will answer the concerns quite properly raised with me.

The inquiry is also aware that the Ministry of Justice has been piloting a specialist homicide case worker service over the past two years. The service provides families with a trained and dedicated case worker to guide and support them through the criminal justice process. Results to date suggest the pilot is proving worthwhile, and the inquiry understands the service may be continued and may be expanded.

It is appropriate that I record in this context the recent appointment of Dr Kim McGregor to the newly created role of Chief Victims Advisor, a position that will require her to provide independent advice to the Government on legislative, policy and other matters relating to victims of crime.

Among the terms of reference is a requirement to consider electronic monitoring practices for high-risk offenders such as Robertson.[2] After the inquiry began its work, another offender, Daniel Livingstone, came to public notice after removing his electronic tracking device while on an extended supervision order. Several similar instances followed. The inquiry took these cases into account as part of its considerations, although only in so far as they relate to electronic monitoring.

A large amount of information has been published on Robertson, including in the media. Material published since Robertson's conviction contains information on his criminal record and on many of the circumstances leading up to the crimes he has been convicted of. Much of this information was published after Robertson was found guilty of the rape and murder of Mrs Gotingco, and as a result of the courts lifting suppression orders previously in place to protect Robertson's fair trial rights.

At the time of writing, judicial processes have yet to conclude. The inquiry notes in particular that Robertson has lodged an appeal with the Court of Appeal against his conviction and sentence, and a coronial inquiry into Mrs Gotingco's death is also still to be heard. The inquiry has therefore been careful to try to avoid any comment in this report that may be seen as prejudicial to any continuing judicial process.

It should also be noted that, in accordance with section 11(1) of the Inquiries Act 2013, and as is confirmed in the inquiry's terms of reference dated 10 August 2015, the inquiry has no power to determine the civil, criminal or disciplinary liability of any person. It follows that nothing in this report should be read to determine any liability of that nature.

1.2 Robertson's offending

I turn now to the subject at the centre of this inquiry: Tony Douglas Robertson, born 28 February 1987 in Waikato. The records show he had an unsettled upbringing and childhood. His schooling was interrupted at an early age, and he soon came to the attention of Police and social service organisations, including iwi support services.

Robertson's criminal record began in 2003 when he was 16 years old. He has a number of convictions, including for assault, aggravated robbery, possession of an offensive weapon, wilful damage, threatening to kill, burglary and receiving stolen property. The sentences imposed on Robertson for those crimes included supervision, community work and imprisonment.

2. The inquiry has adopted Corrections' terminology of "offender" to describe people with criminal convictions serving sentences in prison or in the community, or who are in the community subject to conditions following release from prison.

Then on 4 October 2006, Robertson was sentenced in the High Court at Tauranga to seven and a half years' imprisonment for abducting a child, attempted kidnapping of two other children, committing three indecencies on the child he abducted and robbery from a child. Another six months were added for two further offences, committed while in custody awaiting trial: assault with intent to injure and behaving threateningly.

The sentencing judge ordered that he serve two-thirds of his eight-year sentence before being eligible to be considered for parole. The judge noted Robertson's history of violent offending, obstruction and resisting police, and aggravated robbery, but emphasised that this latest offending against children "was of a more sinister character".[3]

In reviewing the psychiatric and psychological reports prepared on Robertson (as well as presenting a detailed review of the law on preventive detention, which the Crown was seeking), the judge noted the dilemma he faced: the reports came to different conclusions about the possibility of future sexual offending. He referred to two critical observations in the psychiatric report:

> One is that this is the first occasion on which you have apparently offended in this way. You show no history of prior or diverse sexual offending. The other is that you committed these offences at the age of 18 and that is important in itself. It is impossible, the report says, to predict how you will be when you are more mature and have served, as you inevitably must, a significant term of imprisonment.

The Crown did not appeal against the sentence. Robertson appealed to the Court of Appeal against his conviction and, after that failed, he applied for leave to appeal again to the Supreme Court, which, in a very short decision it issued on 3 April 2009 dismissing his application, said:

> The sole proposed ground [of appeal] is that the verdicts of the jury were unreasonable, a ground which was understandably pressed only "lightly" in the Court of Appeal by his counsel as the Crown case was in fact extremely strong. The verdicts, far from being unreasonable, were really inevitable on the basis of the evidence.
>
> No point of public general importance is raised and there can certainly be no concern that a miscarriage of justice may have occurred.

The sentencing judge gave an indication of the difficulties Corrections would face in attempting to bring about any significant change in Robertson's behaviour when he said:

> You committed these offences at the age of 18 and, while you show presently no instinct to address what happened, in fact you are in complete denial, that may change if you are given time to reflect and accept help. You are not simply to be assumed to be a lost cause at the age of 19.

But he could also foresee that an extended supervision order might be required if the necessary changes in Robertson's behaviour and outlook did not occur, saying: "[There is] the ability to impose an extended supervision order on release."

Robertson was released on 11 December 2013, having served his sentence in full.

3. Quoting Justice Keane's sentencing decision of 4 October 2006.

The New Zealand Parole Board had on three occasions declined to release him on parole. Special conditions attached to his release were due to expire six months later. The High Court at Auckland imposed an extended supervision order on 19 February 2014 that was due to take effect on 15 June 2014 when his release conditions expired. By then, however, he was in custody on suspicion of Mrs Gotingco's murder.

On 22 May 2015, Robertson was found guilty of the rape and murder of Mrs Gotingco, and sentenced on 6 August 2015 to life imprisonment with a minimum period of imprisonment of 24 years for murder, and preventive detention with a minimum period of imprisonment of 10 years for rape. An appeal by Robertson against the convictions and sentences is outstanding and scheduled to be heard early in 2016.

1.3 Sector challenges

From listening to the views of experts, commentators and the practitioners themselves, I can affirm that working at the coalface of the criminal justice system is hard. Everyone involved in the system faces challenges, whether judges, police officers, custodial and probation officers or psychologists providing specialist assessment and treatment. And those challenges are especially daunting when managing individuals imprisoned for extended periods who have offending histories like Robertson's.

There are tough operational decisions to be made every day by Corrections staff, and among the toughest are those relating to the safety of the public, security of prisoners, rehabilitating offenders and the management of offenders in the community. A review in 2007 into the release on parole of Graeme William Burton, with consequences not unlike those in this case, put it bluntly: "To say release decision-making is a challenge is an understatement."[4]

Another report into Burton's release in 2009 made a similar point about the difficulty of predicting how offenders will behave on release: "Offenders often have little experience of complying with timeframes. [They] can be unpredictable, and often have difficulty in reintegrating into the community."[5]

Relatively stable behaviour in prison over a lengthy term is no sure indicator that the behaviour will continue, nor will it give clear guidance to probation staff about how they should manage the offender. It must be said that Robertson's behaviour could not be described as stable, having been involved in numerous incidents and maintaining a high security classification throughout most of his time in prison.

All in all, this is a story of tragic loss.

Police and Corrections, in my view, carried out a difficult task well, a task they had to perform without the benefit of hindsight, and with the additional workload of countless similar cases. There is always room for improvement in any organisation or system, and where the inquiry has found such shortcomings, it has not hesitated to point them out.

4. Review of New Zealand Parole Board: decision given on 28 June 2006 to release Graeme William Burton on parole, Judge R J Johnson, Chief District Court Judge of New Zealand and Professor J R P Ogloff, 2007.
5. Department of Corrections: Managing Offenders on Parole, Controller & Auditor General, Office of the Auditor-General, 2009. http://www.oag.govt.nz/2009/parole/docs/parole.pdf

SECTION 2: IN PRISON

2.1 Management in prison

2.1.1 Introduction

Robertson spent eight years in prison before his release on 11 December 2013. In that time, a prisoner would have received, in the ordinary course of events, various forms of rehabilitation support. The inquiry is required to examine his management during his time in prison, and in particular whether the rehabilitation services and programmes offered to him, and taken up by him, were adequate; and also whether his release planning was adequate.

At the time of his sentencing on 4 October 2006, the judge observed that Robertson, then aged 19, had been psychologically assessed as being at high risk of further sexual offending after release from prison unless he successfully completed intensive and specialised psychological treatment. He received seven individual sessions with a psychologist in mid-2012. Corrections staff were clear to the inquiry that Robertson was regularly told there was help available to him – and the documentation supports this position – but that such offers of help were conditional on his improving his behaviour so as to be reclassified, at a minimum, as a medium-security prisoner. For reasons that will be outlined, certain rehabilitation programmes could not be made available to high-security prisoners. Robertson persistently behaved in a way that ensured his classification could not be lowered. Of equal and possibly greater significance, he also maintained his innocence and expressed a determined unwillingness (with a single exception) to participate in any such programmes.

Corrections was also clear that, with a change of behaviour and attitude (in particular, admitting his child sex offence), Robertson could have participated in, and might have benefited from, a range of programmes relevant to him and available at the time, including programmes tailored specifically for child sex offenders.

Importantly from the inquiry's perspective, any programmes he participated in, and any progress he made from that participation, would in the ordinary course of events have had a bearing on the assessment of the risk he posed to the community, on the conditions of his release, and on his supervision by probation officers. The question that arises for the inquiry is whether the absence of any participation, and consequent change of behaviour, was sufficiently factored into his pre-release assessment and post-release supervision. A second question that arises is whether Corrections did everything it reasonably could to provide help to Robertson, given he entered prison a high-risk offender and left a high-risk offender and received practically no help, albeit of his own choosing, throughout his incarceration.

The adequacy of Robertson's release planning is dealt with in section 3.

2.1.2 Offender plan

Soon after arrival, a prisoner will meet with a case manager to develop an individual offender plan. It identifies the problems that directly contributed to the offending (such as poor problem-solving abilities, illiteracy, substance abuse or violence) and sets out what steps the offender should take to deal with those problems (such as education, treatment or work skills). The plan also sets out the steps that can be taken while in

prison that will help the offender reintegrate after release, such as lowering his or her security classification in order to enter a self-care unit, participating in a living skills course, and identifying a release address and employment prospects. Once the offender plan is complete, the case manager will refer the prisoner to activities identified in the plan. Depending on the term of imprisonment, the plan is reviewed and updated at least every 12 months.

Robertson's initial offender plan was prepared in October 2006 by a prison-based officer (then called a sentence planner). The plan identified his offending-related problems such as propensity for violence, alcohol and drug use, and attitudes that led to his offending (including a strong sense of entitlement). The plan also identified the need to confront his sexual offending. But since he denied his child sex offending, the plan said he should work with Corrections staff, including psychologists, to develop a willingness to face up to his offending. Such a shift, in conjunction with a lower security classification, would enable him to receive treatment. The plan also identified vocational and employment skills as areas he could develop.

The plan met all the requirements of the policy of the time governing what such a plan should contain.

The plan was reviewed with him each year. Each progress update recorded the need for him to attend a child sex offender programme.[6] His plan updates invariably recorded employment activities he could participate in, such as work in the laundry or making prison uniforms. However, opportunities for prison-based employment depend on security classification. Few opportunities are available and offered to high-security and maximum-security prisoners, or those who are segregated from other prisoners. Robertson did participate in some work, but there were no meaningful work opportunities offered to, or taken up by, Robertson.

A review of Robertson's updates between 2007 and 2013 shows that each records the need for him to stop getting into incidents, to agree to mix with other prisoners, to work on his motivation and generally to improve his behaviour in order to lower his classification and gain access to rehabilitation and reintegration activities. Typical comments include: "He proclaims that he is innocent and refuses to participate in available interventions" (November 2009) and "Robertson is not interested in addressing his offending or to participate in any available intervention" (October 2010).

2.1.3 Treatment approach

At the time of Robertson's imprisonment, Corrections' approach was to schedule rehabilitative treatment towards the end of prisoners' sentences to ensure they had fresh skills and knowledge to help them on release. (The policy changed in 2013 to one that delivers these programmes earlier in a prisoner's sentence, although it has yet to be fully implemented. The inquiry fully endorses steps in this direction.) This meant Robertson was not seriously considered for any rehabilitation until the first time he became eligible for parole, that is, until he had served two-thirds of his sentence, or in the month or two before February 2010.

Rehabilitation programmes developed over the years by Corrections include the Kia Marama child sex offender treatment programme (begun at Rolleston Prison in 1989), violence prevention for high-risk offenders (begun at Rimutaka Prison in 2001), drug

6. On his conviction in 2005, he was automatically placed on a list for assessment by a psychologist for suitability for child sex offender treatment programmes. He remained on the list until 2011 when he was removed because of his persistent denial of child sex offending. This would not prevent a future referral if his willingness to attend changed.

and alcohol treatment programmes, and educational and vocational training to help offenders stop their offending and get employment.

Most treatment programmes are delivered in groups. This is not simply a matter of economics. Delivered in this way, they are more effective. Offenders are encouraged to talk in a group setting about their offending, examining the thoughts and emotions that have triggered their behaviour. This open examination helps offenders to recognise the faultiness of their thinking, as well as their unrecognised assumptions, that lead on to their offending. In recognising patterns of behaviour, they are in a position to change them. A further advantage of a group setting is that offenders can hold one another to account and help develop realistic alternatives to their familiar lifestyles.

For a group to work, participants must be able to mix with others without disruption and also be willing to talk about their offending. Robertson could do neither. He denied his child sex offending throughout his sentence. And by his repeated involvement in incidents with other prisoners and staff, he demonstrated his inability to behave appropriately in group settings. It needs to be clearly understood that disruptive or dangerous behaviour by even a single member of a group has the potential to severely undermine the effectiveness of the programme for every other member. Robertson was undeniably such an individual.

Another set of factors working against any involvement by high-security or maximum-security prisoners like Robertson is the physical layout of the east division of Auckland Prison where he was held for the last three years of his sentence.[7] Based on a 1950s American model to manage dangerous and difficult prisoners, the east division intentionally limits physical contact between prisoners, and between prisoners and staff. It also lacks adequate common spaces, course rooms or offices for one-on-one or group psychological treatment. Furthermore, routines are highly restrictive, with highest-risk prisoners potentially confined to cells for up to 23 hours a day. And finally, those psychologists employed by Corrections – and they are limited in number and in high demand – largely concentrate on providing group treatments and completing assessments and reports for courts or the Parole Board. Individual psychological treatment is less common.

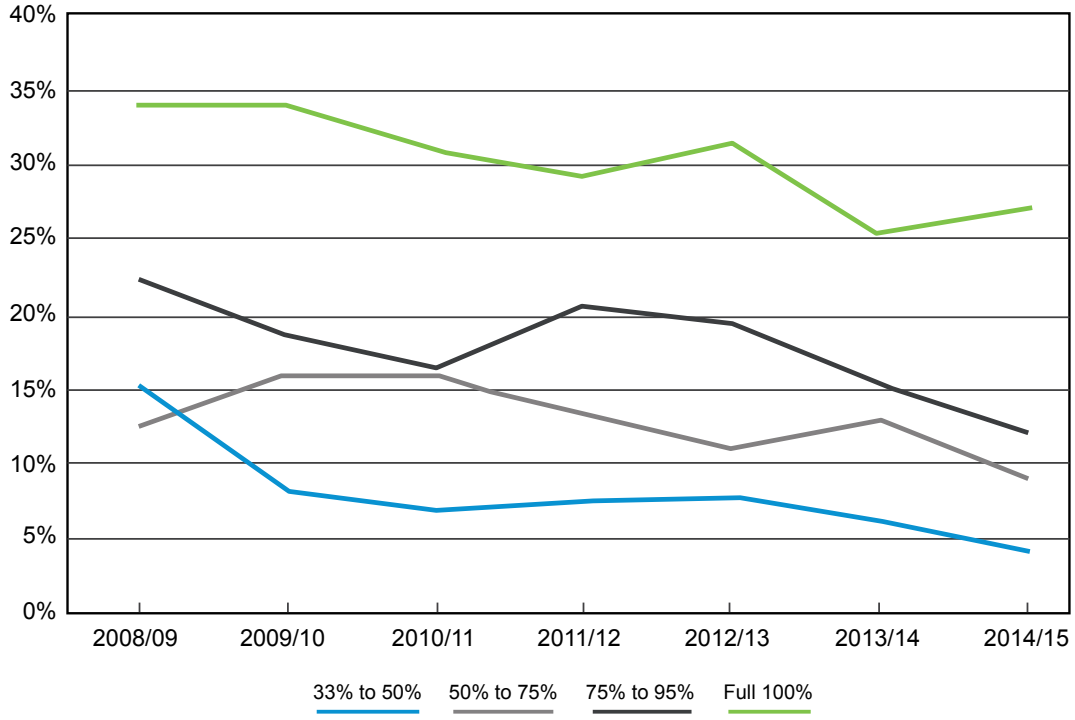
2.1.4 Treatment effectiveness for long-serving prisoners

Almost a third of all long-serving prisoners released each year in New Zealand serve their full sentence.[8] This equates to about 460 prisoners a year, and in general they are at high risk of reoffending, as well as a high risk to public safety. Corrections compared such prisoners, (who include Robertson) with prisoners released early, and found that the former were substantially more likely to reoffend within 12 months of release and also to commit more serious crimes when they did reoffend (see chart on page 12).

Extensive studies in New Zealand and overseas have shown that certain treatments are effective in reducing the likelihood of new convictions. One New Zealand study in 2012 found that reimprisonment of child sex offenders for sexual offending fell from about 10 per cent to about 7 per cent among those who received treatment.[9] Nevertheless, some offenders will always deny their offending and refuse to participate in treatment, or fail to complete treatment. Such offenders remain at high risk of reoffending.

7. Commonly known as Paremoremo prison.
8. Long-serving prisoners are those with sentences of more than two years.
9. Moore, L (2012): A comparison of offence history and post release outcomes for sexual offenders against children in New Zealand who attended or did not attend the Kia Marama Special Treatment Unit. University of Canterbury: Unpublished master's thesis.

Reprisonment rate within 12 months of release, by proportion of sentenced served



Source: Department of Corrections

Recent legislation enables authorities to keep the most high-risk of these individuals in prison beyond their release date (see 2.1.8 below).

Corrections is proceeding with a proposal to amend the Corrections Act 2004 that would provide for a statutory *expectation* – not to be confused with a statutory *requirement* – that prisoners participate in appropriate rehabilitation programmes. A paper to Corrections' executive describes this approach as placing greater focus on rehabilitation and also involving prisoners very early on in their sentence. Such a change would not be enforceable, but it would emphasise to offenders that their imprisonment is part punishment, part obligatory confronting of the causes of their offending – and further, that they are highly unlikely to be released on parole without having taken serious steps to participate in rehabilitation. The inquiry fully supports this move.

2.1.5 Security classifications and incidents in prison

Prisoners are given a security classification (either minimum, low, low-medium, high or maximum) based on an assessment of their risk inside the prison and to the community, and housed accordingly. Classifications are reviewed at least six monthly or as a result of an incident or change of circumstances (such as, for example, testing positive for drugs). Most prisoners slowly lower their initial classification through good behaviour.

Robertson had a high-security classification for much of his sentence, a good proportion of which was spent at Auckland Prison's east division (see table on page 13). While at Auckland Prison, Robertson requested segregation from other prisoners and was moved between cells and placements in the prison's special-needs unit, at-risk unit and the east division, including what is commonly known as D Block. At-risk and special-needs units accommodate prisoners who are mentally unwell, low functioning,

have complex health problems or are at imminent risk of either harming themselves or other prisoners, or of being harmed by other prisoners.

Prison dates and security classifications

Year	Month classification changed	Prison placement	Classification
2005	February (start of remand in custody)	Waikeria Prison	Unclassified
2006	October (date of sentence)	Waikeria Prison	High
2007	May	Auckland Prison (East)	High
2007	November	Manawatu Prison	High
2008	November	Whanganui Prison	High
2009	April	Rimutaka Prison	High
2010	October	Auckland Prison (East)	Maximum
2010	April	Auckland Prison (East)	High
2011	June	Auckland Prison (East)	Maximum
2013	February (until December 2013 release date)	Auckland Prison (East)	High

Corrections records indicate Robertson was involved in more than 50 incidents during his time in prison. These included threatening or abusive language towards staff or other prisoners, assaulting other prisoners, possession of dangerous instruments, destroying property, bullying other prisoners and disobeying orders. A review of the incidents show a fairly consistent pattern over the time he spent in custody and in the various institutions. Some incidents resulted in proven misconduct, for which he either went without privileges, was confined to his cell or was reclassified and moved to the east division of Auckland Prison, a high-to-maximum-security facility.

Robertson's records show custodial officers devoted much of their time with Robertson enforcing compliance with prison routines, responding to his poor behaviour or dealing with his various requests. This amounted to ensuring his most basic needs were met and that he was safe, as were those with whom he interacted. Comments by an officer as part of Robertson's security classification review in 2013 illustrate this point:

> Prisoner arrived from Delta Block after going At Risk, he handed over a shank to officers. This equalled one incident and a misconduct [charge] followed. Robertson has been shifted from the At Risk Unit to the Special Needs Block … he can communicate [with] but not physically touch other prisoners. This he agreed to otherwise he would not be moving from ARU as he refused to go back to delta block. ... He is compliant with staff instructions and states that he wants to stay incident free and stay here until he gets out in December … We in the future are hoping to move him to A block for him to get to mix … with others.

2.1.6 Parole Board reports

The reports prepared for Robertson's Parole Board hearings provided the inquiry with useful summaries of his conduct at the time, as well as outlining the rehabilitation programmes Corrections considered and attempted to involve him in. Each report, a condensation of information from Corrections custodial officers, probation officers and psychologists, also detailed his potential risk to the community on release.

Robertson was considered for parole by the board on four occasions. They were in December 2010 (subsequently reheard in March 2011 after the board sought more information); in February 2012; and in February 2013.

From these reports, together with other information obtained about Robertson's time in various prisons, a picture emerges of his consistent refusal to become involved in rehabilitation programmes. What emerges with equal consistency is the view about his level of risk on release. Time and again, Robertson denied having committed the serious offence against a child. This denial of responsibility was in contrast to the Supreme Court's view, in considering his appeal, that the evidence against him led inevitably, rather than unreasonably as he alleged, to the verdicts the jury reached.

The Parole Board's decisions to decline parole were based in part on the concern that he had not attended any rehabilitation programmes and in part that he had not presented the board with any release plan and, in combination, that he posed an undue risk to the community's safety.

The reports described Robertson as confrontational and aggressive in prison. They noted the steadily growing number of incidents in which he was involved. Robertson showed himself to be a very difficult prisoner. His security rating and segregation status compounded the difficulties of working to secure his participation in any rehabilitation programmes and, eventually, planning for his release.

In its February 2012 decision, the board painted a bleak picture of his current position and future prospects: "We note that he refused to participate in the preparation of the parole assessment report and he went so far as to say that he would go out on his statutory release date.[10] As for rehabilitation programmes, he has not attended any to date and he specifically refused to undertake the Kia Marama programme. He has a high security rating. He has no release proposal."

Each board hearing referred to Robertson's refusal to undertake any programme related to his child sex offending, or indeed any other therapeutic programme. There was one exception. In an assessment for his report to the December 2010 hearing, he was asked whether he would be willing to work with a psychologist, to which it was reported: "Robertson stated he is willing to participate, saying 'I just want to get out of here. I think this will help me with my board hearing'." As for taking part in child sex offender treatment, he stated: "I'm willing to participate because of the board." He went on: "I don't even need to do it. I'm not like that [not a child sex offender]." On drug and alcohol treatment, he is recorded as saying: "I don't need it, but I'm willing to do it to stay out of jail. I'd climb Mt Everest to stay out." And of participating in violence treatment, he said: "I would do it because I've got a bit of an anger problem. A programme would help because I've never had anything [any programmes] before, and nothing else helps."

10. Robertson refused to be interviewed, writing on the form he was required to sign as evidence of his refusal to participate: "I will do my time and go out on my statutory release date in December 2013."

The December 2010 hearing was largely taken up with Robertson's declarations of innocence. In the end, the board deferred a decision until a March 2011 hearing in order to gather court documents about his case. At the March hearing, the board considered a psychologist's report recommending child sex offender treatment as the best course of action for Robertson. His application for parole was declined.
A psychologist subsequently saw him, but no one followed up on his declared willingness to participate in the other treatments. Was this a genuinely missed opportunity to press home an apparent breakthrough or merely the words of someone intent on saying what the questioner wanted to hear? Any answer would be speculation, but the lack of follow-up does indicate a shortcoming in process and co-ordination on Corrections' part. This same lack of follow-up occurred after he eventually took part in a series of one-on-one sessions with a psychologist.

A psychologist did not see Robertson at Auckland Prison until June 2012, more than 14 months later. In total, he had seven sessions, the last in August 2012. The psychologist reported in the same month that Robertson was enthusiastic about getting treatment and eager to participate in the sessions. He completed all the activities asked of him between sessions. These in essence consisted of noting down situations in which he found himself getting angry in daily prison life and whether and how he went about avoiding an aggressive response. His diary entries would provide the basis for subsequent sessions.

