ACCEPTED VERSION

Michael J. Proeve and Gabrielle Wolf

Professional reports for sentencing courts: recommendations for reporting on child exploitation material offenders' risk of recidivism and prospects for rehabilitation

Professional Reports for Sentencing Courts: Recommendations for Reporting on Child

Exploitation Material Offenders' Risk of Recidivism and Prospects for Rehabilitation

Michael J Proeve

The University of Adelaide

Gabrielle Wolf

Deakin University

Word Count: 10,399

Address for Correspondence:

Dr Michael Proeve, The University of Adelaide,

School of Psychology, AUSTRALIA 5005.

Tel: +61 8 8313 3818

e-mail: michael.proeve@adelaide.edu.au

ORCiD: 0000-0002-4710-585X

Abstract

Denunciation and general deterrence are major objectives of sentencing those who are convicted of possessing or distributing child exploitation material in Australia (CEM offenders), but courts also strive to achieve specific deterrence. To this end, courts tend to rely on professional reports as evidence of risk of reoffending and prospects for rehabilitation. After outlining matters that courts consider when sentencing CEM offenders, we discuss key empirical findings concerning CEM offenders' risk of recidivism, and then evaluate two approaches for assessing this risk: actuarial assessments; and structured professional judgment. We recommend that professional reports prepared for sentencing reflect current research findings regarding risk of recidivism amongst CEM offenders and that the structured professional judgment approach is used. We also recommend that matters which inform offenders' risk of recidivism and their prospects for rehabilitation be reported separately.

Keywords: Child exploitation material; child pornography; risk assessment; actuarial; structured professional judgment; rehabilitation.

Introduction

Internet sexual offending refers to sexual offending that is facilitated by use of the Internet. This term encompasses two overlapping populations of offenders: solicitation offenders; and child pornography offenders (Seto, 2013). Solicitation offenders use Internet technologies, such as social networking sites, chat sites and instant messaging, to approach children and adolescents by exchanging sexually-explicit images or text messages, or meeting in person to commit contact sexual offences. This group of offenders, about which there have been relatively few studies (Seto, 2017), is not the focus of this article. Rather, we focus on the second group of Internet sexual offenders, who may view, download, distribute or manufacture sexual images of children or adolescents. Courts refer to these images as 'child exploitation', 'child pornography' and, less commonly, 'child abuse' material. The preferred term for child pornography in Australia is 'child exploitation material' (CEM), so we use that term in this article.

Denunciation and general deterrence are the major objectives of sentencing those who are convicted of CEM offences, but courts also strive to achieve specific deterrence. To this end, courts tend to rely on professional reports that they receive as evidence of CEM offenders' risk of reoffending and prospects for rehabilitation. This article discusses and evaluates some of the matters that currently inform these professional reports, and makes recommendations for their content.

In the first part of the article, we discuss factors that Australian courts consider when sentencing CEM offenders. The second part of the article outlines key findings of empirical research regarding CEM offenders' risk of recidivism, which we argue should inform professional reports about CEM offenders that are provided to sentencing courts. Part three of the article evaluates the means currently available for assessing CEM offenders' risk of

reoffending: actuarial assessments; and the structured professional judgement approach. In the fourth part of the article, we make recommendations for professional reports that are prepared for sentencing courts. Specifically, we suggest that those preparing these reports apply structured professional judgment, as this can entail a comprehensive, individualised assessment of CEM offenders' risk factors for recidivism, can be informed by current research findings about general trends in CEM offenders' risk of recidivism, and can be linked to offenders' prospects for rehabilitation. We also recommend that professional reports provide separate, but linked, information regarding offenders' risk of recidivism and their prospects for rehabilitation.

I   Matters Taken Into Account in Sentencing CEM Offenders

There are various Australian State and Territory and Commonwealth offences concerning CEM and offenders are often charged under both Commonwealth and State or Territory legislation.[1] Notwithstanding differences between the offences and their associated penalties, courts across Australia tend to apply the same general propositions in sentencing for CEM crimes.[2] Application of those principles will generally result in a sentence of 'immediate imprisonment' unless there are exceptional circumstances, because, as the Victorian Court of Appeal has stated, 'access to child pornography is regarded as very serious morally depraved conduct that is harmful to children' (*DPP v Garside* [2016] VSCA 74).[3]

---

[1] For instance, in *R v Porte* [2015] NSWCCA 174 (2 July 2015) [55], the offender was charged with accessing child pornography contrary to *Criminal Code Act 1995* (Cth) s 474.19(I)(a)(i) and with possessing child abuse material contrary to *Crimes Act 1900* (NSW) s 91H(2).
[2] See, eg, *DPP v Garside* [2016] VSCA 74 (20 April 2016) [24]-[25], quoting *R v De Leeuw* [2015] NSWCCA 183 (10 July 2015) [72] and *DPP v D'Alessandro* (2010) 26 VR 477 [21].
[3] *DPP v Garside* [2016] VSCA 74 (20 April 2016) [62], [25], citing *R v De Leeuw* [2015] NSWCCA 183 (10 July 2015) [72].

The objectives of general deterrence and denunciation are regarded as the 'paramount considerations' in sentencing for CEM crimes (*R v Porte* [2015] NSWCCA 174).[4] Specific deterrence also plays some role in sentencing decisions where an offender is perceived to have a high risk of reoffending (discussed further below). Judges have articulated several reasons why they treat general deterrence in particular as such a significant objective in sentencing for CEM offences (*R v De Leeuw* [2015] NSWCCA 183).[5] They note the 'paramount public interest objective in promoting the protection of children' (*R v De Leeuw* [2015] NSWCCA 183).[6] Further, they describe CEM crimes as 'callous and predatory' (*R v Booth* [2009] NSWCCA 89),[7] and emphasise that they are not 'victimless': 'children are sexually abused in order to supply the market', and CEM offenders feed the 'market for the continued corruption and exploitation of children' (*R v De Leeuw* [2015] NSWCCA 183).[8] Judges refer also to 'the prevalence and ready availability of pornographic material involving children, particularly on the internet' (*DPP v D'Alessandro* (2010) 26 VR 477),[9] and 'the ease and relative anonymity of the internet … and the difficulties of detection' (*Fitzgerald v The Queen* [2015] NSWCCA 266).