The psychologist found he had tried to implement suggested behavioural strategies in daily prison life. The psychologist was aware Robertson's continued refusal to accept his sexual offending, along with his high-security classification, meant he could not take part in group sessions, and that this in turn meant it was important he had more individual sessions to motivate him to undergo child sex offender treatment, and also to develop ways to control his own behaviour to avoid reoffending. The psychologist recommended a break of three to four months during which Robertson could demonstrate he was able to employ these new self-control methods to good effect before scheduling further sessions.

However, the inquiry could find no record the psychologist or anyone else from Corrections' psychological services followed up by the end of that year on whether he had succeeded or failed in putting these new skills into practice, or whether he wanted to participate in additional sessions with the same eagerness previously demonstrated. Robertson had no more sessions while in prison.

A search of Corrections records shows one incident (aggressive behaviour, involving a group of prisoners, towards visiting chaplains) in the first three months of Robertson's "trial" period. Robertson was not put on a disciplinary charge for this. In the fourth month, two instances are recorded of prison misconduct, (both possession of an unapproved article, namely a tattooing device and a makeshift weapon), resulting in disciplinary charges and punishment.

Almost a year later, in July 2013, another Corrections psychologist wrote to Robertson's case manager in Auckland Prison saying Robertson was unlikely to benefit from more sessions. This psychologist said Robertson's enthusiasm for participating in future treatment was likely to be "superficial", that is, not sustainable when tested by real-life situations beyond the psychologist's room, especially given his continued denial of his child sex offending.

Those comments were written a month after s 6(c) assessed Robertson as part of a report to Corrections' Services national commissioner on whether to seek an extended supervision order. Such orders can be made for up to

10 years and are intended to monitor high-risk sex offenders and very high-risk violent offenders after their release into the community. This s 6(c) considered Robertson had a tendency to "impression-manage", that is, give the appearance of wanting to change. This psychologist was aware of the earlier seven sessions, but found that "Robertson was not able to employ these emotional regulation strategies during the current assessment … Robertson's tendency to resort to argumentative behaviour and his accumulation of three misconduct reports … since his brief treatment intervention is considered to demonstrate his inability to personalise, generalise or expand upon treatment gains".

The prospect of an extended supervision order lasting up to 10 years might well have contributed to Robertson's apparently antagonistic demeanour, and to the unfavourable impression he conveyed, during that assessment, which is an entirely different matter to a treatment session. And there still remains both the original psychologist's favourable assessment and the absence of follow-up after three to four months, and finally the fact that in three or his four trial months there were no proven misconducts.

Again, this highlights a shortcoming in process, namely, in following through on treatment.

2.1.7 Adequacy of rehabilitation efforts

Despite Robertson's obstructive attitude and the practical limitations imposed by his security classification and segregation status, the question remains: was sufficient work done to encourage him to participate in treatments, however small that help might have been, and however ancillary it might have been to addressing his central offence, child sex offending? And also, should some urgency have been given to this matter, in light of the fact a) his fixed-term sentence would soon expire, making his release a certainty; b) Corrections reports assessed him "as being at high risk of reoffending and of harm to others"; c) the sentencing judge had indicated that Robertson was in need of specialised psychological treatment; and d) imprisoning him at 19 and releasing him at age 26 without the benefit of any substantial or useful assistance or treatment would place huge reliance on the probation officers charged with his supervision?

Or put another way, did Corrections take an unnecessarily narrow approach towards providing a young offender with the necessary rehabilitation and life skills to deal with the world into which he would re-emerge after eight years in prison, a good deal of it confined in high security? Or did Corrections, in fact, take every reasonable action, following the law and good practice, to equip Robertson for life outside prison, and also to minimise his identified high risk to the community?

It is not in dispute that Robertson was frequently a difficult and demanding prisoner who justified his high security rating. Nor is it in dispute that this rating, coupled with his placement in various segregated and at-risk units, compounded the difficulties of providing any rehabilitation programmes. Nor, finally, is it in dispute that his continued refusal to acknowledge his child sex offending and agree to participate in a child sex offender's programme created a further roadblock to his rehabilitation and to any reduction in his risk on release.

The inquiry accepts that Corrections made efforts to encourage Robertson to change his behaviour, and that those efforts were in accordance with its policy and practice at the time. However, Corrections should have started efforts to help him acknowledge and change the behaviour that led to his convictions much earlier.

2.1.8 Legislative and policy changes

The inquiry has examined Corrections' recent policy work and policy settings as they apply to the most serious offenders and is satisfied it has the right focus, both during and after release, on reducing the risk to the public from the highest-risk offenders.

One policy proposal considered, but not ultimately adopted, was a post-sentencing order requiring a prisoner to complete a specified rehabilitation programme. This policy would have imposed sanctions for failing to take part in rehabilitation programmes and would have made release subject to completion of the required programme or programmes. The proposal was not adopted because of doubt about a programme's effectiveness if offenders were compelled to participate; the need for a court to extend offenders' time in prison if they refused to participate; possible legal difficulties to such a change; and the pressure on funding and prison population numbers. The inquiry's view, and one backed by criminal justice system experts, is that Corrections was correct not to pursue the proposal.

The Public Safety (Public Protection Orders) Act 2014, which came into force on 12 December 2014, seven months after Mrs Gotingco's murder, is intended to protect the public from individuals who pose a very high risk of imminent and serious sexual or violent reoffending. The High Court may make a public protection order only if it considers an offender:

> …exhibits a severe disturbance in behavioural functioning established by evidence to a high level of each of the following characteristics:
>
> (a) an intense drive or urge to commit a particular form of offending:
>
> (b) limited self-regulatory capacity, evidenced by general impulsiveness, high emotional reactivity, and inability to cope with, or manage, stress and difficulties:
>
> (c) absence of understanding or concern for the impact of the respondent's offending on actual or potential victims (within the general sense of that term and not merely as defined in section 3).
>
> (d) poor interpersonal relationships or social isolation or both.[11]

A public protection order requires the detention of such individuals within prison precincts. The Act makes clear this is not another form of punishment but rather a public protection measure. The threshold for imposing such orders is justifiably high. It is a moot point whether Robertson would have continued to be detained if this law had been in effect at the time. To the inquiry's knowledge, no orders have yet been made under this legislation.

Some significant parole law changes have also recently come into force, which, in the inquiry's view, are timely and appropriate, but again were not in force at the time of Robertson's release or when release conditions were imposed.[12]

Another significant and comparatively recent development in the supervision of offenders in the community is electronic monitoring, discussed later.

The question as to whether more can be done from a legislative or policy perspective to reduce reoffending by high-risk prisoners and improve public safety is a formidable

11. Section 13(2) Public Safety (Public Protection Orders) Act 2014.
12. Parole Amendment Act 2015, which came into effect on 2 September 2015. Among other things, the Act makes changes which allow the Parole Board to defer parole hearings when an offender has little prospect of release. For most offenders the maximum interval between hearings increases from one to two years. For offenders on indeterminate sentences or sentences of 10 or more years' imprisonment, the Board is able to increase the maximum interval between hearings from three to five years.

one, especially in light of data about the release of high-risk offenders who serve their full term. One pressing practical matter, finding suitable accommodation, is dealt with later. Prison design is another. The design of Auckland Prison is acknowledged by management, senior staff and others as a severe impediment to providing rehabilitation programmes for high-risk prisoners in a safe and positive environment. They added that the redevelopment of the east division, due for completion in early 2018, will be a vast improvement in that respect.

The inquiry also notes the introduction in 2013 of a group programme for maximum-security prisoners in the east division. Known as the high-risk personality programme, it aims to give prisoners the skills to control and modify their behaviour, learn how to work with other people, and generally behave in a way that will lower their security classification. It is delivered in three phases over 10 to 11 months in a group and individual format, with weekly group sessions of about two and a half hours and a weekly one-hour individual session for each participant.

Robertson did not participate in this programme, principally because he remained a segregated prisoner but also because other prisoners were unlikely to accept or work with him in this setting in view of his child sex offending.

2.1.9 Findings

Robertson's security classification, segregation and failure to acknowledge his child sex offending made it difficult to provide him with suitable rehabilitation programmes, but Corrections made reasonable efforts to do so. However, Corrections did not make efforts to bring about change sufficiently early in Robertson's sentence.

The introduction of public protection orders, together with expansion of the applicability and duration of extended supervision orders, gives Corrections sufficient options to ensure public safety when considering the release of long-term, high-risk offenders who serve their sentences in full. The adequacy of those options, however, has not yet been fully tested and will require evaluation.

2.1.10 Recommendations

Corrections should put more emphasis on motivating offenders to attend and complete rehabilitation programmes.

Corrections should give priority in rehabilitation programmes to young offenders identified as high-risk and serving a lengthy sentence.

Rehabilitation programmes should start early in a prisoner's sentence.

Corrections should consider developing individualised programmes for prisoners who deny their offending, pose behavioural problems in groups or otherwise are ineligible for existing programmes.

SECTION 3: PRE-RELEASE PLANNING

3.1 Planning process

3.1.1 Introduction

The increased likelihood of reoffending by long-term prisoners who have served their full sentence – frequently without attending rehabilitation programmes – makes it imperative planning for their release is carefully considered and starts early. This was doubly so with a high-risk offender such as Robertson.

Corrections had 10 months' notice of his release date. On 1 February 2013, the Parole Board declined parole, leaving him to serve his full sentence and leaving Corrections with no other option than to release him on 11 December 2013.

Typically, prison case managers and probation officers work together to plan a prisoner's return to the community. Planning for a prisoner's release can be brief and simple or more detailed and complex depending on whether a prisoner is low-risk or high-risk and the availability of accommodation options, family and community support, employment options, financial support and health needs, among other things.

Considering proposals for release also must be early enough to help develop and seek approval for any special conditions on a prisoner's release, including any proposed limits or obligations to be imposed on an offender, such as areas where the offender cannot go or employment restrictions. Both standard and special conditions can last for a maximum of six months from the end of a prisoner's sentence.[13] The Parole Board or courts can impose these conditions, although only a court can impose an extended supervision order.

3.1.2 Extended supervision order

Robertson's sentencing judge in 2006 noted, in imposing a finite sentence, that Corrections could consider applying for an extended supervision order if it still considered him to be a high risk at the time of his release – which it did. The High Court at Auckland granted an extended supervision order on 19 February 2014, two months and two weeks after his release. The court stipulated, with the agreement of the Crown and Robertson, that this order was to come into force on 15 June 2014, the day after his release conditions expired. In the event, Robertson was already back in custody, held on suspicion of Mrs Gotingco's murder, by the time the extended supervision order would have come into effect.

From the inquiry's investigations, it is apparent prison case managers and probation officers together made considerable effort to develop a plan for Robertson's release. Most of that effort, however, was spent finding him suitable accommodation, which, although unquestionably a critical first step in the reintegration process, is not the only step.

The high cost and limited availability of all types of housing in Auckland, where Robertson was ultimately released, made the task more difficult, especially since there

13. Standard conditions include reporting regularly to probation officers. Special conditions are designed for the individual offender and can include restricting an offender to a specific address and prohibiting entry to certain places. They are intended to reduce the risk of reoffending and help with rehabilitation.

was another complicating factor: any accommodation had to be suitable for electronic monitoring (see 4.3.5). In Robertson's case, this was to the probable detriment of time that could have been spent developing his special conditions.

With a release date set, Corrections had two options for his supervision: seek special release conditions lasting up to six months and/or seek an extended supervision order for up to 10 years.

On the first option, the Parole Act 2002 imposes standard conditions for six months on an offender released at the end of a long-term sentence, and also gives the Parole Board discretion to impose any special conditions for the same period.

On the second option, the High Court could, after receiving an assessment by a health assessor, impose an extended supervision order of up to 10 years on those convicted of certain sexual offences. To grant such an order, the High Court had to be satisfied an offender was at high risk of committing another sexual offence. In addition to standard conditions for such an order, the Parole Board could also impose special conditions. Corrections' chief executive could apply for an extended supervision order at any time up to the end of a prisoner's sentence or release conditions.

The special conditions available for an extended supervision order are identical to those applicable to any offender released from prison except they can last much longer (up to 10 years) and can require "intensive person-to-person monitoring" for up to a year.[14] Such monitoring can involve a Corrections-appointed person supervising the offender round the clock (see 3.1.4).

The High Court can make an order active from any date, including the day the order is made. The Court can also, upon application from Corrections' chief executive, impose any standard and special conditions available to the Parole Board if it determines there is insufficient time for the board to set conditions. The penalty for breach of any condition of an extended supervision order is up to two years' imprisonment, compared with a one-year maximum for a breach of parole or release conditions.[15]

In Robertson's case, Corrections took a twin-track approach, applying to the Parole Board for special release conditions for the maximum six months while simultaneously initiating steps to obtain an extended supervision order.

Corrections' first step was to undertake a comprehensive psychological assessment of Robertson to determine whether an application to the High Court for such an order was appropriate. As previously noted, a Corrections psychologist completed the assessment in June 2013. On the basis of this report, the chief psychologist, in consultation with the manager of the high-risk response team, recommended that Corrections Services' national commissioner, as the chief executive's delegate, apply for an order. On 18 September 2013, an application was submitted to the Crown Solicitor for filing in the High Court. Robertson defended the application.

On 10 October 2013, two months before his release, the Parole Board imposed special release conditions on Robertson. These are detailed in appendix D.

The High Court heard the application for an extended supervision order on 13 and 14 February 2014 and made the order on 19 February, directing, on the agreement

14. On 12 December 2014, the Parole (Extended Supervision Orders) Amendment Act 2014 came into effect, allowing supervision orders to be extended as often as needed, and also widening their applicability from high-risk child sex offenders to high-risk sex offenders and very high-risk violent offenders. It also allowed the courts to impose intensive monitoring.
15. In the case of parolees, there is also the option to recall them to prison to continue to serve their sentence.

of the Crown and Robertson that it should come into effect on 15 June when the special release conditions expired. By then Robertson had been rearrested. It should be noted that the order came with standard conditions. The court did not impose any special conditions relevant to Robertson's circumstances. It was Corrections' task to recommend conditions for the Parole Board to impose before the order took effect in June.

The court's decision came more than 12 months after the Parole Board, in rejecting Robertson's parole on 1 February 2013, noted that he remained a high-risk offender and suggested Corrections should consider whether an application should be made for an extended supervision order.

The inquiry has received no adequate explanation for why the process took so long. The delay in obtaining the psychologist's assessment was in part attributable to Robertson's reluctance to take part in an assessment. On 11 June 2013, more than four months later and exactly six months before Robertson's release, an assessment was eventually completed. Another three months passed before Corrections submitted the application to the Crown Solicitor. And a further five months passed for the court processes to conclude and the order to be made.

The chief probation officer and other Corrections staff told the inquiry that parole conditions, release conditions and extended supervision order conditions are so similar (as are, relatively speaking, penalties for breaches) that Corrections favoured extended supervision orders taking effect when release conditions ended. This enabled Corrections to supervise high-risk offenders for the longest period possible. In Robertson's case, that would have been 10 years and six months.[16] But another rationale was that if the extended supervision order were not made in time for Robertson's release, the release conditions would at least be in place as a back-up.

In the inquiry's view, this approach needlessly duplicates the process of obtaining assessments, developing and preparing to implement release conditions, and drafting applications to the Parole Board when a single release order would suffice.

It is also the inquiry's view that high-risk prisoners who will serve their entire long-term sentence and who have not acknowledged their offending should be the focus of much earlier release planning and more co-ordinated efforts.

In this case, applying solely for an extended supervision order would have better focused resources and effort and would no doubt have ensured the order was in place by 11 December 2013. The process of obtaining such an order must start early, not least because it can, as happened here, involve distant court appearance dates and defended court hearings, which necessarily entail some delay.

Nothing prevented Corrections from starting the assessment process before the Parole Board observation in February 2013. In fact, the psychological assessment for Robertson's 2010 Parole Board hearing made reference to this possibility. The sentencing judge had also noted the availability of such a measure. Even by the time of the board's previous parole decision, in February 2012, Robertson had been identified as a prisoner who was unwilling to attend treatment for his offending and whose release arrangements could be expected to pose a challenge.

16. This perceived advantage has been eliminated by the introduction of the Parole (Extended Supervision Orders) Amendment Act 2014, which allows for renewal of extended supervision orders as often as is necessary.

It is the inquiry's view that Corrections should have assessed Robertson for an extended supervision order and, if recommended, applied for one when it became clear he was unlikely to complete rehabilitation before the end of his sentence and certainly immediately after the board's suggestion of 1 February 2013.

In the event, the inquiry is satisfied that the fact no extended supervision order was in place before Mrs Gotingco's murder made no material difference to Robertson's supervision. The release conditions in place and the conditions that would have come into effect with the order were very similar and would not have resulted in tighter restrictions on Robertson's movements at the time Mrs Gotingco was murdered. But it does underline the inquiry's view that release planning for offenders such as Robertson needs to start much earlier than in fact occurred here. This view is consistent with the inquiry's concern that planning, and especially rehabilitation programmes for long-term, high-risk prisoners, should begin much sooner in an offender's sentence, particularly motivational work for offenders such as Robertson, which should start immediately after arrival in prison.

Robertson's special release conditions and the special conditions of his extended supervision order both included an overnight residential restriction. However, the latter had a second residential restriction: that Robertson should remain at his address from 8.15am until 9.30am and from 2.30pm until 4.30pm on school days. This was added after discussion between the probation officer and psychological services, on the basis that Robertson's offending in 2005 targeted children unknown to him on their way to and from school. In the inquiry's view, Corrections, having made that decision, should have recommended to the Parole Board to add that restriction to Robertson's existing special release conditions.

The school-hours restriction was the only notable difference between the two sets of special conditions. The one other difference of note was the requirement for Robertson to attend a psychological assessment and, if necessary, treatment. This was a special condition of his release, but not of his extended supervision order. See below for discussion of this point.

Corrections staff interviewed by the inquiry believed the special conditions of the extended supervision order would have been sufficiently restrictive and practical to mitigate Robertson's risk of reoffending against children, and that no other conditions were necessary. The inquiry concluded that these special conditions were proportionate to Robertson's known risks.

3.1.3 Release conditions

Robertson's prison-based case manager and a probation officer from Community Corrections' pre-release team developed the special conditions imposed by the Parole Board.[17] Two of Corrections' high-risk advisors also lent assistance. Their report, dated 13 September 2013, went to the board's hearing on 10 October. The board accepted and imposed all the recommended conditions. (Appendix C sets out the conditions.)

One of the adopted recommendations was that Robertson underwent a psychological assessment on release, and, if required, treatment. However, no Corrections psychologist was consulted about this recommendation. This is a matter of concern

17. Community Corrections is the probation arm of the Department of Corrections.

to the inquiry – that planning an offender's release does not as a rule involve the participation of, or at least consultation with, a Corrections psychologist. Granted, such specialist professionals are not always readily available, nor necessary in every case. But the efficient management of offenders, particularly high-risk, long-term offenders, demands a concerted effort by all of Corrections' available expertise, whether case managers in prisons, probation officers, psychologists or officers in the high-risk team and intelligence group. A combined approach of this sort is necessary in the interests of both the offender and the safety of the public. It is also likely to be more efficient.

The inquiry learned that the board was unaware its decision to require a post-release psychological assessment had not been carried out by the time of Robertson's arrest. It is apparent two arms of the Corrections organisation, Community Corrections and psychological services, were not communicating adequately with one another.

The effectiveness of communication between Community Corrections and psychological services is a matter for Corrections' chief executive to examine. What particularly concerns the inquiry is Corrections failed to inform the board, an independent statutory body exercising quasi-judicial functions, that a recommendation it proposed to the board, and which was subsequently made a release condition, had not been fulfilled while Robertson was living in the community, nor had the reasons for that omission been made known to it. This highlights the need for Corrections to inform the board of any condition or conditions not acted on and the reasons why, and to propose an amended condition or conditions, or a cancellation of the condition or conditions, for the board's endorsement.

3.1.4 More restrictive conditions

Residential restrictions

One view put to the inquiry is that Corrections should have considered and requested much stricter special conditions than it did, and in particular that the curfew should have been more stringent than 8pm until 6am.[18] This is an understandable view in light of the crimes Robertson has now been convicted of. The Parole Board is, however, required to set conditions that match an offender's *known* risk, not potential risk. Corrections and the board are also able to make decisions only on the basis of information known to them. Corrections considered but rejected applying for more restrictive residential restrictions than those ultimately imposed on Robertson as part of his special release conditions.

The Parole Board has the power to impose a requirement that an offender remains at a residence at all times. The chief probation officer told the inquiry that a psychologist, in consultation with probation staff and high-risk response advisors, makes such a recommendation to Corrections Services' national commissioner. If approved, Corrections recommends the requirement to the board.

Asked what Corrections staff considered in deciding against a full-time residential restriction for Robertson, the chief probation officer told the inquiry:

> Preventing access to children was the primary concern that the conditions imposed were designed to mitigate. Robertson's previous sexual offending occurred during one 24-hour period and he targeted particularly young victims. In his case the least restrictive condition that could be imposed was GPS monitoring, which allowed

18. Under section 33(2)(c)(i) and (ii) of the Parole Act 2002, the Parole Board has the power to impose a "residential restriction", that is, a requirement that an offender remains at a residence at times specified by the board.

exclusion zone conditions to be established and monitored to prevent access to a specific victim type. His overnight curfew was imposed to ensure he complied with his residence condition and that he did not stay or reside elsewhere without prior approval from the probation officer. This also ensures that the likelihood of access to children is reduced as he is prevented from staying at other, unassessed residences where children may reside.

Since the implementation of GPS monitoring there has been a general trend for there to be fewer instances of imposing full residential restrictions as GPS allows a less restrictive option to ensure sentence compliance and prevent access to specific victims.

The chief probation officer said the requirement to impose the least restrictive option arose from section 6(g) of the Corrections Act 2004, which states that "sentences and orders must not be administered more restrictively than is reasonably necessary to ensure the maintenance of the law and the safety of the public, corrections staff, and persons under control or supervision".[19]

Person-to-person monitoring

Corrections also considered, but did not apply for, a special condition for Robertson's extended supervision order requiring him to be subject to person-to-person monitoring. This would have required Robertson to remain under direct supervision of an approved individual or individuals for a specified number of hours a day, up to 24 hours a day. Such a condition can be imposed for a maximum of 12 months from the commencement of the order (irrespective of the length of the extended supervision order).[20]

Until 12 December 2014, the Parole Board had the discretion to impose such a condition if so requested by Corrections' chief executive. Since that date, it is for the High Court, when imposing an extended supervision order, to decide whether to add an "intensive monitoring condition" – in effect, the same as the former person-to-person monitoring condition.[21] Such monitoring cannot be imposed as a special release condition (or as a special condition of parole). It is available only as part of an extended supervision order.

At the time Robertson was released from prison and up until his arrest in May 2014, the Parole Board still had the discretion to impose person-to-person monitoring.

Corrections told the inquiry the criteria for deciding whether to recommend person-to-person monitoring to the board were an offender's:

- reliance on others to monitor behaviour to avoid reoffending
- lack of acceptance of responsibility for his or her own behaviour
- poor coping skills
- impulsive behaviours and low self-control
- inability to learn and retain new information
- low IQ
- difficulty in relating to adults
- displaying of sexual behaviour from an early age
- emotional basis to offending

19. Section 7(2)(a) of the Parole Act 2002 also requires the Parole Board to impose release conditions that are not "more onerous, or last longer, than is consistent with the safety of the community".
20. Legislation introduced in 2007 provided for such a condition of an extended supervision order.
21. Section 107IAC of the Parole Act 2002. Corrections' chief executive can request, when making an application for an extended supervision order, that the High Court also impose an intensive monitoring condition. If the High Court agrees, it will order the Parole Board to impose an intensive monitoring condition as a special condition of the extended supervision order.

- minimal grooming of victims before offending
- poor insight into the effect of his or her behaviour on others
- convictions within a short time of release.

The criteria reflected the legislation in effect at the time, which stipulated that extended supervision orders were available only for offenders posing "a real and on-going risk of committing sexual offences against children or young persons".[22] The legislation was expanded in December 2014 to include offenders who posed "a real and on-going risk of committing serious sexual or violent offences".[23]

Staff at Corrections' psychological services considered that Robertson met some of the criteria, but that person-to-person monitoring was not necessary because:

- he could manage himself and live independently
- he met his reporting requirements after release
- his offending, while opportunistic and impulsive, occurred in a single 24-hour period and he had no history of predatory behaviour
- he did not pose a sufficiently high risk of harm to warrant resource-intensive person-to-person monitoring.[24]

One member of psychological services told the inquiry:

> The category of offender that would be typical [for recommending person-to-person monitoring] would be somebody who really couldn't manage life, but the risk was imminent so they would not be able to go out into the community and not commit a relevant sexual offence if they were not under supervision by somebody 24/7. So whilst Robertson certainly met some of those criteria … he was able to demonstrate some level of compliance so he was able to report into probation on time, he was able to meet the requirements of the sentence, there were home visits that didn't highlight any concerns so we're looking at somebody who was able to comply with their sentence at that point in time.

The inquiry formed the view from discussions with Corrections staff and information received that low functioning – that is, a combination of poor impulse control and low IQ – was not, as suggested by the written policy, an optional criterion, but a mandatory one.

At the time Corrections applied for Robertson's extended supervision order special conditions, the process of assessing an offender for person-to-person supervision was relatively simple. A psychologist would carry out an assessment of an offender and make a recommendation to Corrections Services' national commissioner. The chief probation officer told the inquiry the process now calls on the expertise of a multi-disciplinary team. The revised process involves assessment and recommendations by a panel of the most senior of Corrections officers, reviewing each assessment for person-to-person monitoring. A further panel, including representatives from external agencies, reviews the recommendation. The national commissioner makes the final decision.

The inquiry considers the new process is an improvement because it is less reliant on a single psychologist's assessment. Nevertheless, Corrections' decision-making process in concluding that Robertson did not need person-to-person monitoring was adequate.

22. Section 107I(1) of the Parole Act 2002 (as worded from 8 July 2004 until 20 December 2014).
23. Section 107I(1) of the Parole Act 2002 (as presently worded).
24. Corrections told the inquiry the cost of person-to-person monitoring was between $180,000 and $270,000 per offender per year, depending on the conditions of the offender's order.

3.1.5 Findings

Release planning and conditions

Corrections should have begun Robertson's release planning sooner, particularly since he was a long-term, high-risk offender whose release involved consideration of a large range of factors.

The special conditions of Robertson's release and the special conditions of Robertson's extended supervision order were both appropriately directed towards his known risk of child sex offending. The Parole Board imposed all the special conditions recommended by Corrections.

The board had the power under the Parole Act 2002 to impose a full-time residential restriction. Corrections did not request such a restriction on the basis that this would have been disproportionate to Robertson's known risk.

Corrections should have consulted its own psychologists before recommending to the Parole Board the condition that Robertson undergo a psychological assessment, and if necessary treatment, on release. This failure led to the imposition of a special condition that Corrections' psychologists did not support but were responsible for implementing. When it became evident this implementation would not happen, Corrections should have applied to the Parole Board to discharge the condition.

Extended supervision order

Corrections should have assessed Robertson for an extended supervision order, and then made an application for an order, earlier than it did so that, if imposed by the High Court, the order could have come into effect at Robertson's release. At the latest, Corrections should have begun the assessment process immediately after the board's suggestion of 1 February 2013.

Corrections had ample opportunity to assess and apply for an extended supervision order, so that, if made, it could come into effect on the day of Robertson's release.

Corrections' approach of seeking an extended supervision order that would come into effect at the expiry of Robertson's release conditions needlessly duplicated the process of obtaining assessments, developing release conditions, drafting applications to the Parole Board and preparing to implement release conditions when a single release order would have sufficed.

Nonetheless, the fact no extended supervision order was in place before Mrs Gotingco's murder made no material difference to Robertson's supervision.

Corrections should have recommended to the Parole Board that the extended supervision order special conditions imposing additional school-hours residential restrictions be added to Robertson's existing release conditions.

Corrections' decision-making process in concluding that Robertson did not need person-to-person monitoring was adequate, although too reliant on a single psychologist's assessment. The introduction of a multi-disciplinary approach to reaching such decisions has since strengthened this process.

3.2 The search for accommodation

3.2.1 Introduction

The search for suitable accommodation consumed a disproportionate share of the time and effort put in by those preparing for Robertson's release. Their work did not end with his release – it was nearly a month later that he moved into suitable longer-term housing. This difficulty in finding newly released offenders accommodation is a challenge worldwide – and also a key to offenders' successful reintegration into the community. A recent United Nations report highlights its importance, noting that unstable or unsuitable housing can limit employment options, exacerbate social isolation and ultimately lead to recidivism.[25]

Offenders released from prisons in New Zealand commonly have three options: stay with family members or others they know; stay in accommodation provided by a Corrections-contracted supplier; or rent accommodation. (Buying is seldom an option, and few have a home to return to.) In the five and a half months between his release and final arrest, Robertson stayed in all three types, interrupted by two periods in custody totalling five weeks.

His accommodation history was:

11 December 2013	With family members (Waikato)
17 December 2013	PARS (prisoners' aid) accommodation (Auckland CBD)
31 December 2013	Custody
6 January 2014	Rented accommodation (Birkdale, Auckland)
27 January 2014	Custody
26 February 2014	Rented accommodation (Birkdale)
27 May 2014	Custody.

3.2.2 Accommodation guidelines for child sex offenders

Corrections' probation service, Community Corrections, has guidelines for assessing whether housing is suitable for offenders such as Robertson. The guidelines recommend a one-kilometre distance from schools and pre-schools, although "in cities, 500 metres may be more realistic". Staff should also consider proximity to playgrounds, parks, reserves, public swimming pools, churches, thoroughfares or residences with young families, other places frequented by children and shared driveways or facilities.

Other matters to weigh up include proximity to victims, to neighbours with children, to counselling and support services (and the availability of transport to these), any evidence of children under 16 living at the proposed accommodation, the suitability of any other occupants and whether they are aware of the individual's offending and current sentence or order. Corrections staff also need to check with appropriate organisations, such as Police, Child, Youth and Family and mental health teams, to find out whether they approve of the proposed address.

25. United Nations Office on Drugs and Crime: Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders (2012), p 70-71 http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Introductory_Handbook_on_the_Prevention_of_Recidivism_and_the_Social_Reintegration_of_Offenders.pdf

The guidelines do not define what is suitable accommodation, rather what is not. It is for staff to exercise their judgment about suitability. Finally, having passed all those tests, any proposed accommodation must meet the technical demands for electronic monitoring if there is such a requirement.

The inquiry heard repeatedly from Corrections staff how difficult it was to find properties that were not close to potential victims, met monitoring requirements and yet still gave offenders a good chance at rehabilitation and reintegration into the community.

3.2.3 Initial search efforts

Robertson's release from prison to temporary accommodation with family members followed a great deal of effort by Corrections staff to help him find suitable accommodation. They were hampered in this task by Robertson's own uncertain and changing plans, as well as constrained by the criteria just discussed.

A prison case manager began more focused discussions with Robertson about accommodation in July 2013 as part of release planning (which included discussions about his offender plan and ideas for release). The following month, a probation officer from Community Corrections' North Shore office joined the case manger. (This office is responsible for pre-release planning of high-risk offenders at Auckland Prison who don't have accommodation to go to.) They made little progress. Robertson named various towns where he wanted to live, none of which he had any previous association with. The case manager and probation officer did not support Robertson's move to these towns. This was partly because providers of supported accommodation for offenders gave priority to individuals who had local connections and supports. Robertson had none. The other reason was that, without family members or other supports, he would be socially isolated and this might inhibit his chances of reintegration.

By mid-October, with his release two months away, the search was gaining some urgency, prompting the case manager to make a file note that he and the probation officer might have to consider calling Robertson's mother, who lived in Australia, to see whether she could help find accommodation. Although the release date was 11 December, the deadline was really a month earlier because it took Corrections staff that long to complete the assessment of a property's suitability, particularly when electronic monitoring was under consideration. The file note also proposed a back-up plan: an approach to PARS, which had accommodation in Auckland, among other places.[26]

On 16 October, the case manager, service manager and probation officer asked PARS in Auckland for help with Robertson, but it had nothing available.

About this time, a member of Corrections' high-risk team responsible for the northern region joined in the effort to help find accommodation and deal with other release planning questions. In an email to the service manager and probation officer, this advisor supported the idea of involving Robertson's mother in the search for accommodation. And like her two colleagues, she was against Robertson going to places where he had no associations or support. In the absence of any other suitable place, said the advisor, Robertson should be housed in Auckland.

26. Formerly known as the Prisoners Aid & Rehabilitation Society.

The inquiry understands this was because North Shore Community Corrections and the local high-risk advisors were familiar with him and that Auckland was likely to have a greater range of resources and support for former prisoners.

Corrections' North Shore service manager also became involved. In a file note to the probation officer dated 23 October, he identified the matters that need thinking through when assessing Robertson's accommodation and release plans. The matters he detailed, consistent with the guidelines above, were:

- Robertson's offending history
- information available about known or potential victims
- areas where Robertson might have the potential to reoffend
- possible restrictions on entering or leaving certain locations in the community
- supports among whanau and other key individuals in the community
- services available to Robertson on release.

On 24 October, Corrections discussed accommodation options with Robertson's mother, who said she could help financially with accommodation and intended to travel to New Zealand in December. The Corrections officers encouraged her to come earlier, in mid-November, to help secure accommodation, which she agreed to do. She also suggested Robertson might live with relatives in Waikato.

She proposed two addresses. When contacted by Corrections, relatives at both addresses agreed to host Robertson. The probation officer arranged checks of mobile phone signal strength in the area, a requirement of global positioning satellite (GPS) technology used to monitor Robertson electronically (see 4.3.2). Signal strengths were weak. The officer also contacted local Police. For a variety of reasons, including the signal strength and the health of one relative, the properties were ruled out as unsuitable for medium to longer-term accommodation.

The high-risk advisor canvassed options in the upper North Island, including other places suggested by Robertson's mother. The team of four considered supported accommodation run by Anglican Action in Waikato. Nothing eventuated from this.

3.2.4 Search narrows

Robertson's mother arrived in mid-November to help. As options in other areas were eliminated, accommodation in Auckland became the focus of the team's efforts. Robertson's mother began looking for a two-bedroom apartment so she could stay with her son when she was in New Zealand. Despite looking at numerous apartments, none worked out. Corrections either deemed them unsuitable or they were rented to people prepared to sign a tenancy agreement immediately. (Robertson's mother had to await confirmation of suitability from Corrections.)

As the release date neared, the probation officer and service manager began searching the internet for accommodation, again without success.

In the first week of December, Robertson's mother put forward an address in Birkdale, a suburb on Auckland's North Shore. In fact, she had already signed the lease agreement. It was a self-contained, two-bedroom apartment in a block of four. The service manager visited it on 7 December, four days before Robertson's release.

In his notes, he recorded:

> No obvious signs of children in the area. However, given that the property is residential there is likely to be children in the area. The property is set back away from the main road and appears suitable for the offender. It meets the basic requirements of the residence, being reasonably far away from schools and parks. I discussed the requirement to check GPS signal and that this will be arranged shortly. Family … have signed the lease agreement already. I explained the process and the limitations of the equipment, but that the property appears suitable given its location.

The service manager went on:

> The residence meets the majority of the requirements we are seeking, it is … a good distance away from parks and schools. There are no obvious signs of children residing in the neighbouring properties, but it is likely that some of the residences will have children residing in them. Additionally the residence does not appear to overlook any property where children are likely to be visible. As it's set back from the road, it's likely that children will congregate some distance away when waiting for [the] bus. Additionally, GPS should help mitigate some risks as well as his mother's presence.

Given Robertson's child sex offending, the service manager's focus was understandably on proximity to children and places where they went. He told the inquiry:

> The nearest school, I think, is Kauri Park School, and by driving distance it's about 1.3 kilometres away but [a] direct line from his residence to the school is approximately 516 metres or so, and I used a measuring tool in order to identify that. We have a supported decision framework that says, when assessing addresses for child sex offenders, you're looking for things such as children nearby, schools, parks, playgrounds, things that would potentially be risk factors for the offender. It says generally you should not approve addresses that are within one kilometre of a school. However, it states specifically that in an urban setting 500 metres is more appropriate. That's why I'd assessed this address as suitable. There was [Kauri Park], it was more a reserve that was approximately 250 to 300 metres away [and despite the proposed address] being close to the reserve I still assessed it as suitable. It was not a playground per se – it was more of a reserve. There was a jogging and a walking track through it, but we felt that we could manage that s 6(c) an exclusion zone.

The service manager approved the address, subject to its suitability for GPS monitoring. Administratively, the property would allow for a seamless transition of responsibility: the service manager and probation officer would continue to supervise Robertson because he would be living within the North Shore office's jurisdiction. Police raised no objections to the address.

Two days before Robertson's release, the service manager was informed s 6(c) . Corrections could not approve the address. The service manager advised Robertson's mother at Auckland Prison on the day of Robertson's release. She appeared upset, saying she had committed to a 12-month lease and had paid a deposit and advance rent. However, staff had advised her earlier that it was possible Corrections could reject the property as unsuitable.

3.2.5 Temporary accommodation in Waikato

On the day the Birkdale address was ruled out, the service manager emailed Corrections' Waikato office to request contact be made again with Robertson's relatives. This time, it would be for only a few days until other accommodation could be found for Robertson. He added: "We have explored numerous options in our area to accommodate him … [including] placing him in a motel."

Corrections told the inquiry it used motels occasionally as fall-back only if all else failed, but seldom for more than a few days. Police were advised, but they got back to say the motel was unsuitable. Also, it was mid-December, the school holiday period when children were more likely to be staying.

Waikato staff came back with a reply. One of the relatives had agreed to the request. Local police were advised. Corrections' GPS monitoring team said signal strength at the address was acceptable for a temporary stay.

On 11 December 2013, Robertson left the prison for the Waikato address, where he remained until 17 December.

3.2.6 PARS accommodation

On the day of Robertson's release, PARS advised the service manager that one of the self-contained, single-room apartments at its Auckland CBD premises might be available for Robertson. The maximum length of stay is 13 weeks. During his stay, Robertson could expect to receive help from PARS staff with such things as getting photo identification, registering for benefits, getting work, training or education, meeting family members and securing permanent housing.

Corrections refers to PARS offenders who had a medium-security to high-security classification in prison, who have not found other accommodation, and who pose a risk of reoffending without such help. PARS requires offenders to agree to tenancy rules and to pay part of their earnings and/or benefit payments as rent.

Two PARS managers travelled from Auckland to interview Robertson in Waikato. He eventually agreed to move there – and to accept the terms of the tenancy. He moved in on 17 December. As described already, Robertson breached the tenancy rules and was evicted on 31 December 2013. Arrested the same day, he was held in custody until 6 January.

3.2.7 Birkdale apartment

Robertson moved to the Birkdale apartment on his release from custody on 6 January (the apparent GPS signal strength problems having been resolved). His mother was there, and remained there until she returned to Australia on 25 January. A Work and Income New Zealand accommodation allowance paid to Robertson helped him meet rent payments.

On 27 January, two days after his mother's departure, he was arrested and subsequently sentenced to two months' imprisonment for breaching his release conditions. On 26 February, he returned to the apartment, where he remained until 27 May.

The apartment's owner told the inquiry the tenancy was in the name of Robertson's mother and stepfather. The tenancy agreement allowed for up to three occupants. According to the apartment owner, Robertson's mother did not tell the leasing agency about her son's past as a recently released offender.

Corrections told the inquiry it did not require probation officers to notify property agents or owners of an offender's history. The Privacy Act 1993 limits the circumstances in

which personal information can be disclosed. Corrections staff can make a disclosure to prevent, detect or investigate an offence. Probation officers are expected to use their discretion in deciding whether to disclose this information.

3.3 Accommodation: the broader view

3.3.1 The obstacles

Many individuals within Corrections told the inquiry that the enormous amount of time and effort put into the search for accommodation for Robertson was far from unusual. They spoke of how this task often took up a disproportionate amount of probation officers' time – time that could be better spent on other areas of their work such as rehabilitation and reintegration activities.

Robertson is certainly the hardest type of offender to place – a high-risk child sex offender who requires electronic monitoring, is single and has no family members to offer him accommodation.

At first glance, social housing would seem an obvious solution. The Ministry of Social Development told the inquiry that offenders are assessed for social housing, such as that provided by Housing New Zealand, in the same way as other New Zealanders. But offenders can seldom get into social housing. They generally need single-bedroom accommodation – and about four-fifths of the waiting list is made up of people looking for such accommodation. Housing New Zealand's stock consists largely of houses with three or more bedrooms that do not match the needs of many people on its waiting lists, including those of offenders.[27]

The Ministry of Social Development also told the inquiry that a further factor that works against prisoners securing social housing before their release are the practical limitations of completing the housing application process whilst in prison. As a result offenders post-release must look for temporary accommodation while they wait.

3.3.2 Corrections-contracted providers

The traditional form of supported accommodation for released prisoners was the half-way house. The emphasis has shifted to individual, supported accommodation run by non-government organisations. Group accommodation is usually confined to residential treatment programmes such as those for drug and alcohol addiction.

PARS was for 50 years the country's sole contracted provider of accommodation for former prisoners. In 2010, Corrections opened this service to other organisations to provide. The table below summarises the current supported accommodation options.

27. Housing New Zealand advised the inquiry that its asset management strategy includes, among other things, divesting itself of three-bedroom properties in areas of low demand and building more properties (including one and two-bedroom properties) in areas of demand.

Supported accommodation options

Service	Region	s 6(c)	Provider	Intensity	Description
Supported accommodation	Northern		Auckland PARS	Medium	Wrap-around case management service for long-serving prisoners, up to 13 weeks' transitional accommodation and support into sustainable independent accommodation.
	Central		Anglican, Action, Salvation Army		
	Lower North Island		Salvation Army		
	South		Salvation Army, Otago PARS		
Total					
Emergency Accommodation	Northern		Auckland PARS	Medium	Short-term (up to six nights) accommodation for high-risk, high-need community offenders.
Total					
Rotorua, Taupo, Tokoroa (RTT)	Central		HealthCare NZ	Medium	Wrap-around case management service for medium-to-high-risk offenders released into RTT district. Includes transitional and longer-term accommodation and employment support.
Total					
Reintegration Support for Short Servers (RSSS)	Northern		Goodwood Park, NUMA	Medium	Wrap-around case management services for short-serving prisoners released in south-west Auckland. Includes transitional and longer-term accommodation and employment support.
Total					
Tiaki Tangata	All of New Zealand		NUMA, WERA	Medium	Wrap-around case management service for long-serving Maori prisoners. Provides transitional accommodation, employment support and assistance to re-engage with whanau and community.
Total					

Some are regional providers targeting local former prisoners, such as the programme called Rotorua, Taupo, Tokoroa, or RTT.

There are examples of houses built on prison land – but outside the secure perimeter – for a small number of very high-risk individuals at the end of their sentence who cannot be accommodated anywhere else. Christchurch Men's Prison has such a house, as do Whanganui Prison and Waikeria Prison. But these cater for only a tiny number of a certain category of offenders.

3.3.3 Emergency options

Some accommodation is last resort, usually for a prisoner on the point of release who must be housed somewhere for a few days until Corrections can find a permanent – or at least longer-term – solution. A contracted provider might do this, as might some boarding house owners. A motel might also be an option, as was briefly canvassed as a back-up option for Robertson.

3.3.4 Possible solutions

Almost all Corrections staff spoke of the difficulty of finding accommodation for offenders. The inquiry asked for suggested solutions.

One was a facility on prison land, but not within the prison perimeter. This would overcome the difficulty of finding places away from potential victims and also make monitoring, especially electronic monitoring, easier. Such an approach has been adopted in Australia. In 2010, the Corella Place transitional facility opened in rural Victoria for recently released sex offenders. The facility is on the grounds of a state prison.

The United Kingdom has about 100 "approved premises", which provide intensive supervision for recently released high-risk offenders. They are described as a short-term public protection measure rather than an accommodation solution. Canada has 17 community-based residential facilities for conditionally released offenders.

In all three countries, the facilities have no secure perimeter. But they have overnight curfews, require permission to leave, have a high level of monitoring by on-site staff, and offer rehabilitation and reintegration programmes. They are a transition to the outside world.

Each approach works within the legal parameters of the particular criminal justice system and each country's social support system. They are unlikely to be transferable unmodified to the New Zealand setting.

Authorities in each country noted the increasing number of problems offenders presented with – a trend apparent in New Zealand, too. In Canada, for example, the Office of the Correctional Services Inspector noted that staff in prisoner accommodation services faced "more offenders with mental health needs, a greater number of elderly and palliative offenders, more offenders requiring prescription medications, increased representation of gang members and aboriginal offenders as well as a growing number requiring assistance in [addictions and mental health]".

Canadian officials observed that they received funding on the basis that offenders could live independently after release, but "this is not the type of clientele that are sent to us".[28]

3.3.5 Findings

Robertson's accommodation

Corrections put significant effort into housing Robertson, a very difficult category of offender.

A service manager, rather than case manager or probation officer, made key decisions about Robertson's accommodation, which was an appropriate level of decision-making for such a high-risk offender.

Remaining near relatives in Waikato might have been better for Robertson's reintegration, but circumstances and location prevented this outcome.

The focus, in sourcing suitable accommodation, was on mitigating the risk of reoffending against children. Given that focus, and the use of electronic monitoring and a curfew, the service manager's approval of the Birkdale apartment was appropriate.

Corrections involved Police in a timely manner in making decisions about Robertson's accommodation options.

Accommodation generally

Probation staff are too often having to spend too much time trying to find accommodation for high-risk offenders at the expense of their other work.

Work to secure accommodation for prisoners should start earlier in the pre-release planning process.

More needs to be done to provide suitable accommodation for single males at high risk of committing sexual or violent offences.

Any solution will require the involvement of not just Corrections, but other relevant government agencies working together because reintegration of such individuals goes beyond simply finding them accommodation, and must include social support, employment, education, medical care and other considerations.

Any initiatives must be based on assessed need and must fit into New Zealand's legal and social fabric.

3.3.6 Recommendations

There should be among staff who prepare for prisoners' release an officer or officers dedicated to planning accommodation for high-risk prisoners.

The Government should take a multi-agency approach to considering, funding and implementing solutions to the problem of suitable accommodation in the community for high-risk offenders.

28. Office of the Correctional Services Inspector, Overcoming Barriers to Reintegration: An Investigation of Federal Community Correctional Centres - Final Report (2014) http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20141008-eng.aspx

3.4 Risk assessments

3.4.1 Introduction

Assessments of an offender's risk of reoffending are put to a variety of uses, including in determining length of sentence, assessing suitability for parole and developing release conditions.

To evaluate whether Corrections adequately assessed Robertson for his risk of reoffending, it is necessary to understand the available assessment tools. Corrections uses various assessment methods to predict the likelihood an offender will reoffend, the possible type of reoffending and the potential harm resulting from such reoffending. Corrections' assessment methods have evolved from international models and extensive research, and are the subject of continual validation.[29]

Risk assessments have two other purposes besides predicting the likelihood of reoffending: to help determine and prioritise interventions to reduce an offender's likelihood of reoffending; and to help set up management and monitoring regimes.

Risk assessment methods analyse static and dynamic factors to predict reoffending. Static factors are largely unchangeable and relate to an individual's criminal history (number of previous convictions, age at the time, relationship to victims). Dynamic factors (response to treatment, criminal association) also influence the likelihood of reoffending.

Offenders can lower their static risk scores only by not reoffending for many years. By contrast, dynamic factors can raise or lower the likelihood of reoffending over relatively short periods of time. Stable accommodation or employment, for example, can lower an offender's risk assessment; use of alcohol or loss of a significant relationship can increase it.

Corrections assesses imprisoned and released offenders at regular intervals or when their circumstances change. As well as deciding an offender's overall risk of reoffending (measured as low, medium or high), Corrections also determines the level of harm such reoffending may cause and (usually) explains the most likely contributors to reoffending. Such an explanation brings together the risk factors to describe situations in which an offender is most likely to reoffend. In the case, for example, of someone with convictions for assault of females, the most likely situation may be after forming a new relationship. In the light of this information, Corrections can decide how much supervision an offender needs, or what actions to take to help lower the risk (such as working with an offender to disclose his relationship history and develop a safety plan with his new partner).

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29. Ruth J. Tully, Shihning Chou, Kevin D. Browne: A systematic review on the effectiveness of sex offender risk assessment tools in predicting sexual recidivism of adult male sex offenders. Clinical Psychology Review 33 (2013) 287–316b

    Yesberg, J. A., & Polaschek, D. L. L. (2014) Assessing dynamic risk and protective factors in the community: Examining the validity of the Dynamic Risk Assessment for Offender Re-entry) with high-risk parolees. Psychology Crime and Law, 21(1), 80-99.

    Hanson, R. K., Harris, A. J. R., Scott, T-L., & Helmus L. (2007) Assessing the risk of sexual offenders on community supervision: The Dynamic Supervision Project. Corrections Research User Report 2007-05. Ottawa: Public Safety Canada.

    Bakker, L., O'Malley, J. and Riley, D. (1999) Risk of Reconviction: Statistical Models predicting Four Types of Reoffending. Wellington: Department of Corrections.

3.4.2 Robertson's risk assessments

Robertson was subject to assessments to:

- identify suitable rehabilitation programmes while in prison
- help the Parole Board evaluate his risk to the public
- help Corrections in its application for an extended supervision order
- help probation officers prepare special release conditions
- determine his level of risk to the community when he reported to probation officers after his release.

Corrections assessed Robertson as having a 77 per cent probability of general or violent offending leading to imprisonment within five years of release. Corrections used the RoC*RoI assessment tool to arrive at this assessment of static risk.[30] An individual with a score above 0.7, or 70 per cent, is considered high risk by Corrections.

In May of that year, a clinical psychologist assessed Robertson, using the ASRS static risk measure, as having a medium-to-high risk of a sexual reconviction.[31] The medium-to-high-risk category indicates a 24 per cent probability of reconviction for child sex offenders within 10 years of release. The average for all child sex offenders is 13 per cent.[32]

In that same month, Corrections assessed his dynamic risk factors in considering him for an extended supervision order and any specific areas of his behaviour that Corrections might have to monitor closely. Using the STABLE-2007 assessment tool, he was evaluated for the risk of sexual recidivism. That assessment put him in the high-risk category.

STABLE-2007 assesses factors that tend to persist for months or years, though are capable of change. Such factors include significant social influences, intimacy deficits, general self-regulation, sexual self-regulation and co-operation with supervision. Factors identified as relevant to Robertson's risk of sexual recidivism included: stability of relationships, lack of concern for others, impulsivity, substance use, poor problem-solving, sexual pre-occupation, hostility and lack of co-operation with supervision.

The files show that after his release probation officers were assessing Robertson's dynamic risks using a tool called DRAOR, which is designed specifically for such users.[33] DRAOR assesses 19 factors to help probation officers decide the immediate risks posed by offenders. Among them are stable factors (such as attitude to authority), acute factors (such as access to victims, which can change quickly) and protective factors (such as responsiveness to advice, which is likely to help prevent reoffending).

Corrections records show probation staff were seeking information about Robertson's relationships, substance use and ability to problem-solve as well as assessing his response to supervision, and frequently using DRAOR to assess acute and protective

30. RoC*RoI (Risk of Conviction times Risk of Imprisonment) produces a statistical probability of reimprisonment (scores ranging from 0.0 to 1.0) representing a 0 per cent probability to a 100 per cent probability of reoffending. Robertson's score of 0.77 equated to a 77 per cent probability of reoffending.
31. ASRS: Automated Sexual Recidivism Scale.
32. Skelton, A, Riley, D, Wales, D and Vess, J. (2006), Assessing risk for sexual offenders in New Zealand: Development and validation of a computer-scores risk measure. Journal of Sexual Aggression.
33. Dynamic Risk Assessment for Offender Re-entry.

factors. Excluding periods in custody for breaches of release conditions, probation staff managed Robertson for 20 weeks after his release. The evidence shows they conducted risk assessments (using DRAOR, or its acute or protective components) at least 32 times.[34]

Dynamic risk assessments rely on offenders disclosing information that probation officers and others can corroborate. The records are clear that probation staff watched how Robertson presented himself, asked questions and sought information from third parties about their observations of Robertson. However, these observations of Robertson revealed little of concern. (He had, for example, a neat and tidy home and showed no apparent signs of drug use.)

As well as DRAOR and STABLE-2007, Corrections staff have a third dynamic risk assessment tool – ACUTE-2007. This measures factors shown to have the ability to predict sexual reoffending in the short term. Robertson's supervising probation officer completed an ACUTE-2007 assessment, and it did not indicate any imminent risk of sexual reoffending. However, Robertson denied any deviant sexual interest or behaviour. Consequently, this assessment would have been of questionable value.

Corrections staff are trained in all three tools, although the inquiry learned that the probation officer managing Robertson lacked confidence in using STABLE-2007 and did not complete this assessment with Robertson. Using STABLE-2007 requires detailed discussions about sexual attitudes, thoughts and behaviours. Robertson resisted these discussions with his probation officers, claiming he had only consenting adult sex and sexual thoughts. The probation officer appears to have reached the view that persisting with questioning would elicit little information of value to assess his risk of sexual recidivism against children.

It would certainly be preferable that Corrections uses all applicable tools to assess an offender's risk, but the inquiry's view is that the application of ACUTE-2007 (which helps predict sexual reoffending in the short term), frequent use of DRAOR, direct observations and corroborative information (including from Police) were adequate to assess his risk of general and sexual reoffending.

The inquiry concludes that Corrections assessed Robertson's risk regularly, both inside and outside prison, using appropriate assessment tools.

3.4.3 Robertson's overall risk

Corrections keeps information on offenders in a computerised record management system called the Integrated Offender Management System. The opening screen on an individual shows key details at a glance: name, age, RoC*RoI score and a classification for risk of reoffending and risk of harm (shown as low, medium or high). Probation staff sometimes refer to this overall classification as the "banner risk". It is the result of a combined evaluation of an offender's psychological reports, DRAOR assessments, RoC*RoI score and ASRS, STABLE-2007 and ACUTE-2007 results. A banner risk broadly sums up at a glance an offender's risk classification – it does not determine how an individual is managed.

On 30 December 2013, Robertson's banner risk of reoffending was lowered to medium. This struck the inquiry as at odds with his psychological assessments and

34. Guidance for probation officers states that they should assess risk at every contact with an offender. This requires them to assess only the acute risk factors measured by DRAOR at each contact. They are not required to use DRAOR in full on every occasion.

RoC*RoI score. There is no written record of the rationale for this change. The chief probation officer explained that North Shore Community Corrections staff believed electronic monitoring and other control measures would be effective deterrents to reoffending, and thus lower his likelihood of reoffending from high to medium. This assumption is wrong. An offender's static risk is largely fixed except for some small or gradual diminution with the passage of time. Control measures cannot reduce this risk. The probation officer agreed that Robertson was always high-risk and was managed accordingly.

Despite the medium-risk banner classification, the inquiry did not find evidence Robertson was managed with less intensity than any other high-risk offender in the community. He was managed in accordance with his release conditions and Corrections' standards for managing newly released offenders. (See more on his community-based management in 4.1.)

3.4.4 Greater support for probation officers

The chief probation officer's report into Robertson's management recommended that probation officers receive more support from Corrections psychologists so they apply STABLE-2007 and ACUTE-2007 in a consistent manner.[35] Despite encouraging such a measure, the inquiry questions whether probation officers are the professionals best suited to completing dynamic risk assessments for offenders convicted of sexual violence. Such assessments necessitate explicit conversations about sexual feelings, thoughts and behaviour. Previously, registered psychologists conducted these assessments. If Corrections wants probation officers to perform this role, it needs to give them more frequent training, professional support and supervision.

3.4.5 Reliance on risk assessments

Risk assessments cannot predict what an individual will do and when. At best, they indicate general probabilities. Robertson was one of about 30 high-risk offenders managed by Corrections in the Waitemata area in early 2014. Some, like Robertson, had convictions for violence and sex offending. Corrections' risk assessment tools help staff to decide which offenders they should focus their attention on, but the tools have clear limits, and none can provide the level of assurance about offenders' intentions that the justice sector – and the public – would like.

In seeking to gauge the suitability of such tools and their use in New Zealand, the inquiry interviewed psychologists and published academics. In addition, it examined New Zealand and international research.

The general view was that New Zealand has a good range of tools to assess violent and sexual offenders, and that it is comparable with those available to overseas authorities. There was also a clear view that each tool should be created for, or adapted to, New Zealand's criminal justice system, criminal environment and unique cultural factors. Furthermore, there should be continued research into how assessments from separate tools could be combined to arrive at the most balanced and accurate picture of the risk posed by individual offenders.

Many interviewees advocated greater investment in training for those who use the tools and make decisions based on the tools' assessments. This would also have benefits for the courts and Parole Board. The inquiry fully supports this view.

35. http://www.corrections.govt.nz/news/media-releases/2015_media_releases/management_of_offender_tony_robertson.html

3.4.6 Findings

Corrections has a good range of tools to assess risk of reoffending, and it uses tools comparable to those available to overseas corrections authorities.

There would be benefit in increased understanding of how assessments from separate tools could be combined to arrive at the most balanced and accurate picture of the risk posed by individual offenders.

Corrections assessed Robertson's risk regularly during and after imprisonment using appropriate tools.

Corrections' overall assessment of Robertson's risk of reoffending took into account his propensity for using violence to meet his needs.

Corrections was wrong to lower Robertson's banner risk to medium, although the change made no practical difference to his management as a high-risk offender.

Probation officers would benefit from more frequent training and support in order to use risk assessment tools for sex offenders consistently and to the required standard.

In Robertson's case, probation officers did not complete risk assessments using all the available tools, although he was managed as a high-risk offender.

3.4.7 Recommendations

Corrections should provide greater support to probation officers to carry out and apply risk assessments for sex offenders in a consistent manner.

Corrections should consider how decision-makers in the criminal justice system can best understand the outcomes of different risk assessment tools and their combined bearing on an individual offender's assessment.

The justice sector should increase investment in training for those conducting risk assessments, as well as those analysing and making decisions based on the results.

3.5 Centre for impact on sexual offending

3.5.1 Introduction

In August 2013, Corrections and Police established a centre at Police National Headquarters in Wellington, called the centre for impact on sexual offending, to give both agencies' frontline staff better information about child sex offenders identified as at high risk of reoffending after release.[36]

The centre selects all prisoners whose statutory (that is, compulsory) release date is no more than eight weeks away, or whose release date has been set by the Parole Board, and screens them based on conviction histories and information in Corrections and Police databases and files. From that initial screening are drawn offenders who are profiled in more detail. The profile is sent to relevant staff in Police and Corrections

36. The centre for impact on sexual offending has four staff: a Police manager, a Police intelligence analyst, a Corrections intelligence analyst and a senior advisor from Corrections' s 6(c) (currently half-time).

(including child protection teams, probation managers and officers, and intelligence units) to help supervise, and make decisions about, the offenders once they are released.

s 6(c) They contain "considerations" about how to mitigate an individual's risk of reoffending.[37] These might include restrictions on freedom of movement or association, based on the offender's previous patterns of offending.

The centre distributed a profile on Robertson to those assigned to his case on 4 December 2013, a little more than a week before his release. The inquiry was told the profile was helpful in three ways: it provided a more rounded understanding of Robertson; it was useful in determining his risk of reoffending and risk of causing harm in the community; and it helped to develop a strategy to manage those risks. The sole criticism was that the profile arrived too late to be of use in planning Robertson's release, including preparing release conditions (see 4.1.13 for discussion of one such proposed condition).

The centre does not routinely distribute its profiles to Corrections psychologists. Nor does Corrections provide them to the High Court as part of an application for an extended supervision order, or to the Parole Board when it assesses an offender for parole or considers what release conditions or extended supervision order special conditions to impose.[38] The inquiry has been told Corrections psychological service receives the profiles on request.

The centre now tries to complete profiles earlier than the s 6(c) target set at the time of its establishment in August 2013. Meeting its self-imposed target depends on staff levels and experience.

The Parole Board receives relevant intelligence when necessary (although not the full profile). Such intelligence can include material that has not been proven to any legal standard, and in these instances the Parole Board will give it such weight as it considers appropriate in light of the nature and source of the information.[39]

The inquiry considers Corrections should make sure the Parole Board has all information relevant to the risks an offender poses, and steps available to mitigate those risks. This may mean requiring the profiles to be completed earlier so relevant information can be identified and shared when the board considers prisoners for parole and for the imposition of special conditions.

3.5.2 Child Sex Offender Register

The Ministers of Corrections and Police have proposed establishing a Child Sex Offender Register to help minimise the risk of harm by child sex offenders released into the community. As well as acting as a single source of information about such offenders, it would provide a management framework to co-ordinate action to help offenders live a low-risk way of life after release.[40]

37. At the time of Robertson's release, considerations were called recommendations. The change of terminology reflects the intention to help frontline staff make decisions rather than direct them to take certain actions.
38. Robertson's special release conditions were imposed on 25 October 2013. His profile was completed on 4 December 2013, so there was no opportunity for the profile to inform his special conditions.
39. Section 117 (1) Parole Act 2002.
40. Regulatory Impact Statement - Child Protection Offender Register and Risk Management Framework, 6 December 2014.

A select committee is due to report back on the Child Protection (Child Sex Offender Register) Bill by 16 March 2016. Some groups and members of the public have expressed concern about the effectiveness of such a register, as well as its possible impingement on civil liberties. The inquiry makes no comment on these matters, given its terms of reference and the current parliamentary processes, except to note that if the Bill proceeds, the centre will carry out the intelligence function for the register, to create profiles and help frontline staff monitor offenders' activities. The inquiry supports the extension of this function in that event. To be effective, the centre needs enough funding to produce the volume of profiles required of it, and within the deadlines required of it.

3.5.3 Recommendations

The centre for impact on sexual offending should complete its profiles in time for use by Corrections in preparing parole assessment reports, formulating special conditions and planning an offender's release.

Corrections should put in place a process to ensure intelligence relevant to the assessment of an offender's risk to the community is known and accessible to those preparing parole assessment reports, reports seeking special conditions, assessments for extended supervision orders and other relevant assessments, as well as to the Parole Board when appropriate.

The centre for impact on sexual offending should have sufficient funding to carry out the register's intelligence function, if it is so required, thereby enabling the register to meet its legislated goals.

SECTION 4: AFTER RELEASE

4.1 Management in the community

4.1.1 Introduction

The inquiry is required by its terms of reference to examine Corrections' management of Robertson after his release into the community in December 2013, including:

- compliance with mandatory and best-practice standards for managing offenders such as Robertson
- tools used to assess the risk of offenders reoffending, and the risk they pose to the community, and how those tools were applied to Robertson (discussed earlier)
- decisions made about where Robertson lived and about advising neighbours of his background
- supervision and monitoring of Robertson (including when he had to report in, probation officers' visits to his home, and his compliance with release conditions)
- operational practices (such as use of electronic monitoring) for those deemed at high risk of reoffending
- programmes and services Robertson took part in or received
- responses to any breaches of conditions (including those of other agencies) and liaison with Police
- training of probation staff supervising high-risk offenders.

In order to investigate these matters, the inquiry obtained copies of Corrections' records on Robertson from February 2013, 10 months before his release, until soon after his arrest on 27 May 2014. Of the 350 electronic pages received, about 200 record the period after his release. A separate hard copy offender file was also obtained. Together, these records provided a detailed account of each contact or event relating to Robertson, including with third parties such as Police. Records detailed the author, the event or reason for the record entry, key information and decisions (including their rationale). In all, record-keeping on Robertson was very good and helped establish what happened, who was involved, when and why.[41]

4.1.2 Oversight structures for high-risk offenders

The adequacy of the structures Corrections had in place to deal with high-risk offenders like Robertson, and also of its oversight of those managing him, are questions the inquiry is required to examine.

Corrections uses referrals from staff working with offenders as well as computer-generated reports to identify high-risk offenders. The resulting lists of offenders (including those in prison) go to various parts of the organisation for use in various ways.

41. Where this is not the case, the inquiry makes specific mention: for example, decisions about lowering Robertson's banner risk.

In prisons, multi-disciplinary panels led by prison directors may review a high-risk offender's reintegration proposal, ensure agencies such as Police and Child Youth and Family are aware of the impending release and, when necessary, advise those at regional and national level within the organisation.

Managers in offices throughout the country support and supervise staff managing high-risk offenders. Service managers are responsible for fortnightly file checks to confirm high-risk offenders are managed according to standards. They also talk regularly to probation officers about their high-risk cases.[42] District managers review each office's high-risk offender list and raise significant cases at regional level.

A high-risk team focuses on Corrections' highest-risk offenders. It makes sure the organisation's regional centres and its national office are up to date with such offenders. It has no line management responsibility, instead providing independent advice, as required. It also ensures maintenance of standards. High-risk advisors help with applications for extended supervision orders, help probation staff prepare reports for the Parole Board, work with psychological services, help prepare release conditions and train probation officers in the implementation of extended supervision orders.

A member of the high-risk team is seconded to the centre for impact on sexual offending to develop profiles on child sex offenders due for release (see 3.5). High-risk advisors refer cases to a panel of senior Corrections officers, and also to the national commissioner if they identify a serious risk and find that an offender has complex needs (such as no family supports or accommodation or low mental functioning) which Corrections staff are having difficulty meeting.

4.1.3 Robertson: high-risk advisors' input

The high-risk advisors or high-risk manager did not refer Robertson to this panel despite being an untreated child sex offender due for release at the end of a long sentence in high security and with an extended supervision order application pending and no suitable accommodation in sight. Corrections explained to the inquiry that case managers, probation staff, psychologists and high-risk advisors were involved in his case, and his mother was actively seeking accommodation. Such comprehensive involvement by so many individuals meant he did not need the panel's intervention.

Whether such a referral would have improved Robertson's release plan or his management in the community is speculative. But it would have seemed justified, as well as appropriate, that a discussion at this senior level took place to seek extra help and canvass ideas. Certainly the national commissioner, as Corrections' final decision-maker on whether to apply for an extended supervision order, was aware of Robertson.

High-risk advisors within the northern regional office and at national office were aware of Robertson from June 2013 when Corrections was assessing him for an extended supervision order. From then onwards, they worked with case managers in prison and staff at the North Shore office to plan for his release, help prepare a parole assessment report in September 2013 and the April 2014 report to the Parole Board on special conditions for Robertson's extended supervision order.

The inquiry was told high-risk advisors' involvement with probation officers managing high-risk offenders is limited to the pre-release stage and preparing for any extended

42. New standards that took effect in July 2015 require three-monthly discussions.

supervision order and associated special conditions. They generally do not work alongside probation officers and give day-to-day advice. The inquiry considers high-risk advisors could have a role to play in giving such day-to-day advice and support to probation officers over and above existing arrangements. Corrections should consider how to give this best effect.

Interviews and a review of records confirm that the service manager and senior probation staff at the North Shore office actively scrutinised, and lent support to, staff directly involved in Robertson's case. The manager was involved in the months before Robertson's release, including assessing more than 100 addresses, an effort well in excess of standard practice. The manager also met Robertson and his mother at Auckland Prison on his release day. He sometimes met Robertson when his primary and "shadow" probation officers were unavailable, completed file checks and assessed whether neighbour notification was warranted, his finding going to the district manager for a decision (see 4.1.7 for more on staff who supervised Robertson). Later, he was involved in arrest, bail and prosecution matters, and also responded quickly to inquiries from Police. Throughout, he maintained detailed records. Robertson's probation officer spoke of receiving considerable guidance and encouragement from the service manager, as well as from the shadow probation officer and colleagues.

Finally, in decisions to arrest and prosecute Robertson for breaches of release conditions, there was involvement by Waitemata's district manager, plus oversight by the regional manager and operations director.

4.1.4 Standards of practice

Corrections supervises all offenders released into the community in conformity with basic standards of practice, referred to as mandatory standards, and concentrates extra effort on those judged most at risk of reoffending or causing harm.[43] Probation officers determine with their service managers which offenders should receive more supervision. This is in contrast to an approach followed until 2009, which gave the same level of supervision to all offenders with the same sentence or release order, regardless of offenders' risk assessment. The new approach was the result of a review by the Auditor-General[44] and the recommendations of an independent advisory panel.[45]

Corrections' standards set out the minimum supervision applicable to offenders with various types of sentences and release orders, on the understanding that the supervision will increase in proportion to the risk posed by the individual. This approach recognises that probation officers should prioritise their work based on offenders' risk, that high-risk offenders will need more intensive management, that officers should focus their efforts on areas likely to have the greatest influence on offenders' criminal behaviour, that offenders who do not complete treatment are at higher risk of reoffending, and that the seriousness of an offender's most recent offence or offences is not the same as the level of risk posed by the offender (with assessment of that risk taking into account static and dynamic factors).[46]

Increased supervision can take the form of more frequent visits – both scheduled and unannounced – to an offender's home, requiring the offender to report more often to

43. Mandatory standards are now referred to as practice standards.
44. Department of Corrections: Managing Offenders on Parole Controller & Auditor General, Office of the Auditor-General, 2009. http://www.oag.govt.nz/2009/parole/docs/parole.pdf
45. The establishment of the panel, which included chair Paula Rebstock and public sector specialists Peter Hughes and Andrew Bridges, followed a series of violent, and in several cases, fatal incidents involving offenders released into the community, most notably William Bell and Graeme Burton.
46. Andrews, D. A., & Bonta, J. (1994), The psychology of criminal conduct. Cincinnati, OH: Anderson.

a probation officer, more checks with people with whom the offender has contact, and more probing questions when the offender reports.

Supervision standards are more stringent for those granted parole than for those released on conditions imposed by courts at sentencing. This is because most offenders in the latter category have usually served less than two years for less serious offences. There is a third category of offenders – about 460 a year – who have been convicted of a very serious offence and who have served their sentence in full, having never been granted parole. In such circumstances, the Parole Board is limited to imposing release conditions applicable for a maximum of six months. Robertson fell into this category. Corrections does not have a supervision standard specifically for this category of offender. In such cases, it applies the higher parole standard. This was the case for Robertson.

4.1.5 Standard as applied to Robertson

Below is set out the supervision standard for parolees, and against each standard the measures taken by Robertson's probation officer and others.[47] Comparing Robertson's supervision with the required standard shows that each standard was met or exceeded.

Supervision of Robertson against the mandatory standard for parolees

	Mandatory standard for parolees	Robertson's supervision
1	Assess the suitability of the offender's proposed address, recommend appropriate and manageable special conditions and ensure this information is detailed in the parole assessment report to reduce likelihood of reoffending and minimise risk of harm to others.	A probation officer completed an assessment report in September 2013, with proposed special conditions designed to manage Robertson's risk of harm and reoffending at the end of his sentence. At that time, no residential address had been found.
2	Explain the requirements of parole to the offender and confirm offender's understanding no later than five working days after release to encourage compliance with the order.	Robertson was released on 11 December. The probation officer explained the requirements of the standard and special conditions to him the same day, including electronic monitoring. The consequences of non-compliance were explained. Robertson confirmed he understood the requirements and consequences.
3	Instruct the offender on parole to report at least once every 10 working days to supervise compliance with the order.	Robertson was instructed to report to his probation officer at least once every week. He was in the community for a total of 20 weeks and reported on 37 occasions. For 13 of the 20 weeks (65 per cent), he reported two or more times a week. This included nine home visits.
4	Visit and verify the offender's address no later than five working days after release and no later than five working days after any change of address to check the offender's compliance with parole.	Each address was verified by probation staff before his arrival and a home visit conducted on the day of his arrival at each address.

47. Case notes are taken from Corrections' computerised record management system, and are date-stamped when created or amended.

5	Plan parole with the offender no later than 20 working days after release to encourage compliance with the order, reduce likelihood of reoffending and minimise risk to others.	An offender plan was developed on 17 December, six days after his release. The plan was a continuation of his prison offender plan and addressed each of his release conditions.
6	Manage and monitor all standard and special conditions of the offender's parole to supervise their compliance with the order.	Case notes show probation staff monitored his compliance with the conditions of his release. Probation officers referred to electronic monitoring reports, discussed his compliance when he reported, when conducting home visits and by responding to possible non-compliance (by phone calls, directions and formal prosecution). Referrals for assessment for alcohol and drug use and psychological services were made within the first month of Robertson's release from prison. The condition requiring him to be at his residence between 8pm and 6am was monitored electronically. For each address (Waikato, Auckland CBD and Birkdale) probation staff established whereabouts monitoring, with inclusion and exclusion zones and curfew restrictions in accordance with his conditions. The restrictions for each address were either set up before or amended soon after his arrival. Monitoring system alerts were responded to according to the national response framework.
7	Formally review the offender's progress with parole and update plan to encourage compliance with the order, reduce likelihood of reoffending and minimise risk of harm to others.	Robertson's offender plan was updated in March 2014. The measurement of the standard requires at least one review of the plan during the term of the offender's parole.
8	Take action every time the offender does not comply with any requirement of parole to hold offender accountable for compliance with the order.	Alerts or suspected non-compliance were responded to by investigation and direct communication with Robertson. An action was evident for every instance of non-compliance. Action included court prosecutions for both breaches of conditions considered intentional.
9	Respond to every instance where the grounds for recall are met. If an application for recall is warranted, submit an application no later than five working days after the grounds are established, to hold the offender to account and contribute to safer communities.	Not applicable. He could not be recalled because he had served his full sentence.
10	Respond to every identified increase in the offender's likelihood of reoffending and/or risk of harm to others to reduce likelihood of reoffending and/or minimise risk of harm to others.	When he reported to probation staff, his reoffending risk was assessed using the general risk assessment tool and guidance. His risk of reoffending and risk of harm to others were not assessed as escalating. However, reporting was increased after non-compliance with conditions of his release.[48]
11	Fulfil victim notification requirements for each offender with victims on the victim notification register, to comply with the Victims Rights Act 2002.	Robertson did not have any registered victims.

48. Robertson was instructed on his release from prison in December 2013 to report to a probation officer weekly. This rose to twice a week after his release from custody on 26 February 2014 for breaching a release condition. A probation officer also began visiting him weekly at home.

4.1.6 Training of staff supervising high-risk offenders

All probation officer recruits receive initial training over 26 weeks that includes workplace modules and classroom-based coursework. It covers core tasks of a probation officer, including preparing reports for courts and the Parole Board, assessing offender risk, what types of counselling, programmes and options are available to address their offending, how to deal with offenders who don't comply with release conditions, and working with complex cases such as offenders with mental health problems or substance addictions and who have no fixed address. They also receive further training while on the job, attending courses on screening for alcohol, drug and other substances, electronic monitoring and how to deal with manipulative and deceptive behaviour by offenders.

The inquiry was told that only experienced probation officers and managers supervise child sex offenders subject to an extended supervision order. Psychologists and probation officers with experience in this area train them. They learn about such things as providing advice to the Parole Board on release conditions for such offenders; pre-release planning; building motivation; dealing with manipulative and deceptive behaviour and non-compliance; making safety plans for high-risk situations; liaising with external agencies and other parties; and neighbourhood notification.

Corrections psychologists also train them in a method of assessing the risk of recidivism by sex offenders known as dynamic supervision of sex offenders, or DSSO. The focus is on building an understanding of reoffending risk factors. There is also training in the use of static risk assessment tools and how to draw out information to assess dynamic risks.

The inquiry found nothing lacking in Corrections' specialist training, although some probation staff interviewed by the inquiry commented that the training was not provided frequently enough, particularly refresher courses in the DSSO method run by expert trainers (as opposed to reading online articles).

Motivational interviewing skills are also invaluable to all frontline Corrections staff because of their usefulness in helping offenders become more willing to improve themselves (whether by attending programmes and educational courses or making personal changes). Training in such skills is part of Corrections' core training curriculum. The case of Robertson, who was not motivated to address his own offending, shows the crucial value of these skills, and Corrections should place more emphasis on developing these skills in all frontline staff.

4.1.7 Staff who supervised Robertson

Two probation officers are generally assigned to each high-risk offender because it ensures continuity in the individual's supervision, it helps identify offending-related risks better, and it lessens the chance of an offender manipulating or influencing a single officer. Two officers were assigned to Robertson. His primary probation officer was an individual with s 6(c) years' experience at Corrections s 6(c) An officer with three and a half years' experience in Corrections was the shadow probation officer. Both had completed DSSO training. The primary probation officer and the shadow probation officer underwent extended supervision order training in May 2014 (before the start of Robertson's extended supervision order). A service centre manager who had worked with offenders for more than 13 years supported the probation officers. The service centre manager was in turn supported by a district manager, who had worked for Corrections in various roles for 20 years, nine of them as a manager.

The inquiry interviewed all four individuals and found no evidence, and was given no impression, that Robertson intimidated or manipulated his two probation officers or other staff supervising him. The records show a constant awareness of attempts by Robertson to influence officers.

4.1.8 Monitoring conditions of release

The Parole Board set nine standard and 13 special conditions of release (see appendix C). In the inquiry's view, Corrections' management of some, but not all, of those conditions warrants discussion in this report. Excluded are those that in practice required no management on Corrections' part. One condition, for example, required Robertson to obtain his probation officer's approval before joining community or sporting clubs or groups. He showed no interest in such activities. Another required him to avoid former victims. Again, he showed no knowledge of, or interest in, his previous victims.

4.1.9 Special condition: psychological assessment

A special condition of his release required Robertson to attend a psychological assessment and complete any treatment or counselling recommended by the psychologist to the satisfaction of the probation officer and treatment provider. Records show the probation officer initiated a referral on 17 December 2013 to Corrections' psychological services for an assessment. The officer followed standard procedure, completing the referral form and sending it to his service manager to assess against priority criteria. Robertson met the criteria because he had a high static risk score, had a sex offence conviction, had not taken part in treatment while in prison, was unsuited to group work, and was required by the Parole Board to attend an assessment.[49]

The community psychologist told the inquiry the referral came through on 5 February 2014 – the same day the psychologist, in an email to the probation officer, declined the referral because Robertson was in custody for breaching a release condition.
The email to the probation officer added: "Should he be released, please re-refer."

On 28 February 2014, after Robertson's release from prison on 26 February for the Kauri Park breach, the North Shore service manager again referred Robertson to Corrections' psychological services for an assessment. That same day, the community psychologist sought clarification about the purpose of the referral because the stated reasons for the assessment were very general. These were shown on the referral form as "Risk of Violence, Risk of Sexual Offending, Risk of Domestic Violence (against partner), Safety planning, Case management". The section on "offender details" included the following: "Previous Violence, Domestic Violence, Special Condition, Previous Psych involvement."

The form's contents did not make clear to the psychologist that the referral was a Parole Board-imposed condition of Robertson's release. That was suggested by the words "Special Condition" included in the section on the offender's details.
The psychologist replied: "In order for me to provide you with the most appropriate support/advice on risk management, it would be useful to have some more information about your current concerns related to risk. I note none are raised in the referral."

49. According to Corrections' draft business rules for referral to psychological services.

The psychologist added that the probation officer should assess Robertson for the risk of further child sex offending using specialist assessment tools (described in *Risk Assessments* above). The psychologists offered to help prepare the officer to interview Robertson for this purpose and to review the results. The officer did not take up the offer or complete all the risk assessment tools. He said he did not feel especially confident about applying these tools, or about his ability to elicit information from Robertson on his sexual deviancy, especially since he denied any deviancy.

The psychologist told the inquiry "further assessment and treatment was not considered a suitable option at this stage, given Mr Robertson's denial with regard to his sexual offending and the responsivity barriers present that would hinder any engagement. The risk assessment detailed in the existing Extended Supervision Health Assessment [completed in June 2013, four months before the Parole Board set release conditions] was considered to remain valid".

The psychologist also told the inquiry of co-operation with the s 6(c) psychologist who completed the assessment for the extended supervision order and helped probation staff develop the special conditions for that order.

Both psychologists considered that another psychological assessment was neither necessary nor of any benefit in determining Robertson's risk of reoffending or causing harm in the community. Both also regarded him as not amenable to treatment.[50]

Robertson did not have an assessment before his arrest on 27 May 2014, and nor, in the inquiry's view, was it likely one would have taken place by the time his release conditions expired.

Separately, Corrections had set another process in motion to develop and gain Parole Board approval for the special conditions of Robertson's extended supervision order, which the High Court had made on 19 February 2014 and which was due to come into effect on 15 June. The Parole Board was scheduled to consider these conditions at a meeting in June.

Robertson's probation officer completed a report, dated 4 April, for the Parole Board recommending a series of special conditions. The psychologist s 6(c) who had assessed Robertson in June 2013 wrote a separate report to the board. Dated 14 April 2014 and based on the assessment a year earlier, it examined Robertson's risk of reoffending, and the appropriateness of the proposed special conditions. The probation officer was still under the belief that Robertson would be assessed by a psychologist, as required by his existing release conditions, because he added in his report: "Robertson remains waitlisted to be assessed by a Department of Corrections psychologist." Neither report recommended a psychological assessment of Robertson or any psychological treatment as a special condition of the extended supervision order.

The inquiry does not consider a psychological assessment after Robertson's release would have uncovered any risks not previously identified in the June 2013 assessment. Nor does the inquiry believe Robertson would have been any more inclined to participate in treatment after such an assessment because of his well-established intractability.

50. The inquiry has not sought Robertson's full psychological treatment files. This is to ensure offenders do not decline to work with psychologists because of fears the confidentiality provisions of the Health Privacy Code may not be upheld.

Even so, the Parole Board had imposed such a condition, the North Shore service manager had twice made a referral, in conformity with priority criteria, so the psychologists should have made their views and intentions known to probation staff in a more direct manner. They could have clearly communicated their view at two points: either when the community psychologist had decided to provide help via Robertson's probation officer in February 2014, and certainly by early April 2014 when the s 6(c) psychologist wrote the report on the extended supervision order release conditions. As a result, Corrections made no application to the Parole Board to remove the condition.

4.1.10 Special condition: alcohol and drug treatment

Robertson was required to attend and complete an alcohol and drug treatment programme to the satisfaction of his probation officer and programme provider.

During his eight-year term, Robertson had been tested seven times for drug and alcohol use, returning a negative result every time. But in a 2005 pre-sentence report for his child sex offence, Robertson told a probation officer he had been a cannabis user since 15. He said he had stopped, but his mother is recorded in the report as disputing this assertion, describing him as a heavy user. He had not completed any drug or alcohol treatment in prison and might resume his drug use after release. Against this background, the Parole Board approved the condition.

His probation officer referred him to the Community Alcohol and Drug Service on 13 January 2014 for an assessment. The agency scheduled an appointment for 23 January. Robertson arrived for his appointment, but the time slot, through an administrative error, had been allocated to another offender. His arrest over the Kauri Park breach delayed his next appointment until 24 March. Robertson attended that appointment, but the counsellor stopped the session after Robertson became confrontational when told he would have to take part in a programme. Probation staff, after talking to the counsellor, instructed Robertson to attend or face a charge of breach of a special condition. Robertson attended an assessment on 3 April and agreed to complete an eight-week programme that encouraged abstinence. He attended the first session on 15 April, followed by another four, before his arrest on 27 May.

A review of records, together with interviews of Robertson's probation officers and the service manager, established that Corrections monitored Robertson for any sign of drug or alcohol use as closely as possible. Both psychological assessment reports, as well as reports probation officers completed for the Parole Board, said substance use was likely to contribute to reoffending. At every contact, probation staff assessed him for signs that he was under the influence of drugs or alcohol. They also looked for drug paraphernalia or alcohol consumption whenever they visited his address, which was often at short notice. No signs of consumption were ever found, and assessments and case notes consistently record that he denied any use.

At his murder trial in the High Court at Auckland in 2015, Robertson told the court he was under the influence of methamphetamine when, on his way to buy drugs, he ran down Mrs Gotingco.

A Bill is before Parliament that would allow compulsory testing of high-risk, community-based offenders for drug and alcohol use, and probation and police officers who spoke to the inquiry welcomed this proposal as a significant advance towards detecting and preventing drug and alcohol use.[51]

In summary, probation staff did everything necessary to enforce this special condition, and Robertson, until his arrest and despite his evidence in the High Court to the contrary, appeared to have complied.

4.1.11 Special condition: live at approved address

On 31 December 2013, PARS was notified that there had been complaints about people smoking on Robertson's balcony and dropping cigarette butts on to vehicles below. It was also discovered that unauthorised people had visited the unit, in breach of the tenancy agreement.

PARS ended his occupancy with immediate effect. Robertson's probation officer conveyed the news to him by phone. That afternoon, the service manager of Corrections' North Shore office received news of the eviction and rang Robertson, who admitted his cousin had stayed in his unit overnight. After consulting the district manager, the service manager decided to seek Robertson's immediate arrest. The decision was recorded in case notes as follows:

> The offender has failed to comply with the rules of PARS and has been evicted from the only approved address. This is seen as non-compliance and action needs to be taken to hold him to account and bring him into compliance … Breach action appears to be the most appropriate response and given his assessed risk and need to have him at an approved address an arrest without warrant is appropriate.

The service manager phoned Police to request his arrest. The same day probation staff filed a charge in North Shore District Court of breaching a release licence condition to live at an address approved by a probation officer and not move from there without written approval.[52] Aided by electronic monitoring data from Corrections, Police arrested Robertson at 7.35pm on the same day.

Police officers described the request to arrest an offender for being evicted from his accommodation as unusual. One officer called the service manager to confirm the request. The manager was adamant it was the appropriate response because of Robertson's risk of reoffending and causing serious harm. The officer spoke to the inquiry of the service manager's "tenacity" in insisting on Robertson's arrest.

Robertson appeared in court the following day, 1 January 2014. Probation staff formally opposed bail. Robertson was remanded in custody until 6 January. At that hearing, Robertson pleaded guilty. Corrections recommended community detention because officers believed it would ensure reliable coverage for electronic monitoring, one of his release conditions. Probation staff considered the time Robertson had spent in custody to be an appropriate custodial penalty. Robertson was sentenced to six months' community detention. He was to live at the Birkdale address and to abide by a curfew of 8pm until 6am.

The inquiry finds that probation staff responded in a timely, appropriate and decisive manner over Robertson's eviction.

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51. The Drug and Alcohol Testing of Community-based Offenders and Bailees Bill had its first reading on 26 February 2015.
52. The maximum penalty for breach of release conditions is 12 months' imprisonment

4.1.12 Special conditions: avoid exclusion zones and carry mobile phone

On 27 January 2014, Robertson entered Kauri Park, an exclusion zone near his Birkdale address (see 4.3.2 for more on exclusion zones). Corrections acted promptly and within the hour, using electronic monitoring data, he was in custody. The following day in North Shore District Court, he faced two charges of breaching the conditions of his release by entering an exclusion zone and by failing to carry or answer the mobile phone he was required to carry. Corrections recommended imprisonment on these breaches.

When Robertson was in court the next day, his lawyer disputed that Robertson had entered the park, saying Robertson had been waiting with his girlfriend outside a house on the street, not in the park. He also said Robertson had notified Corrections that his mobile phone had stopped working after falling into water, and that he had called a probation officer, and also gone to a probation centre, to let Corrections know about the fault.

The judge directed Corrections to provide a response to these points and remanded Robertson in custody. In a written response dated 2 February, Corrections said it had consulted an expert on the reliability of electronic monitoring data gathered by global positioning system (GPS) technology. The expert said the GPS data pinpointed Robertson moving within the park boundary. Corrections said it couldn't test whether the mobile phone was damaged because Police held it. Corrections confirmed Robertson had left a voicemail with a probation officer on 27 January saying his mobile phone was damaged. Corrections also used GPS data to establish that he was on a road where a probation centre was located, but the office was shut because it was Auckland Anniversary Day.

When Robertson appeared in court on 5 February, he pleaded not guilty. A date for a defended hearing was set down for 13 March. His lawyer made an application for bail. The judge noted that the High Court would hear an application for an extended supervision order in a week's time and that Robertson was considered a risk to children. For this reason, and because the breach matter was unresolved, the judge would not allow Robertson to be bailed to his Birkdale address, and remanded him in custody. Probation case notes record that when bail was denied, Robertson lost his temper and yelled obscenities at the judge, continuing to do so as he was taken away.

After five weeks in custody, Robertson appeared in North Shore District Court on 25 February and pleaded guilty to one charge. In sentencing him to two months' imprisonment, the judge noted Robertson's abusive behaviour and said he considered him a substantial danger to the community, given the offending for which he had only recently been released from prison. However, he also noted that Robertson was subject to electronic monitoring and that the High Court had recently imposed an extended supervision order. He said:

> In light of the fact that you are going to be closely monitored on this occasion, I am simply going to impose a sentence that you having pleaded guilty and waived your right to a pre-sentence report, to two months imprisonment, which will mean your almost immediate release. But let there be no doubt about it Mr Robertson, you effectively have got big brother looking at you over your shoulder and he will continue to do that for a very substantial period of time. If further alarm bells start ringing you can simply expect to have substantial prison sentences imposed upon you in the future. Simply because the protection of the public, and in particular children, must be of paramount importance. So what is best for you is no longer a substantial criterion. What is best for the community is what counts from now on.[53]

53. Sentencing notes of Judge Wade dated 25 February 2014.

Because of time already served, including time in custody on remand, Robertson was released the following day.

Corrections and Police were later criticised for having failed to consider Robertson's risk to the community and respond quickly. But the inquiry considers that every time Corrections had evidence of a breach, it sought his immediate arrest, opposed bail and provided the courts with comprehensive information about Robertson, including his offence history and high-risk assessment. For their part, Police also responded in a rapid and co-ordinated way.

It is not for an inquiry to comment on sentencing decisions by the courts, but it notes that the maximum sanction available to the courts for a breach of release conditions is 12 months' imprisonment, and further that the courts are able to take account of future risk of offending only in limited circumstances (such as when considering preventive detention).

4.1.13 Whether to impose a vehicle restriction

One recommendation in the intelligence profile on Robertson was that he should not own or drive a vehicle without his probation officer's approval (see discussion on the centre for impact on sexual offending at 3.5). The centre recommended Corrections consider applying to the Parole Board to impose this as a special condition. The profile containing the recommendation was completed on 4 December 2013, which was a week before Robertson's release.

The Corrections s 6(c) advisor involved in preparing the profile at the centre told the inquiry that a review of Robertson's offending in 2005, when he used his vehicle to approach a young girl and abduct her in it, meant the centre "was concern[ed] that he could do the same in future". Robertson approached the girl outside school hours and in a public place while she was not under direct parental supervision. The day before, Robertson had used his vehicle to approach two boys. They, too, were in a public place outside school hours and not under direct parental supervision.

The profile with its vehicle recommendation (one of nine in the document) was sent to a range of people in Corrections and Police, but the decision on whether to seek a new condition from the Parole Board fell to the probation officer, service manager and high-risk advisor responsible for Robertson. The service manager said that, after a lengthy discussion, the three concluded it would be "okay for him to have his own car and get from A to B, rather than hopping on a bus, getting used to the route, getting used to people, the same people taking the route and him … grooming potential victims".

The s 6(c) advisor told the inquiry that in discussing the pros and cons of the recommendation, they "felt that if we could have appropriate conditions that limited his access to victims, that him not having a vehicle, especially because we didn't know where he was going to be living, it may have been that he was living in a rural area [where] he needed a vehicle to get to services and counselling and reporting – that that would have been isolating so it was a balancing-type discussion".

The advisor went on: "When I reflect back on the circumstances leading up to the tragedy, without the benefit of hindsight, I still would not have recommended that condition be imposed because at the time I felt that what would be gained from it actually didn't outweigh what we were taking away or the different risk that we were creating."

The service manager said of the discussion: “We did not feel that restricting him from a vehicle would have actually mitigated his risk. In fact, it may have actually escalated his risk by isolating him, especially from supports that he has down in [Waikato].”

The service manager and probation officer both told the inquiry they felt a better alternative was to monitor his movements using GPS data, s 6(c) exclusion zones s 6(c) advise Police of his car’s registration number and remind Robertson that, as a learner driver, he had to be accompanied by a registered driver. Case notes and police records confirm these statements.

There were, therefore, two diametrically opposed views: one, that Robertson had a criminal history that included the use of a vehicle to commit child sex offending and should not have access to a vehicle; the other, that forcing him to use public transport might increase the risk of reoffending by giving him opportunities to be around young children.

The inquiry’s view is that there were sound grounds for both positions, and further that the three officers properly considered the question and had substantive grounds for arriving at their decision.

It should be recorded that Corrections’ s 6(c) psychologist and the community psychologist both subsequently told the inquiry that denying Robertson access to a vehicle would not have lessened his risk of reoffending. The view of the s 6(c) psychologist, who had assessed Robertson s 6(c) before his release, was that if Robertson were sexually preoccupied, under the influence of substances and “engaging in anti-social thinking”, his lack of access to a car “would not have stopped him”.

The psychologist went on: “I don’t think the [vehicle restriction condition] would have been protective … [what] we also know about sexual offenders is that potentially isolating them raises their risk of recidivism, potentially, say, if Mr Robertson had got a job and he couldn’t keep [it because he had no car] – I would prioritise him working and having a routine, you know Monday to Friday eight to five, and if he needed a car to drive to that job I think that would have been protective.”

The centre’s profiles, as already noted, need to be timely to be of use in setting release conditions. Late supplementary conditions like the one proposed here tie up staff time unnecessarily and do not contribute to an efficient outcome. It is obviously preferable that all proposed conditions go up for consideration as one. This also ensures everyone who needs to know about an offender’s proposed release conditions does know about them.

Corrections’ rejection of this recommendation raises the question of whether it should notify the Parole Board when it decides against putting forward a release condition for its consideration. Corrections looks at a large and wide-ranging number of conditions. To advise the board of those it did not consider worthwhile would probably result in needless administrative work and add little of value to the board’s decision-making. But recommendations by an expert group such as the centre are a different matter. In the inquiry’s view, the board should be given the opportunity to decide whether it accepts Corrections’ grounds for rejecting such recommendations.

4.1.14 Findings

Robertson's management after his release exceeded the mandatory standards. His management was careful, responsive and based on assessed risk. The level of management oversight, the frequency of reporting, the attention to electronic monitoring information, the active liaison with Police, and the responses to non-compliance were in accordance with policy and standards, purposeful and timely.

The inquiry could find no instance of Corrections in practice treating, or responding to, Robertson as other than a high-risk offender.

In reviewing the practice standards and the evidence from records and interviews, the inquiry confirms the chief probation officer's view that the decision to lower Robertson's banner risk classification to medium was mistaken, but in practice did not weaken the level or quality of management he received.

Elements of his case management could have been done better, in particular the outstanding special condition to attend a psychological assessment. Some decisions could have been recorded more fully, such as lowering his banner risk to medium. Risk instruments specific to child sex offenders should have been applied while Robertson was in the community. None of these actions materially affected the standard of his management.

In the weeks leading up to Mrs Gotingco's murder, Robertson had been reporting as directed, attending his alcohol and drug counselling sessions as directed, living at his address as directed, complying with his curfew as directed, and keeping out of exclusion zones as directed. In those final weeks, he was also behaving correctly towards his probation officer. Throughout, he had the support of family members.

4.1.15 Recommendations

Corrections should seek the advice of its psychologists before recommending any special condition to the Parole Board that involves a psychological assessment or treatment.

Corrections should advise the Parole Board of any special condition suggested by the centre for impact on sexual offending, but declined by Corrections, and the reasons for declining it.

Corrections should apply in a timely manner to the Parole Board for a variation to, or discharge of, any special condition it considers inappropriate or unable to fulfil.

Corrections should manage offenders who are released on conditions and who are also the subject of an extended supervision order application to the highest management standard.

Corrections should offer probation staff more frequent refresher training in managing high-risk sex offenders, including in the use of relevant risk assessment tools.

Corrections should increase investment in motivational interviewing skills for all prison and probation officers and for others who work directly with offenders.

Corrections should consider expanding the role of high-risk advisors to include providing day-to-day advice and support to probation officers.

4.2 Corrections and Police liaison

Auckland Prison advised Police of Robertson's impending release through meetings (previously mentioned) at which Police and Corrections representatives discuss high-risk offenders approaching release.

On 3 December 2013, Corrections notified Police of his possible release to the Birkdale apartment on the North Shore. The notification went to the Waitemata district's intelligence section. A member of that section took steps to:

- obtain the name of the supervising probation officer
- contact the probation officer to request any update if release plans changed
- confirm Robertson was marked as a high-risk offender in the police intelligence system
- obtain a summary on Robertson in the system.

On 4 December, Waitemata district circulated a daily assessment to all staff that included information on Robertson's impending release.

On 9 December, a detective sergeant in Waitemata CIB was delegated responsibility for Robertson. He collated information on Robertson (including the profile from the centre for impact on sexual offending) and visited proposed addresses.

When Robertson moved temporarily to Waikato, Corrections liaised with Police there.

On 12 December, the detective sergeant created a file on Robertson's release in the national intelligence system to ensure any other officer could read information about Robertson and would see immediately he was the first point of contact, and also to ensure case notes were immediately available to his replacement in the event he was transferred.[54]

Also on this day, the detective sergeant contacted the North Shore service manager to advise him he was the liaison person for Police on Robertson. When told Robertson was temporarily in Waikato with relatives and would soon return to Auckland to move into a PARS unit, the detective sergeant briefed the intelligence units in Waikato and Auckland central about Robertson's planned movements.

The detective sergeant arrested Robertson after his eviction from PARS accommodation. He subsequently organised a weekend duty police officer to visit Robertson at his Birkdale apartment on 10 March 2014 and himself visited Robertson on 24 March.

The detective sergeant told the inquiry he had frequent contact with probation staff responsible for supervising Robertson about his release, accommodation, vehicles, possible involvement in new offences and suspected breaches of conditions. This was confirmed by the staff members and also by file notes the detective sergeant kept. It all points to regular and meaningful liaison between the detective sergeant and probation staff. The detective sergeant also made sure another member of his team was responsible for Robertson's file while he was on leave.

54. As a result, the detective sergeant was notified when Robertson was stopped for speeding while in Waikato.

The detective sergeant was not involved in the investigation into Mrs Gotingco's disappearance, but, given his previous interactions with Robertson and knowledge of his residence, he executed the search warrant and arrest of Robertson on 27 May.

Waitemata staff told the inquiry information on high-risk offenders that went between police intelligence and police frontline staff now goes via the district's CIB manager. This ensures a senior officer is aware of current information about such offenders and can integrate that knowledge into criminal investigations.

4.2.1 Findings

Corrections and Police exchanged information about Robertson in a timely and effective way before and after his release.

Police made good arrangements to help Corrections monitor Robertson and respond to incidents. Police responded quickly when required.

Police's early decision to assign Robertson's file to Waitemata district was effective in maintaining continuity of involvement, even when Robertson was living out of the district.

Waitemata district Corrections and Police worked well together to manage Robertson, other than in matters relating to notification.

4.3 Electronic monitoring

4.3.1 Introduction

Corrections is responsible for the electronic monitoring of offenders released from prison on parole or subject to orders such as community detention or extended supervision. The Parole Board has the power under the Parole Act 2002 to impose electronic monitoring. Its purpose is to deter offenders from breaching conditions that relate to their whereabouts, and to monitor compliance with those conditions.

Conditions relating to an offender's whereabouts (referred to as whereabouts restrictions) include limitations on movement such as a requirement to remain at a place (a residence or workplace) during certain hours, or to stay away from a place (a victim's property) or class of places (schools and early childhood centres).

Monitoring extends to offenders on temporary release from prison (for example, to work) and people subject to electronically monitored bail. The ability to detect non-compliance with restrictions on movement – and subsequently deter such behaviour – helps ensure public safety. Corrections regards electronic monitoring as one tool among many to manage offenders. Others include risk assessments and rehabilitation, employment and education programmes.

Despite contrary views expressed to the inquiry, international studies confirm the effectiveness of electronic monitoring in reducing parole and release condition breaches and reoffending. Corrections' departmental disclosure statement for the Electronic Monitoring of Offenders Legislation Bill 2015 refers to studies about its

effectiveness.[55] An investment brief by Corrections, the Ministry of Justice and Police also refers to studies about its effectiveness.[56]

4.3.2 Technologies

Electronic monitoring can use radio frequency (RF) technology or global positioning satellite (GPS) technology. Both were used to monitor Robertson.

RF technology is suited to monitoring offenders who are not allowed to move beyond their residential property boundary. A tracking device worn by an offender transmits data by radio waves to a base unit installed in the property. The base unit sends data via a mobile phone network to Corrections' monitoring system, which receives an alert if an offender crosses the boundary. A landline is used if mobile network coverage is poor. This technology is mainly used for offenders subject to home detention or community detention.

GPS technology links an offender's tracking device to a network of satellites to calculate his or her location. s 6(c)

s 6(c) where mobile network signal strength is poor, s 6(c)

orrections will not agree to an offender living at the address – a situation that arose with Robertson, as discussed below.

As a GPS-monitored offender moves about, his or her movements show up to monitoring staff as a series of reference points on a digital map or satellite view of the earth. The technology can programme in "exclusion zones" that are off limits to an offender, as well as "inclusion zones" (for example, a workplace or residence) where an offender must remain during certain times. If an offender enters an exclusion zone, or leaves an inclusion zone, the system creates an alert, either in the form of a warning on a monitoring centre operator's screen, or a text message sent to a probation officer. Alerts are also generated if the tracking device is tampered with or stops communicating with the monitoring system, or if the device's battery runs low.

s 6(c)

55. Bulman, P. (2013) Sex Offenders Monitored by GPS Found to Commit Fewer Crimes. National Institute of Justice Journal. Issue no. 271, February 2013. Retrieved from: https://ncjrs.gov/pdffiles1/nij/240700.pdf

    Centre for Criminology and Public Policy Research (Florida State University). (January 2010). A Quantitative and Qualitative Assessment of Electronic Monitoring. Retrieved from: http://www.criminologycenter.fsu.edu/p/pdf/EM%20Evaluation%20Final%20Report%20for%20NIJ.pdf

    Geoghegan, R. (2012). Future of Corrections: Exploring the use of electronic monitoring. Policy Exchange: London, United Kingdom. Retrieved from: http://www.policyexchange.org.uk/images/publications/future%20of%20corrections.pdf

    Padgett, K. G., Bales, W. D. and Blomberg, T. G. (2006). Under surveillance: an empirical test of the effectiveness and consequences of electronic monitoring, Criminology and Public Policy, 5(1), pp 61-92

    Renzema, M and Mayo-Wilson, E. (2005). Can electronic monitoring reduce crime for moderate to high-risk offenders? Springer: Journal of Experimental Criminology (2005). pp 215-327. Retrieved from: http://correcttechllc.com/articles/14.pdf

56. Renzema, M. (2013). Evaluative research on electronic monitoring, in M. Nellis, K. Beyens & D. Kaminski (eds). Electronically Monitored Punishment: International and Critical Perspectives. New York: Routledge.

    Roman, J., Liberman, A., Taxy, S. & Downey, P. (2012). The Costs and Benefits of Electronic Monitoring for Washington, D.C. Washington: Urban Institute.

s 6(c)

4.3.3 Responding to alerts

At the time of Robertson's release and arrest in May 2014, a monitoring team at Corrections' national office in Wellington kept watch on about 200 offenders using GPS technology. When the team received alerts, it would, if necessary, contact contracted security officers, probation staff and/or police officers to respond. The team also made decisions about when to escalate an alert to an arrest. (In February 2015, 3M became responsible for this monitoring service. GPS monitoring technology has since the time of Robertson's arrest been extended to about 2,200 offenders, three-quarters of whom are on home detention and were previously monitored with RF technology.)

The inquiry found that, at the time of Robertson's release, Corrections had clearly defined processes and procedures detailing what should happen, when and by whom for all types of electronic monitoring incidents – including for when an electronic tracking device gave off an alert. Corrections staff would determine the response to incidents depending on the type of incident (a tamper alert, for example, compared with an alert that the wearer had entered an exclusion zone) and escalation points for different types of incidents (for example, requesting that Police arrest an individual). The inquiry saw first-hand how monitoring staff put these procedures into effect.

Monitoring centre staff and a dedicated electronic monitoring team at Corrections' national office had access to real-time data. Probation officers received daily reports on the movements of offenders under their supervision, which staff would usually review weekly, looking at where offenders had been and confirming compliance with any special conditions. Probation staff could contact the monitoring team for real-time information on an offender's movements, for interpretation of data, and for more detailed information than was available in daily reports.

The chief probation officer told the inquiry he did not encourage probation officers to track offenders' movements in real time because it duplicated the monitoring centre's work and took them away from their main tasks of managing offenders' compliance with release conditions and planning and overseeing rehabilitation and reintegration work.[57]

4.3.4 Robertson's electronic monitoring

Robertson's release conditions included a prohibition on entering any school, playground, park, reserve or place where children were likely to congregate, and also an 8pm-to-6am home curfew.[58]

On 9 December 2013, two days before Robertson's release, Corrections' national office monitoring team advised probation staff that his proposed address in Birkdale, did not receive sufficient mobile network signal strength to allow use of GPS monitoring. Robertson could not live there. The team said a proposed address for Robertson in Waikato had a weak-to-medium signal strength and would be suitable for GPS monitoring, but only on a temporary basis.

57. Probation staff now have direct access to monitoring system data rather than having to phone the monitoring centre, so that they can view offender movements on any day, including same-day information.
58. "Not to enter any school, playground, park/reserve or place where children are likely to congregate, unless under the direct supervision of an adult approved in writing by your Probation Officer. Not to stay away over night, between the hours of 8:00pm and 6:00am, from your residence without prior written approval of a Probation Officer."

Corrections decided to release Robertson to the Waikato address until a unit became available at PARS accommodation in the Auckland CBD (where signal strength was sufficient for GPS monitoring). A GPS monitoring device was fitted at Auckland Prison and Robertson travelled to Waikato. GPS monitoring equipment was installed at the address and he was shown how to charge the tracking device. Corrections programmed s 6(c) exclusion zones into the system for the period up to 17 December. On that day, he moved to the PARS accommodation, which was already approved for GPS monitoring. Exclusion zones were programmed in on 16 December.

4.3.5 RF monitoring in Birkdale

After his eviction from PARS for breaching accommodation rules, Robertson was sentenced to six months' community detention. Corrections told the inquiry that probation staff requested a community detention sentence because they thought this would allow them to use RF monitoring equipment (connected to a landline) at the Birkdale address. A combination of GPS monitoring and landline-connected RF monitoring would enable reliable and complete coverage.

After Robertson moved in on 6 January 2014, Corrections found the mobile network signal strength was, in fact, sufficient for GPS monitoring alone. The inquiry was told it was not unusual for mobile networks' coverage strength to vary. The extra RF monitoring equipment was not installed. There was one blind spot – Robertson's garage. Corrections told the inquiry this did not in reality compromise its ability to tell whether Robertson was at home because movement data before and after Robertson entered the garage allowed monitoring staff to deduce when he was in it.

On 10 January 2014, Corrections' North Shore service manager reviewed Robertson's movement reports for 8, 9 and 10 January and noted nothing untoward. s 6(c)

4.3.6 First Kauri Park alert

On 16 January 2014, the monitoring system received an alert that Robertson had entered an exclusion zone, Kauri Park, a hillside area of native bush a short distance from his home. The probation officer who received an automated text alert recorded:

> Received a text alert stating offender has breached zone "Kauri Park" at 16:18. Spoke with [a staff member at the monitoring centre] and he informed [the probation officer] that it appears that offender is on his way home and the signal may have "drifted" however he is going to keep an eye on the offender to ensure he is heading home.
>
> Made contact with offender on his Dept issued mobile and asked him what his location was, stated that he was waiting for his mother in the street, informed offender [that I had] received an alert which [would] suggest [he is] close/near to a park and directed him to return home, he obliged.

The above note suggests a belief that Robertson had probably not entered the park.

4.3.7 Second Kauri Park alert

At 5.15pm on 27 January 2014, the monitoring system received another alert that Robertson had entered the park. Monitoring centre staff tried several times to

contact Robertson on his mobile phone, issued by Corrections just for this purpose.[59] Robertson did not answer as required. This time, GPS movement data showed him well inside the park where he remained for about 30 minutes. The after-hours duty probation officer contacted Police and requested that they arrest him, which they duly did at 6pm, 15 minutes later.

The after-hours probation officer wrote that evening:

> Decision to escalate non-compliance to Police on the grounds that Tony has failed to comply with 2 special conditions of his Parole [*sic*] thus increasing his risk of re-offending and increasing risk to the community. Tony has failed to answer his mobile phone, thus breaching his special condition which requires him to carry and keep charged his mobile phone for the purpose of communicating with Probation officer. Tony has also entered the exclusion zone of Kauri Park, thus breaching his special condition not to enter any school, playground, park/reserve or place where children are likely to congregate. Taking in to account both instances of non-compliance in addition to Tony's previous offending history, the risk Tony poses to the community during this time is significantly increased. Therefore, Police notification deemed necessary.

Robertson was remanded in custody and prosecuted for two breaches of his release conditions, for which he received a two-month prison sentence.

4.3.8 Victoria Park and tamper alert

On 9 March 2014, monitoring centre staff received an alert that Robertson had entered another exclusion zone, Victoria Park in central Auckland. Another alert on the same day indicated Robertson had removed his tracking device. His probation officer contacted the centre and was told:

> The strap removal was investigated and that no follow up action was required as this took less than half a second and there's no way he will be able to remove and fit strap in the amount of time so must have knocked it on something. With regards to the breached zone, it appears that he was on the motorway driving past the zone.
> – [No further action] required.

The probation officer said he investigated the alerts because of Robertson's high risk of reoffending.

In summary, Corrections considered only one of the four alerts to have constituted a breach.

4.3.9 Robertson eliminated as suspect over approach to a child

On 26 March 2014, Police contacted probation staff as part of their search for a suspect over an approach to a young girl on the North Shore. Staff reviewed Robertson's GPS movement records and advised that Robertson was not in the area at the time of the incident.

4.3.10 Robertson confirmed as suspect over Mrs Gotingco's disappearance

On the afternoon of 26 May 2014, a police officer investigating the disappearance of Mrs Gotingco two days earlier called Corrections' North Shore service manager, who was also the manager of Robertson's probation officer. The police officer was the

59. Corrections gives electronically monitored offenders a mobile phone they must carry at all times and answer if contacted by staff. Corrections will ring, for example, when an alert shows an offender is in or near an exclusion zone and instruct him or her to move away.

same person who had contacted the service manager over the approach to the child in March. The police officer had thought of Robertson because he was a high-risk offender living in the area where Mrs Gotingco had disappeared. He wanted to know if GPS information could again help Police rule out Robertson as a suspect.

The service manager contacted the GPS monitoring team in Wellington and called back with details of nine locations Robertson had been at between 4.54pm and 8.11pm on 24 May, the day of Mrs Gotingco's disappearance. Based on this information, Robertson could not be excluded, he said. However, he added that the information consisted of snapshots only, and he would call back the GPS monitoring team in Wellington for comprehensive information.

The duty officer in Wellington confirmed Robertson had been in the street Mrs Gotingco had gone missing from, and also that he had been there about the time she disappeared. The monitoring team emailed more information to the service manager, who forwarded it to the police officer.

Just before 6pm, the police officer called the GPS monitoring team's supervisor, who confirmed Robertson had been in the street from which Mrs Gotingco went missing numerous times on the evening of 24 May, including about the time of her disappearance. The monitoring team emailed another batch of information to the police officer, including maps of where Robertson had been on 24 and 25 May.

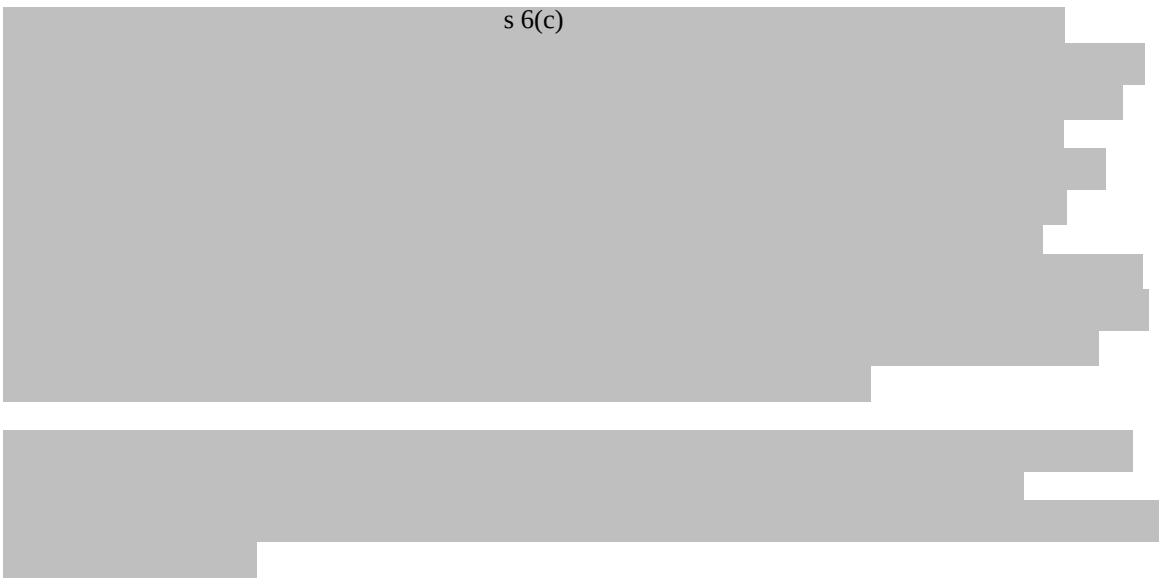
Examining the maps, the police officer found that Robertson had spent considerable time in Eskdale Cemetery on the morning of 25 May, beginning very soon after his curfew ended at 6am.

GPS data of Robertson's movements led police to a bush-covered area adjoining the cemetery where they found Mrs Gotingco's body.

A senior officer involved in the investigation told the inquiry he considered the investigation was unusual because of the serious nature of the offending and the speed of an arrest. He attributed the latter to the availability of GPS data and strong co-operation between Corrections and Police.

4.3.11 s 6(c) *Robertson's GPS monitoring*

s 6(c)



4.3.12 Sharing data with Police

In court, Robertson objected to the admissibility of the GPS data Corrections gave to Police, arguing Police had no search warrant to obtain the information and therefore Corrections had no authority to release it. But the High Court at Auckland found Police did not act unlawfully in obtaining the GPS data. On this and other grounds, the court found the GPS data was admissible as evidence. In considering the application of information privacy principles under the Privacy Act 1993, Justice Winkelmann said:

> The disclosure of the information was necessary for the detection, investigation and prevention of an offence. The situation may have been different if the Police were not dealing with such an urgent situation. I expressly leave open the possibility that in some cases it may be unreasonable for the Police to rely on [an information privacy principle] exception to obtain private information. In some circumstances it may be that proceeding to obtain the information in this way without a warrant is not necessary to avoid prejudice to the maintenance of the law. Those may be circumstances where there is not the same degree of urgency in obtaining the information.[60]

The Court of Appeal dismissed a further challenge by Robertson to this decision.[61]

Police told the inquiry they were concerned the above position of the courts created uncertainty about their access to electronic monitoring data, and suggested the law might need amending to remove this ambiguity.

4.3.13 Police entry to premises in response to alerts

As previously explained, the inquiry has extended its considerations to include the removal of a tracking device by child sex offender Daniel Livingstone on 6 August 2015. Police were concerned that, in responding to an alert indicating Livingstone had tampered with the device, their absence of a warrant to enter his property had inhibited their ability to respond rapidly to the alert. This situation came about because data showed the device had been tampered with and was still inside the property, but police officers had no way of knowing whether Livingstone was still there or had fled.

Police told the inquiry they must have reasonable grounds to suspect that either an offender was inside a property or the offender was unlawfully at large before they could enter without a warrant. In cases where Police cannot be reasonably certain of either possibility, the delay in obtaining a warrant has the potential to put public safety at risk.

Without wishing to analyse the legal position here, including the powers conferred under the Search and Surveillance Act 2012, the inquiry accepts that, in the absence of the occupier's consent, Police are currently unable to enter a property in such a situation without a warrant. The inquiry does not accept that this inhibits their ability to execute Corrections' requests to investigate alerts and, where necessary, arrest the individual concerned.

The inquiry notes that the Minister of Justice has asked the Law Commission to work with the Ministry of Justice to begin a statutory review of the operation of the Search and Surveillance Act 2012 this year. That process might be used to more fully explore this issue.

60. Quoting from Justice Winkelmann's decision of 15 April 2015.
61. The Court of Appeal's decision was issued on 13 May 2015.

Corrections can release electronic monitoring data to Police in the absence of a warrant if the release is necessary to avoid prejudice to the maintenance of the law. The courts have found Police should obtain a warrant to get this data if there is not the degree of urgency that existed when investigating Mrs Gotingco's disappearance. Police must often decide at short notice whether to conduct a search or make an arrest with or without a warrant.

4.3.14 Changes since Robertson's arrest

Since September 2015, Corrections has made changes to electronic monitoring procedures. Alerts from highest-risk offenders go from the 3M-operated monitoring centre straight to a new GPS response team operating round the clock at Corrections' national office. The team's purpose is to ensure alerts from these offenders receive high priority. There are currently about 170 such offenders. They are either subject to an extended supervision order, released from prison with an electronic monitoring condition or subject to home detention.

When an alert comes in, a team member will assume control of the response, advising the probation officer concerned of developments and the outcome. The probation officer remains responsible for follow-up action such as prosecution for breach of conditions.

The team checks on the movements of a small group of prioritised offenders throughout the day, ensuring a faster response if an offender's movements give cause for concer s 6(c) Previously, such a breach might have been picked up only at a weekly review of the offender's movements.

Corrections made changes after the Livingstone incident. In that case, the monitoring centre followed standard procedure and dispatched a contracted security officer, who checked the property and, failing to find him, called police officers who arrived an hour and 25 minutes later.

The monitoring centre now notifies the dedicated electronic monitoring team at Corrections' national office whenever a tamper alert goes off for offenders on release conditions, on parole conditions, on extended supervision orders or on other orders aimed at high-risk offenders. A team member then decides whether to notify Police, dispatch a security officer or both. When tamper alerts go off on other types of offenders, the monitoring centre dispatches a security officer, who will escalate the matter if unable to find the offender or tracking device.

4.3.15 Findings

Corrections did not place undue reliance on electronic monitoring, instead employing a range of measures to monitor Robertson's compliance with his release conditions and minimise his risk of child sex offending.

Corrections selected s 6(c) exclusion zones, and it monitored those zones effectively. Responses to potential or actual entry into those zones were quick.

Corrections' communication of electronic monitoring information to Police was efficient, as was its co-ordination with Police. Information so shared was ruled admissible by the courts.

GPS data was a key factor in leading searchers quickly to Mrs Gotingco's body, in justifying Robertson's arrest, and in securing his conviction.

Corrections is right to discourage probation officers from real-time monitoring of offenders' movements because this would distract them from their core tasks and would not greatly improve monitoring effectiveness.

The electronic monitoring system was, and is, effective for monitoring compliance by offenders with their whereabouts conditions.

Robertson's whereabouts were not in doubt during the hours before his arrest s 6(c) .

The expansion in 2015 of the monitoring functions of the Corrections national office team and changes to response procedures for device tamper alerts have provided additional assurance for offenders of greatest concern.

No gap exists in the law relating to Corrections' sharing of GPS information with Police, and as a result there is no pressing need for a law change over disclosure of electronic monitoring information to Police.

4.3.16 Recommendations

Police, the Ministry of Justice and, if necessary, the Privacy Commissioner should assess whether changes are needed to the way Corrections shares electronic monitoring data or whether a law change should be proposed.

Police and the Ministry of Justice should assess whether procedural and practice changes are needed to the way Police enter properties in response to tamper alerts and similar alerts or whether a law change should be proposed.

4.4 Notifying neighbours and schools

4.4.1 Introduction

The decision to notify people within a community that a child sex offender has moved into the area requires the balancing of three often competing considerations: people's wish to know who the individual is so they can take precautionary steps; the offender's right to privacy and the opportunity to make a fresh start in a community; and the authorities' wish to prevent such a notification leading to the identification of the individual, which could have unintended and possibly serious consequences.

Police guidelines observe that those consequences "can include violent reactions from communities, and the need to urgently remove individuals from a location in which their risks are being well managed to a location in which the individual has no existing support or supervision arrangements". Such an outcome, the guidelines go on, may diminish the risk to the immediate neighbourhood, but it "can significantly increase the risk to the wider community".

Corrections, like Police, has guidelines on what its senior staff should weigh up in deciding whether to notify neighbours, what information they can disclose and how widely they should go in the neighbourhood with their notification.

The inquiry found that these guidelines are not consistent, and in places are also unclear. As to how Corrections applied those guidelines at the three addresses where he lived after his release, it is evident the decision-making process either did not begin in the first place or was not followed right through to a conclusion. As a result, Corrections did not notify any neighbours at any of the addresses.

4.4.2 Corrections guidelines

The decision to notify rests with district managers. In making this decision, the guidelines say the district manager should rely on information from the local probation service manager and that they also involve treatment staff (such as psychologists) and local police officers in the decision. Discussions should include any considerations specific to the area or to the offender, any notification Corrections is planning, when that notification might take place and what involvement Police might have in a notification (such as an officer accompanying Corrections staff as they go from door to door). The guidelines say the presence of Police during notifications "is valuable and demonstrates a joint approach between Police and Corrections in contributing to community safety".

Offenders who may justify a notification are those who are either on parole, subject to preventive detention, subject to, or being considered for, extended supervision or subject to release on conditions and have been assessed as at high risk of reoffending.[62]

The guidelines say an offender's consent to notify neighbours is desirable but not necessary.

Neighbours deemed to be affected by the presence of an offender are those whose properties border the offender's address and those whose movements within their property could be seen by the offender. The guidelines say principals of nearby schools and preschools should be notified if an offender is considered to pose a risk to these children. In high-profile cases, the local mayor should be advised.

One district manager told the inquiry it was the exception rather than the rule to notify neighbours, and that in these few cases only immediate neighbours were usually advised. The inquiry could not establish how many notifications take place because decisions are at the discretion of each district manager and are not recorded centrally.

Corrections guidelines contain no guidance to probation officers on how to respond to Police-initiated requests to participate in notifications. Police guidelines, as noted below, require officers to consult an offender's probation officer.

The Inquiry heard that co-operation between Corrections and Police on notifications varied around the country.

4.4.3 Police guidelines

These relate to Police-initiated notifications. They give no guidance on how to respond to Corrections requests for Police involvement in Corrections notifications.

Police will consider notifying people about a Corrections offender if Corrections classifies the offender as high risk, and the offender is "serving a community-based

62. Such offenders have an ASRS score of three or more (see 3.4).

sentence, on parole or home detention or subject to extended supervision orders". Offenders subject to release conditions are not mentioned.

District commanders must approve notifications. Before deciding to seek a district commander's approval, officers must consult the offender's probation officer (in particular, about whether notification would jeopardise management of the offender's sentence or order), consult the district's legal team, consider a joint Police-Corrections notification and "strongly" consider seeking the offender's authority first. (Like the Corrections guidelines, however, there is no requirement to obtain an offender's consent.) Officers should consider joint notification with Corrections.

The guidelines contain no specific directions about who should be told an offender has moved into the neighbourhood. They simply say: "Talk directly to neighbours and community representatives in the area."

4.4.4 Release of information

Corrections' guidelines do not say what officers should tell neighbours, merely what they should not – namely, the offender's name, address, occupation, anything that might lead to those details becoming known, and any details of the individual's offending history.

It is apparent the guidelines are intended to avoid the release of "personal information" as defined under the Privacy Act 1993. The precise scope of "personal information" is an evolving area of law. Nonetheless, the guidelines appear to be framed on the basis that notification does, in fact, release personal information because they say that, in the absence of an offender's consent, a notification must be justified on Information Privacy Principle 11 exception (e)(i), which states "personal information may be disclosed if an agency believes on reasonable grounds that disclosure is necessary … to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences".

Police guidelines on the release of information about Corrections offenders contain the same constraints as those in Corrections' guidelines. They are concerned to protect the identity of individual offenders. It should be added that Police also have guidelines about the release of information on other types of offenders that are aimed precisely at identifying an individual. Publicising the name and photo of someone sought over an alleged offence is an obvious example of such guidelines in action.

4.4.5 Implementing notifications

District managers are responsible for implementing their decisions, although they can delegate this to a service manager. According to the guidelines, Corrections officers should tell neighbours face-to-face and as close as possible to the date of occupancy. In addition, the emphasis of their conversations should be on "keeping safe in the community" rather than on the offender's details. One officer described to the inquiry a typical interaction with neighbours:

> Generally, you knock on the door, you say, "Hi, I'm from Community Probation. I'm here to talk to you about keeping your children safe. At any given time there might be a high-risk offender living in your area, and there is a child sex offender who has recently moved into the area," or something like that, and you generally provide literature [on explaining "stranger danger" to children] as well as your card. Then you say, "if you see anything suspicious …" and almost immediately the first thing they ask is, "who is it?" and "where does he live?" and we can't tell them who it is or where they live. It's just not information we can share.

The inquiry heard that co-operation between Corrections and the Ministry of Education varied around the country. However, Corrections told the inquiry it very seldom informed school principals because it kept child sex offenders well away from schools in the first place. Offenders were never immediate neighbours, and rarely even close neighbours, and therefore the question of whether to advise principals rarely arose.

From discussions with principals at Auckland primary schools, Corrections found that most wanted some advice they could pass on to parents. The Ministry of Education's view is that it is preferable Police, with the ministry's support, are the lead source of information to schools and early childhood centres about such matters because Police already work closely with schools and early childhood centres.

The inquiry did not discuss with Police how they implemented their notifications, focusing rather on how they worked with Corrections on Corrections notifications.

4.4.6 Robertson: notification proposals

Corrections did not consider notifying neighbours when Robertson stayed a week in Waikato because it regarded this temporary address as not requiring notification.

Corrections did not notify neighbours when Robertson began what was to have been a 13-week stay at PARS' Auckland CBD premises (Robertson's tenancy was terminated after two weeks). The chief probation officer told the inquiry PARS premises were frequently used to house released offenders, and the building manager was aware that offenders were placed at the address and informed PARS if there were any concerns about the residents.[63]

The North Shore service manager told the inquiry he proposed notification for neighbours of the Birkdale apartment. He favoured notifying "not only everybody in the entire apartment building, but also at least another apartment building over, and [I] was actually suggesting the entire cul-de-sac". He believed it would have been easy for neighbours to work out it was Robertson if he confined the notification to occupants in the three other apartments in his block. But aside from such practical considerations for a wider notification area, he believed it was justified given the abduction aspect to Robertson's sex offending and the high risk of reoffending generally.

The service manager saw that a back-up plan was needed. "I distinctly remember telling the district manager that we needed a plan B," he told the inquiry. "In the event that the community did identify who it was, we have to have a place to be able to move him to that is … assessed as suitable and safe, and we didn't really have another address."

The day Robertson moved into the apartment, on 6 January, the service manager emailed his liaison at Police suggesting a local officer accompany a Corrections staff member on the notification. The officer made a file note that the service manager told him this would involve "a Corrections staff member going door to door … to advise residents that an offender lives nearby, but no other details [about the offender] will be supplied. Police could be present to leave a business card in the event of concerns or future event".

63. Chief Probation Officer Review: Management of Offender Tony Robertson, Department of Corrections (2014).

In a phone conversation the same day, the police officer replied that he would have to seek advice first.[64] s 9(2)(h) The police officer emailed the service manager on 25 February to say Police would not participate s 9(2)(h)

4.4.7 Decision on notification

The service manager drafted a memo to the district manager, dated 10 January, requesting a decision about whether to advise nearby neighbours. The memo pointed out that Robertson had a medium to high risk of reoffending and that his victims were likely to be pre-pubescent children he had never known before. It also pointed out that Robertson would have no family supports in Auckland once his mother returned to Australia to live at the end of January, as she had always made plain. His only other relatives lived outside Auckland.

Having drafted the memo, the service manager omitted to send it on to the district manager, although that same day, 10 January, he placed Robertson on a regional notification list of child sex offenders, which the district manager acknowledged to the inquiry she saw. The two managers told the inquiry they discussed several times, albeit very briefly, the question of notifying residents near Robertson. The service manager set up a meeting – at the district manager's request – for 12 March to discuss the matter in detail.

The meeting never took place for reasons the inquiry cannot establish. On 25 March, the service manager sent the district manager an email, titled Community Notification – Tony Robertson, in which he asked: "Has there been a decision made?" He received no reply. Nearly a month later, on 23 April, the service manager realised he had never sent the district manager the January memo. He did so that day.

The district manager remembered discussing notification with the service manager, probation officer and psychologist. She told the inquiry: "It was considered and we had some discussions about that, so there was no decision to notify, but it was something that was, I guess, an ongoing consideration." No record was kept of this discussion or any decision.

She said Robertson's sexual offending was directed at children, and that he had abducted a child in a public place away from carers' supervision, and for that reason her view was that notifying occupants of properties next to Robertson's apartment would not mitigate this specific risk of reoffending.

She did not discuss with Police whether Corrections should notify Birkdale people and whether Police would want to participate in a door-to-door exercise. She told the inquiry she had previously held such discussions with her counterparts in Police, but not on this occasion because she was erring away from notifying neighbours near Robertson.

64. The police officer was on leave from 27 January until 16 February 2014. He told the inquiry the service manager did not give him an indication of when the proposed notification would happen. Nor did he believe Corrections carrying out the notification was dependent on his response.

Having considered all the information before it, the inquiry has concluded that the district manager made a decision not to notify Robertson's neighbours.

However, Police unintentionally alerted residents in the apartment block that an offender might be moving in. Police evidence to the inquiry indicated that on 10 December a police officer inspected the Birkdale apartment block to give Police's view on its suitability. The entrance gate was locked so the officer called a resident on the intercom system to ask to be let in. The officer revealed no identifying information about Robertson during the conversation, but the resident must have gathered that an offender might be moving into the complex because concern was expressed about such a possibility at a body corporate meeting a few days later. The inquiry does not know whether, or how widely, that news spread around the neighbourhood.

The chief probation officer told the inquiry a revision of the guidelines in early 2014 means district managers now draw on a wider range of expertise to make decisions on notification. In addition, Corrections is working with Police and the Ministry of Education to develop practices for notifications. It remains for Police and Corrections to align their guidelines.

4.4.8 Findings

Corrections did not carry out notifications while Robertson was at his temporary Waikato and Auckland CBD addresses.

Corrections gave consideration to notifying neighbours of Robertson's presence at his Birkdale address.

The way Corrections went about deciding whether to advise Robertson's Birkdale neighbours that there was a high-risk child sex offender in the neighbourhood was inadequate. It was unstructured, slow and failed to translate into a recorded decision.

The district manager's records of her decision-making process were poor.

Corrections and Police guidelines on notifying people about high-risk offenders are inconsistent and in places unclear.

In arriving at these findings, the inquiry acknowledges the importance of all agencies co-operating to support and enable carers and children to keep safe from sexual abuse.

4.4.9 Recommendations

Corrections should make a decision about whether to notify people (provided there is an address to make a decision about) as soon as possible and preferably before a child sex offender moves into an address.

Corrections must keep records of decision-making about whether to notify people and the reasons for the decision.

Corrections and Police should always consult one another about whether to notify people regardless of which organisation initiated the proposal.

Corrections and Police should reconsider a decision about whether to notify people, if a child sex offender's circumstances change.

Corrections and Police should consider not only clarifying but also aligning their notification guidelines. Where the guidelines relate to notifying schools and early childhood centres, they should consult the Ministry of Education. In so doing, they should:

- clarify the purpose of notifications
- consider what methods to use when notifying people
- review how much information they reveal about an offender (this may require the involvement of other agencies such as Child, Youth and Family)
- review the respective roles of Corrections and Police in notifications
- examine how Corrections and Police request and approve one another's co-operation in notifications.

SECTION 5: LIAISON WITH OTHER AGENCIES

5.1 Co-ordination and information-sharing

5.1. Introduction

The inquiry turns finally to the question of how other state agencies performed in relation to Robertson, and how well Corrections liaised with, and shared information with, those agencies.

5.2 Information-sharing arrangements

Corrections has information-sharing arrangements with other agencies, which the inquiry found were used efficiently in exchanging information about Robertson.[65]

Corrections and Police have a memorandum of understanding detailing how they will co-operate and when they will share information. The memorandum says Corrections agrees to give Police release details and conditions when an offender leaves its custody, and to give any identity details, recent photographs and appearance change relating to highest-risk offenders in its custody. It also says Police representatives will attend meetings with Corrections to identify offenders who may present a significant risk on release and therefore need co-ordinated pre-release planning.

Corrections also has an agreement with Police, Work and Income, Child Youth and Family and Housing New Zealand specifically about sharing information on child sex offenders. Data goes electronically to the three agencies each s 6(c) with details of current child sex offenders on a sentence or order. Recipients use the data to determine whether the offender is known to them, and may advise a local office or station closest to where the offender lives.

The agreement also allows local Corrections offices to share information with these agencies, but only: an offender's name, any aliases, gender, date of birth and address; court or Parole Board conditions or directions about where an offender can live, individuals the offender must not associate with, and programmes, training or employment the offender must take part in or perform; and risk-related information, including factors that could increase the risk of reoffending against children.

Corrections sent information on Robertson to Police, the Ministry of Social Development and Housing New Zealand as part of its s 6(c) electronic transfer of data.

The Ministry of Social Development received notice of Robertson's release on 24 December 2013 as part of a regular notification the ministry receives of child sex offenders who have been released from prison or are subject to new court orders in the community. On 9 January 2014, the ministry received a copy of Robertson's community detention order of 6 January, which contained his Birkdale address. Corrections provided detailed information about Robertson on 12 March 2014. This notified the ministry of Robertson's full name and date of birth, that he was a released child sex offender and confirmed his Birkdale address. The notification also stated that Robertson was not permitted contact with children, that he could undertake training or take a job only with the written approval of a probation officer, and that he was

65. Section 181A of the Corrections Act 2004 gives Corrections the power to share information with agencies, in prescribed circumstances about "any offender whom the chief executive considers, having regard, among other matters, to the nature and seriousness of his or her offending, to be included in the class of offenders who pose the highest risk to public safety".

scheduled to attend counselling for alcohol and drug use and was on a waiting list to see a psychologist. It also advised that Robertson was living alone, and that no children could come into his home. This was accurate and appropriate.

Both government and non-government agencies have made considerable progress in the past few years since an inquiry into information-sharing about child sex offenders in the education sector.[66] From interviews and a review of the evidence, the inquiry considers Corrections and relevant agencies are sharing relevant information about high-risk offenders more effectively, as well as working together better to ensure public safety. More innovation and collaboration beyond traditional demarcation lines can only strengthen the protection of the public from child sex offending.

In this regard, a British model known as MAPPA, described next, is an example of a general approach that deserves every encouragement. It also provides grounds for considering a legislative requirement for justice and social sector agencies to work together on cases of offenders who pose the greatest risks to the community.

5.2.1 Initiatives in United Kingdom and New South Wales

Britain's Multi-Agency Public Protection Arrangement, or MAPPA, is a relatively recent initiative to foster government and non-government collaboration to better manage sex offenders and others who pose a serious risk to society.[67] So-called "responsible authorities" in the criminal justice system (such as the probation service, prison service and police) plus justice, health and social sector agencies have a mandate to work together to help with the reintegration of offenders. Offenders are assigned to one of three tiers of inter-agency management, each tier successively more comprehensive according to the level of risk offenders pose. Highest-risk offenders are subject to case conferences, pooling of agency resources and detailed, co-ordinated risk management plans. Information-sharing among agencies is well developed.

Each offender has a unique management plan, which may include accommodation at an approved address, how conditions will be monitored, reporting requirements and rehabilitation activities. It may also include when neighbours or the wider community will be notified of the offender's presence.

New South Wales has a similar initiative modelled on MAPPA. Its High Risk Offenders Assessment Committee was established in 2006 to provide a multi-agency response to managing the state's high-risk offenders. Legislation also imposes a duty on agencies to co-operate in managing such offenders.[68] The committee's tasks include reviewing risk assessments of high-risk sex and violent offenders, making recommendations about taking action against those offenders (such as seeking a continuing detention order), overseeing state agencies' high-risk offender functions, facilitating co-operation and information-sharing between those agencies, and developing best-practice standards and guidelines. The commissioner of New South Wales' Corrective Services chairs the body. Committee members have relevant expertise and are appointed by the relevant Minister.

5.2.2 Recommendations

Justice sector chief executives should consider the New South Wales High Risk Offenders Assessment Committee and the United Kingdom's Multi-Agency Public Protection Arrangement and advise Ministers whether such a function would be appropriate in New Zealand and in what form.

66. Ministerial Inquiry Into the Employment of a Convicted Sex Offender in the Education Sector: report to Hon Hekia Parata, Minister of Education, by Mel Smith CNZM and Dr Judith Aitken, 15 June 2012.
67. MAPPA Guidance 2012 version 4; Ministry of Justice National Offender Management Service https://www.gov.uk/government/publications/multi-agency-public-protection-arrangements-mappa--2.
68. See Part 4A of the Crimes (High Risk Offenders) Act 2006 (NSW).

SECTION 6: CONSOLIDATED FINDINGS AND RECOMMENDATIONS

Management in prison

Findings

Robertson's security classification, segregation and failure to acknowledge his child sex offending made it difficult to provide him with suitable rehabilitation programmes, but Corrections made reasonable efforts to do so. However, Corrections did not make efforts sufficiently early in Robertson's sentence to bring about change.

The introduction of public protection orders, together with expansion of the applicability and duration of extended supervision orders, gives Corrections sufficient options to ensure public safety when considering the release of long-term, high-risk offenders who serve their sentences in full. The adequacy of those options, however, has not yet been fully tested and will require evaluation.

Recommendations

1. Corrections should put more emphasis on motivating offenders to attend and complete rehabilitation programmes.

2. Corrections should give priority in rehabilitation programmes to young offenders identified as high-risk and serving a lengthy sentence.

3. Rehabilitation programmes should start early in a prisoner's sentence.

4. Corrections should consider developing individualised programmes for prisoners who deny their offending, pose behavioural problems in groups or otherwise are ineligible for existing programmes.

Pre-release planning

Findings: release planning and conditions

Corrections should have begun Robertson's release planning sooner, particularly since he was a long-term, high-risk offender whose release involved consideration of a large range of factors.

The special conditions of Robertson's release and the special conditions of Robertson's extended supervision order were both appropriately directed towards his known risk of child sex offending. The Parole Board imposed all the special conditions recommended by Corrrections.

The board had the power under the Parole Act 2002 to impose a full-time residential restriction. Corrections did not request such a restriction on the basis that this would have been disproportionate to Robertson's known risk.

Corrections should have consulted its own psychologists before recommending to the Parole Board the condition that Robertson undergo a psychological assessment, and if necessary treatment, on release. This failure led to the imposition of a special condition

that Corrections' psychologists did not support but were responsible for implementing. When it became evident this implementation would not happen, Corrections should have applied to the Parole Board to discharge the condition.

Findings: extended supervision order

Corrections should have assessed Robertson for an extended supervision order, and then made an application for an order, earlier than it did so that, if imposed by the High Court, the order could have come into effect at Robertson's release. At the latest, Corrections should have begun the assessment process immediately after the board's suggestion of 1 February 2013.

Corrections had ample opportunity to assess and apply for an extended supervision order, so that, if made, it could come into effect on the day of Robertson's release.

Corrections' approach of seeking an extended supervision order that would come into effect at the expiry of Robertson's release conditions needlessly duplicated the process of obtaining assessments, developing release conditions, drafting applications to the Parole Board and preparing to implement release conditions when a single release order would have sufficed.

Nonetheless, the fact no extended supervision order was in place before Mrs Gotingco's murder made no material difference to Robertson's supervision.

Corrections should have recommended to the Parole Board that the extended supervision order special conditions imposing additional school-hours residential restrictions be added to Robertson's existing release conditions.

Corrections' decision-making process in concluding that Robertson did not need person-to-person monitoring was adequate, although too reliant on a single psychologist's assessment. The introduction of a multi-disciplinary approach to reaching such decisions has since strengthened this process.

Accommodation

Findings: Robertson's accommodation

Corrections put significant effort into housing Robertson, a very difficult category of offender.

A service manager, rather than case manager or probation officer, made key decisions about Robertson's accommodation, which was an appropriate level of decision-making for such a high-risk offender.

Remaining near relatives in Waikato might have been better for Robertson's reintegration, but circumstances and location prevented this outcome.

The focus, in sourcing suitable accommodation, was on mitigating the risk of reoffending against children. Given that focus, and the use of electronic monitoring and a curfew, the service manager's approval of the Birkdale apartment was appropriate.

Corrections involved Police in a timely manner in making decisions about Robertson's accommodation options.

Findings: accommodation generally

Probation staff are too often having to spend too much time trying to find accommodation for high-risk offenders at the expense of their other work.

Work to secure accommodation for prisoners should start earlier in the pre-release planning process.

More needs to be done to provide suitable accommodation for single males at high risk of committing sexual or violent offences.

Any solution will require the involvement of not just Corrections, but other relevant government agencies working together because reintegration of such individuals goes beyond simply finding them accommodation, and must include social support, employment, education, medical care and other considerations.

Any initiatives must be based on assessed need and must fit into New Zealand's legal and social fabric.

Recommendations

5. There should be among staff who prepare for prisoners' release an officer or officers dedicated to planning accommodation for high-risk prisoners.

6. The Government should take a multi-agency approach to considering, funding and implementing solutions to the problem of suitable accommodation in the community for high-risk offenders.

Risk assessments

Findings

Corrections has a good range of tools to assess risk of reoffending, and it uses tools comparable to those available to overseas corrections authorities.

There would be benefit in increased understanding of how assessments from separate tools could be combined to arrive at the most balanced and accurate picture of the risk posed by individual offenders.

Corrections assessed Robertson's risk regularly during and after imprisonment using appropriate tools.

Corrections' overall assessment of Robertson's risk of reoffending took into account his propensity for using violence to meet his needs.

Corrections was wrong to lower Robertson's banner risk to medium, although the change made no practical difference to his management as a high-risk offender.

Probation officers would benefit from more frequent training and support in order to use risk assessment tools for sex offenders consistently and to the required standard.

In Robertson's case, probation officers did not complete risk assessments using all the available tools, although he was managed as a high-risk offender.

Recommendations

7. Corrections should provide greater support to probation officers to carry out and apply risk assessments for sex offenders in a consistent manner.

8. Corrections should consider how decision-makers in the criminal justice system can best understand the outcomes of different risk assessment tools and their combined bearing on an individual offender's assessment.

9. The justice sector should increase investment in training for those conducting risk assessments, as well as those analysing and making decisions based on the results.

Centre for impact on sexual offending

Recommendations

10. The centre for impact on sexual offending should complete its profiles in time for use by Corrections in preparing parole assessment reports, formulating special conditions reports and planning for an offender's release.

11. Corrections should put in place a process to ensure intelligence relevant to the assessment of an offender's risk to the community is known and accessible to those preparing parole assessment reports, reports seeking special conditions, assessments for extended supervision orders and other relevant assessments, as well as to the Parole Board when appropriate.

12. The centre for impact on sexual offending should have sufficient funding to carry out the register's intelligence function, if it is so required, thereby enabling the register to meet its legislated goals.

Management in the community

Findings

Robertson's management after his release exceeded the mandatory standards. His management was careful, responsive and based on assessed risk. The level of management oversight, the frequency of reporting, the attention to electronic monitoring information, the active liaison with Police, and the responses to non-compliance were in accordance with policy and standards, purposeful and timely.

The inquiry could find no instance of Corrections in practice treating, or responding to, Robertson as other than a high-risk offender.

In reviewing the practice standards and the evidence from records and interviews, the inquiry confirms the chief probation officer's view that the decision to lower Robertson's banner risk classification to medium was mistaken, but in practice did not weaken the level or quality of management he received.

Elements of his case management could have been done better, in particular the outstanding special condition to attend a psychological assessment. Some decisions could have been recorded more fully, such as lowering his banner risk to medium. Risk instruments specific to child sex offenders should have been applied while

Robertson was in the community. None of these actions materially affected the standard of his management.

In the weeks leading up to Mrs Gotingco's murder, Robertson had been reporting as directed, attending his alcohol and drug counselling sessions as directed, living at his address as directed, complying with his curfew as directed, and keeping out of exclusion zones as directed. In those final weeks, he was also behaving correctly towards his probation officer. Throughout, he had the support of family members.

Recommendations

13. Corrections should seek the advice of its psychologists before recommending any special condition to the Parole Board that involves a psychological assessment or treatment.

14. Corrections should advise the Parole Board of any special condition suggested by the centre for impact on sexual offending, but declined by Corrections, and the reasons for declining it.

15. Corrections should apply in a timely manner to the Parole Board for a variation to, or discharge of, any special condition it considers inappropriate or unable to fulfil.

16. Corrections should manage offenders who are released on conditions and who are also the subject of an extended supervision order application at the highest management standard.

17. Corrections should offer to probation staff more frequent refresher training in managing high-risk sex offenders, including in the use of relevant risk assessment tools.

18. Corrections should increase investment in motivational interviewing skills for all prison and probation officers and for others who work directly with offenders.

19. Corrections should consider expanding the role of high-risk advisors to include providing day-to-day advice and support to probation officers.

Corrections and Police liaison

Findings

Corrections and Police exchanged information about Robertson in a timely and effective way before and after his release.

Police made good arrangements to help Corrections monitor Robertson and respond to incidents. Police responded quickly when required.

Police's early decision to assign Robertson's file to Waitemata district was effective in maintaining continuity of involvement, even when Robertson was living out of the district.

Waitemata district Corrections and Police worked well together to manage Robertson, other than in matters relating to notification.

Electronic monitoring

Findings

Corrections did not place undue reliance on electronic monitoring, instead employing a range of measures to monitor Robertson's compliance with his release conditions and minimise his risk of child sex offending.

Corrections selected s 6(c) exclusion zones, and it monitored those zones effectively. Responses to potential or actual entry into those zones were quick.

Corrections' communication of electronic monitoring information to Police was efficient, as was its co-ordination with Police. Information so shared was ruled admissible by the courts.

GPS data was a key factor in leading searchers quickly to Mrs Gotingco's body, in justifying Robertson's arrest, and in securing his conviction.

Corrections is right to discourage probation officers from real-time monitoring of offenders' movements because this would distract them from their core tasks and would not greatly improve monitoring effectiveness.

The electronic monitoring system was, and is, effective for monitoring compliance by offenders with their whereabouts conditions.

Robertson's whereabouts were not in doubt during the hours before his arrest s 6(c) .

The expansion in 2015 of the monitoring functions of the Corrections national office team and changes to response procedures for device tamper alerts have provided additional assurance for offenders of greatest concern.

No gap exists in the law relating to Corrections' sharing of GPS information with Police, and as a result there is no pressing need for a law change over disclosure of electronic monitoring information to Police.

Recommendations

20. Police, the Ministry of Justice and, if necessary, the Privacy Commissioner should assess whether changes are needed to the way Corrections shares electronic monitoring data or whether a law change should be proposed.

21. Police and the Ministry of Justice should assess whether procedural and practice changes are needed to the way Police enter properties in response to tamper alerts and similar alerts or whether a law change should be proposed.

Notifying neighbours and schools

Findings

Corrections did not carry out notifications while Robertson was at his temporary Waikato and Auckland CBD addresses.

Corrections gave consideration to notifying neighbours of Robertson's presence at his Birkdale address.

The way Corrections went about deciding whether to advise Robertson's Birkdale neighbours that there was a high-risk child sex offender in the neighbourhood was inadequate. It was unstructured, slow and failed to translate into a recorded decision.

The district manager's records of her decision-making process were poor.

Corrections and Police guidelines on notifying people about high-risk offenders are inconsistent and in places unclear.

In arriving at these findings, the inquiry acknowledges the importance of all agencies co-operating to support and enable carers and children to keep safe from sexual abuse.

Recommendations

22. Corrections should make a decision about whether to notify people (provided there is an address to make a decision about) as soon as possible and preferably before a child sex offender moves into an address.

23. Corrections must keep records of decision-making about whether to notify people and the reasons for the decision.

24. Corrections and Police should always consult one another about whether to notify people regardless of which organisation initiated the proposal.

25. Corrections and Police should reconsider a decision about whether to notify people, if a child sex offender's circumstances change.

26. Corrections and Police should consider not only clarifying but also aligning their notification guidelines. Where the guidelines relate to notifying schools and early childhood centres, they should consult the Ministry of Education. In so doing, they should:

    - clarify the purpose of notifications
    - consider what methods to use when notifying people
    - review how much information they reveal about an offender (this may require the involvement of other agencies such as Child, Youth and Family)
    - review the respective roles of Corrections and Police in notifications
    - examine how Corrections and Police request and approve one another's co-operation in notifications.

Liaison with other agencies

Recommendations: international information-sharing arrangements

27. Justice sector chief executives should consider the New South Wales High Risk Offenders Assessment Committee and the United Kingdom's Multi-Agency Public Protection Arrangement and advise Ministers whether such a function would be appropriate in New Zealand and in what form.

SECTION 7: CONCLUSION

Many people have suffered as a result of Mrs Gotingco's death and the subsequent arrest, trial, conviction and sentencing of Robertson for her rape and murder. Clearly and without question Mr Gotingco and his family are to the forefront. I use again the expression of Justice Brewer when he sentenced Robertson to life imprisonment for such "bestial" action that "only time and their love for each other will achieve any healing for the family". There are then friends of the Gotingco family, Mrs Gotingco's workplace colleagues, others involved in one way or another with Mrs Gotingco, and then the wider community, all grieving at a senseless and needless loss of a life.

I feel it necessary also to say as part of my concluding comments that there are others who have also been significantly affected by Mrs Gotingco's murder, including frontline Corrections and Police officers who carried out their responsibilities in relation to Robertson following his release. When I interviewed these people during the inquiry, their distress about the death of Mrs Gotingco was palpable.

Against this background, the inquiry's report has traversed the terms of reference assiduously and comprehensively. The findings and consequent recommendations summarised in the preceding section are presented for the purpose of improving existing arrangements and practices. I say again that criminal justice is complex and demanding. It can be extremely stressful on those who work within it. Everyone involved in the system, judges, police officers and Corrections staff, face huge challenges and especially so in managing individuals imprisoned for extended periods for serious crimes like Robertson's.

Not surprisingly, there is a strong public response when events occur such as this case and that have such a tragic outcome. Questions are inevitably raised about the adequacy of the work of government agencies that have a responsibility for the supervision of such offenders. In summary, although this report contains a significant number of findings and consequent recommendations, I have not found that any failings or deficiencies in systems or practices in the management of Robertson following his release from prison, provided any opportunity for the murder of Mrs Gotingco. The information obtained by the inquiry compels me to the view that Robertson, and only Robertson, can be held responsible for what happened to Mrs Gotingco. That was the outcome of the trial when Robertson was charged with rape and murder, found guilty of both crimes and sentenced to life imprisonment.

I have noted in the report that there have been ongoing and significant developments in the law which recognises the need for protection of the public against high-risk offenders, particularly child sex offenders, and in practices and organisation within and between agencies to better manage and control this group of offenders. I have been particularly pleased to note the ongoing enhancements in proper information exchange and co-operation between agencies, in particular Corrections and Police. I have also noted and applaud the development of intelligence exchange within and between agencies and the establishment of a specialist inter-agency structure to develop and report on profiles for child sex offenders.

The substantial growth of electronic monitoring in the criminal justice system has been controversial. A large body of overseas research indicates that electronic monitoring is effective in reducing parole and release conditions breaches and reoffending. There is, however, another body of opinion that rejects the use of such

technology as unwarranted and ineffective. Unfortunately, as with almost any other measure in the criminal justice system, there will be failures. Any breach of the system inevitably attracts considerable negative media attention. I agree with Corrections that electronic monitoring must be viewed as but one tool among many designed to manage offenders' compliance with imposed conditions. Ongoing developments and enhancements will reduce, but probably never eliminate, some offenders breaching the system. I was impressed with the technology and the commitment of those working to manage it at both 3M and Corrections. There is no doubt that it was this technology that led to the location of Mrs Gotingco's body and the speedy arrest of Robertson, aided by strong co-operation between Police and Corrections.

Recent law changes and other structural and administrative developments will not, however, provide a panacea. There is a substantial and increasing number of long-term serious offenders who are not released on parole due to their risk of reoffending. As a consequence, they are released, as they must be, only at the conclusion of the court-imposed term of imprisonment. The problem posed by the management of these offenders in the community remains. The inquiry report discusses proposed improvements in the management, particularly related to rehabilitative measures of these offenders, and in relation to the timing and planning for their release from prison. This group of high-risk offenders will continue to pose problems for the corrections system and indeed the whole of the criminal justice system and requires ongoing policy work.

In concluding this report, I also wish to take a moment to record that the work of the inquiry has been made more difficult by the fact that Robertson has an appeal pending before the Court of Appeal against his convictions and sentences for both murder and rape. Section 11(1) of the Inquiries Act 2013, and the terms of reference for the inquiry, make clear that it is not the function of this inquiry to determine civil or criminal liability, and the inquiry has not done so. The inquiry has also had to try to be careful to avoid any comment in this report that may be seen as prejudicial to Robertson's ongoing judicial processes.

The focus of the inquiry was on Robertson's eight years of imprisonment and his management following his release on 11 December 2013. However, in order to provide a complete report, I determined, following a meeting with Mr Gotingco and his support group, that I should discuss the matters they had raised with me with the Victim Support organisation. My report has also informed Ministers of the actions I took and the response I received from the organisation's chief executive.

As the summary above bears out, I have throughout the inquiry received views, advice and assistance from a number of people. Appendix B outlines the inquiry procedure and covers the organisations whose representatives presented information to the inquiry. All of those with whom I spoke or from whom submissions were received, whether within the several state sector agencies, as experts in criminal justice matters or others with a strong interest in the subject of the inquiry, were open and generous with their time and expertise. I am grateful to them all.

I am also very grateful to the Ministry of Justice, in particular Jeff Orr, the ministry's chief legal counsel, who has hosted the inquiry team and provided administrative support throughout the inquiry, consistent with the ministry's role as the government department responsible for administrative matters relating to the inquiry.

The inquiry has been most fortunate to have had the direct support of a dedicated team. Kelley Reeve, Executive Director, Adam Levy, Principal Advisor, and Emma Brown, Inquiry Administrator, brought experience and skill to the process of the inquiry and worked with me throughout. I am very grateful for their dedication and hard work in assisting to bring this difficult inquiry to a conclusion.

I am also very grateful to Matthew Smith, who was appointed as counsel to assist the inquiry. Mr Smith's appointment enabled me, in terms of the Inquiries Act 2013, to carry out the inquiry effectively, efficiently and fairly. The advice I and the inquiry team received from Mr Smith throughout the entire process was invaluable.

The inquiry is also grateful for the work of the National Transcription Service, the editorial functions undertaken by Peter Riordan and the layout and design work by Jacqui Spragg.

Mel Smith CNZM
29 January 2016

APPENDICES

Appendix A

Establishment of the Inquiry into the Management of Tony Douglas Robertson by the Department of Corrections and Other State Sector Agencies Before and After His Release From Prison in 2013

Pursuant to section 6(3) of the Inquiries Act 2013, The Honourable Amy Adams, Minister of Justice, and The Honourable Peseta Sam Lotu-Iiga, Minister of Corrections, hereby establish the Government Inquiry into the management of Tony Douglas Robertson ("Mr Robertson") by the Department of Corrections and other State sector agencies before and after his release from prison on 11 December 2013 ("Inquiry").

Background

On 11 December 2013, Mr Robertson was released from prison on 6 months of standard and special release conditions after serving his full sentence of 8 years imprisonment for convictions relating to the abduction and indecent assault of a child, the attempted kidnapping of two other children, and assaulting a prison officer.
On 25 May 2014, Mr Robertson murdered Blessie Gotingco.

At its meetings on 3 and 10 August 2015, Cabinet:

- Agreed that a Government Inquiry be established under the Inquiries Act 2013 to inquire into the management of Mr Robertson by the Department of Corrections/ State sector agencies before and after his release from prison (CAB Min (15) 26/23 refers);
- agreed that the Minister of Justice and the Minister of Corrections be the appointing Ministers for the Inquiry.

Terms of Reference

Background

On 24 May 2014, Mr Robertson murdered Blessie Gotingco while subject to release conditions under section 18(2) of the Parole Act 2002. Given the public safety issues arising from Mr Robertson's offending while subject to release conditions, the Inquiry is established to look into the management of Mr Robertson before and after his release from prison, and to make recommendations arising from these matters.

Appointment

The Minister of Justice and the Minister of Corrections have appointed Melwyn Purefoy Smith to inquire into the matters set out below.

Matters for the Inquiry

The Inquiry will inquire into, report upon, and make any recommendations they consider appropriate relating to:

a. The management of Mr Robertson by the Department of Corrections prior to his release from prison on 11 December 2013, including, but not limited to, the adequacy of:

   i. the services and programmes offered to and delivered to Mr Robertson (including, drug and alcohol, psychological and other rehabilitative interventions); and

   ii. the release plan prepared to Mr Robertson;

b. the management of Mr Robertson by the Department of Corrections following his release from prison on 11 December 2013, including, but not limited to, the adequacy of:

   i. the supervision and monitoring of Mr Robertson, including his reporting requirements, home visits by probation staff, compliance with release conditions, and GPS monitoring;

   ii. the response to any breaches of release conditions;

   iii. the services and programmes offered to and delivered to Mr Robertson;

   iv. compliance with mandatory and best practice standards for management of offenders having regard to Mr Robertson's release conditions;

   v. risk assessment tools used by Corrections staff and their application to Mr Robertson;

   vi. liaison by Corrections staff with Police;

   vii. the training of staff supervising high-risk offenders in the community;

   viii. the decisions relating to Mr Robertson's residential arrangements; and

   ix. the decisions relating to the notification of nearby residents of Mr Robertson's background;

c. the actions or omissions of any other relevant State sector agencies (including Police) relating to Mr Robertson's offending following his release from prison, including his breaches of release conditions;

d. the adequacy of operational practices (including the management of electronic monitoring) relating to the release of prisoners who are assessed as posing a high risk of reoffending at their release date; and

e. any other matters relevant to the above matters, to the extent necessary to provide a complete report of these matters.

The Inquiry may be informed by any departmental or State services reviews that have been undertaken into the management of Mr Robertson's release (or related matters), including whether by specific public service departments or on a multi-agency basis.

Exclusions From Inquiry and Scope of Recommendations

In accordance with section 11 of the Inquiries Act 2013 ("the Act"), this Inquiry will not determine the civil, criminal or disciplinary liability of any person. This Inquiry may, as approved in section 16 of the Act, be postponed or temporarily suspended.

Reporting Sequence

The Inquiry is to report its findings and opinions to the appointing Ministers in writing by **30 November 2015**.

Consideration of Evidence

The Inquiry may begin considering evidence on **14 August 2015**, after the Terms of Reference have been published in the *New Zealand Gazette*.

Relevant Department

For the purposes of section 4 of the Act, the Ministry of Justice is the relevant department for the Inquiry and responsible for administrative matters relating to the Inquiry.

Dated at Wellington this 10th day of August 2015.

Hon AMY ADAMS, Minister of Justice.

Hon PESETA SAM LOTU-IIGA, Minister of Corrections.

Appendix B

Inquiry procedures

Establishment

On 10 August 2015, the Minister of Justice, the Hon Amy Adams, and the then Minister of Corrections, the Hon Peseta Sam Lotu-liga (the Responsible Ministers), established, pursuant to section 6(3) of the Inquiries Act 2013 (the Act), the Government Inquiry into the Management of Tony Douglas Robertson by the Department of Corrections and Other State Sector Agencies Before and After His Release From Prison in 2013 (the inquiry). I was appointed to conduct the inquiry. My appointment and the inquiry's terms of reference were notified in the *New Zealand Gazette* on 13 August 2015.

Terms of reference

The inquiry's terms of reference are set out in appendix A.

The inquiry was authorised to begin hearing evidence from 14 August 2015 and was directed to report to the Responsible Ministers in writing by 30 November 2015.

In early September 2015, I requested submissions and information from government agencies, non-government groups, victims, academics and unions whom I identified as having an interest in the terms of reference.

I decided not to designate any party a core participant under section 17 of the Act. I did that because I was satisfied the inquiry processes could be tailored to ensure fair and appropriate opportunities were provided to all parties to participate, without any such designations.

Procedures adopted by the inquiry

The inquiry received evidence from participants without holding public hearings. In adopting that approach, I took into account the factors in section 15(2) of the Act and in particular the following factors:

- There are ongoing criminal proceedings and an ongoing coronial inquiry. There was a risk that public hearings could prejudice those proceedings.
- Some of the information to be provided to the inquiry was likely to address operational procedures within Corrections and other relevant state sector agencies. It would not be in the interests of justice for some details of those systems to be made public, and it would not be practicable to separate out the sensitive aspects of the information in advance. The inquiry's report would ensure there was public transparency over those matters that could properly be made public.
- Public hearings would undermine the privacy interests of a number of individuals, including the victims of Robertson's offending and frontline staff from Corrections, Police and non-government agencies. The inquiry also needed to take into account professional obligations of confidence, for example, of health professionals.
- The inquiry wished to encourage full, free and frank disclosure of information from all participants, and it considered that this would be best facilitated by interviews that were conducted in private.

- The inquiry considered that the principles of open justice and the need for public confidence would be met by the release of its report and by the careful process it followed in conducting the inquiry.

The inquiry accordingly ordered, under section 15(1)(c) of the Act, that the information-gathering aspects of the inquiry would be held in private.

Against that background, 67 individuals contributed to the inquiry, some on more than one occasion. Parties who assisted the inquiry included:

- Mr Gotingco and his supporters
- New Zealand Police
- Victim Support
- Rethinking Crime and Punishment
- Department of Corrections
- Ministry of Justice
- Ministry of Education
- Sensible Sentencing Trust

The inquiry interviewed 56 people. Eight others contributed to high-level briefings, two of whom were academics with relevant criminal justice sector expertise. Finally, three people provided written submissions only. The inquiry did not use its powers to compel the attendance of any participant.

Phases of the inquiry

I decided to divide the inquiry into three broad phases, some of which overlapped:

- **Phase 1** consisted of the receipt of information and contextual briefings from Corrections and other relevant state sector agencies, and submissions from interested parties. Its purpose was to give the inquiry contextual background, including in terms of legislation, regulation, policy settings and operational practice. During this phase, the inquiry also visited the Corrections incident response centre and the contracted electronic monitoring centre. This assisted the inquiry understand practical and operational aspects of the electronic monitoring system.
- **Phase 2** was a fact-finding phase. The inquiry identified participants it wished to interview, including frontline staff from state sector agencies as well as staff from non-government agencies who had interacted with Robertson in prison or were involved with him in the community. The purpose of this phase was to determine the facts of Robertson's management by Corrections and other agencies before and after his release from prison in 2013.
- **Phase 3** required analysis of all the collated information and consideration of the adequacy of the systems, policies and operations relevant to Robertson's sentence in prison and his supervision in the community. During this stage I considered the legislative and policy aspects of the inquiry, and potential recommendations for reforms. This phase proceeded largely by way of oral briefings, written responses to inquiry questions and deliberations by the inquiry.

Gotingco family

At the outset, the inquiry contacted Mr Gotingco, and the people who were nominated by him were invited to meet with the inquiry and present submissions. The inquiry is very grateful to Mr Gotingco and to his dedicated supporters for their contribution and determination to see improvement in the system for the benefit of others.

Extension of report date

By notice dated 17 November 2015 and gazetted on 26 November 2015, the Responsible Ministers extended the inquiry's reporting date to 29 January 2016. The extension took into account the work required to fully address the terms of reference and the need to ensure that the principles of natural justice were complied with.

Consultation

I provided relevant draft report content to inquiry participants whose evidence or information was discussed in those parts. The draft report content was provided to participants, as required by section 14(3) of the Act, to give them an opportunity to identify any factual inaccuracies and to comment on any findings that might be adverse. I carefully considered all comments and responses received and made changes where that was considered appropriate, before finalising this report.

Robertson was given the opportunity by the inquiry to make a submission directed to the terms of reference, and sections of the draft report (including potential findings) relating particularly to him and that may have been adverse to him. Under section 18 of the Inquiries Act 2013, funding was also approved for Robertson to have legal assistance to participate in those ways in the inquiry's processes. Arrangements were made at Robertson's request for him to speak with the inquiry by telephone from the prison in which he is detained. Shortly before the time appointed for that, Robertson decided not to speak with the inquiry. He was informed by the inquiry that he was still able to write to the inquiry with any submission he wished to make by 20 January 2016, being the date the inquiry had set for all such responses. Robertson did not take up that opportunity.

Publication of inquiry evidence

The inquiry proceeded in accordance with the principle of open justice and gave priority to section 15(2)(a) of the Act where appropriate. However, several factors justified and required care. These included ongoing criminal proceedings, and the fact that much information received by the inquiry contained sensitive information on law enforcement and operational policy and procedures concerning the electronic monitoring and supervision of offenders in the community. A further but relatively smaller subset of information received by the inquiry was of a commercially sensitive nature, of a personal and private nature, or provided to the inquiry on the basis that its confidentiality would be respected.

Where it was appropriate to do so, I made orders under section 15 of the Act restricting access to information. It is expected that redacted versions of interview transcripts and other documents provided to the inquiry will ultimately be available. Much of the material supplied to the inquiry will be available directly from the relevant state sector agencies under the Official Information Act 1982.

Appendix C

Robertson's release conditions (effective 11 December 2013 – 14 June 2015)

Release conditions – special (section 15 Parole Act 2002)	
1	To attend and complete an appropriate alcohol and drug treatment programme to the satisfaction of your Probation Officer and programme provider. Details of the appropriate programme to be determined by your Probation Officer.
2	To undertake and complete appropriate treatment/counselling to the satisfaction of your Probation Officer and treatment provider. The details of the counselling or treatment to be determined by your Probation Officer.
3	To attend for a psychological assessment. Attend and complete any treatment/ counselling as recommended by the psychological assessment to the satisfaction of your Probation Officer and treatment provider.
4	To reside at an address approved by a Probation Officer and not to move from that address without the prior written approval of a Probation Officer.
5	Not to stay away overnight, between the hours of 8:00pm and 6:00am, from your residence without prior written approval of a Probation Officer.
6	Not to undertake any employment or training (paid or unpaid) without the prior written approval of your Probation Officer.
7	You are not to have contact or otherwise associate with the victim(s) of your offending, directly or indirectly, unless you have the prior written consent of your Probation Officer.
8	Not to enter any school, playground, park/reserve or place where children are likely to congregate, unless under the direct supervision of an adult approved in writing by your Probation Officer.
9	You are not to associate or otherwise have contact with any person under 16 years of age unless the direct supervision of an informed adult who has been approved by your Probation Officer. An informed adult is a person over the age of 20 years who is fully aware of your previous offending and high-risk situations, and in the opinion of your Probation Officer will not support or collude with any further offending.
10	To only engage in any community or sporting clubs/groups with the prior written approval of your Probation Officer.
11	Not to use or possess alcohol, prescription medication (unless prescribed by a licensed health care practitioner) or illicit drugs including synthetic cannabis.
12	To submit to electronic monitoring in the form of Global Positioning System (GPS) technology as directed by a Probation Officer in order to monitor your compliance with any condition(s) relating to your whereabouts and, if issued a mobile phone device by the Department or if using your own device, to carry and keep it charged at all times for the purpose of communications with the Probation Officer.
13	To comply with the requirements of electronic monitoring, and provide access to the approved residence to a Probation Officer and representatives of the monitoring company, for the purpose of maintaining the electronic monitoring equipment as directed by a Probation Officer.

Release conditions – standard (section 14(1) Parole Act 2002)	
1	The offender must report in person to a probation officer in the probation area in which the offender resides as soon as practicable, and not later than 72 hours after release.
2	The offender must report to a probation officer as and when required to do so by a probation officer, and must notify the probation officer of his or her residential address and the nature and place of his or her employment when asked to do so.
3	The offender must not move to a new residential address in another probation area without the prior written consent of the probation officer.
4	If consent is given under paragraph (3), the offender must report in person to a probation officer in the new probation area in which the offender is to reside as soon as practicable, and not later than 72 hours, after the offender's arrival in the new area.
5	If an offender intends to change his or her residential address within a probation area, the offender must give the probation officer reasonable notice before moving from his or her residential address (unless notification is impossible in the circumstances) and must advise the probation officer of the new address.
6	The offender must not reside at any address at which a probation officer has directed the offender not to reside.
7	The offender must not engage, or continue to engage, in any employment or occupation in which the probation officer has directed the offender not to engage or continue to engage.
8	The offender must not associate with any specified person, or with persons of any specified class, with whom the probation officer has, in writing, directed the offender not to associate.
9	The offender must take part in a rehabilitative and reintegrative needs assessment if and when directed to do so by a probation officer.

Appendix D

Robertson's extended supervision order conditions
(due to have come into effect from 15 June 2015)

Extended supervision order conditions – special (section s107K Parole Act 2002)	
1	To reside at an address approved by a Probation Officer and not move from that or any other subsequently approved address without the prior written permission of a Probation Officer.
2	Not to stay away overnight or move from that address or subsequent approved address without the prior written approval of the Probation Officer.
3	To comply with the requirements of residential restrictions, submit to electronic monitoring as directed by the Probation Officer and to adhere to the conditions and requirements of such monitoring. To be present at your address from Monday to Friday, except school holidays and public holidays, between the hours of 8:15am to 9:30am and from 2:30pm to 4:30pm, unless you have the approval from a Probation Officer to be away from the address.
4	Not to enter any school, playground, park/reserve or place where children are likely to congregate, unless under the direct supervision of an adult approved in writing by the Probation Officer.
5	To submit to electronic monitoring as directed by the Probation Officer in order to monitor your compliance with any condition(s) relating to whereabouts and, if issued a mobile device by the Department, to carry it and keep it charged and turned on at all times and to answer it when called, for the purpose of communicating with the Probation Officer.
6	To comply with the requirements of electronic monitoring and provide access to the approved residence to the Probation Officer and representatives of the monitoring company, for the purpose of maintaining the electronic monitoring equipment as directed by the Probation Officer.
7	Not to engage in any employment, including unpaid or voluntary work, without the prior written approval of a Probation Officer.
8	Not use or possess alcohol, intoxicating spirits, prescription medications (unless prescribed by a licensed health care practitioner) or illicit drugs (including legal highs) for the duration of your Extended Supervision Order.
9	Not to attend or participate in any community and or sporting group including Church services unless you have the prior written approval of a Probation Officer.

Extended supervision order conditions – standard (section 107JA(1) Parole Act 2002)	
1	The offender must report in person to a probation officer in the probation area in which the offender resides as soon as practicable, and not later than 72 hours, after commencement of the extended supervision order.
2	The offender must report to a probation officer as and when required to do so by a probation officer, and must notify the probation officer of his or her residential address and the nature and place of his or her employment when asked to do so.
3	The offender must obtain the prior written consent of a probation officer before moving to a new residential address.
4	If consent is given under paragraph (3) and the offender is moving to a new probation area, the offender must report in person to a probation officer in the new probation area in which the offender is to reside as soon as practicable, and not later than 72 hours, after the offender's arrival in the new area.
5	The offender must not reside at any address at which a probation officer has directed the offender not to reside.
6	The offender must obtain the prior written consent of a probation officer before changing his or her employment.
7	The offender must not engage, or continue to engage, in any employment or occupation in which the probation officer has directed the offender not to engage or continue to engage.
8	The offender must take part in a rehabilitative and reintegrative needs assessment if and when directed to do so by a probation officer.
9	The offender must not associate with, or contact, a person under the age of 16 years, except— i. with the prior written approval of a probation officer; and ii. in the presence and under the supervision of an adult who— a. has been informed about the relevant offending; and b. has been approved in writing by a probation officer as suitable to undertake the role of supervision.
10	The offender must not associate with, or contact, a victim of the offender without the prior written approval of a probation officer.
11	The offender must not associate with, or contact, any person or class of person specified in a written direction given to the offender for the purposes of this paragraph.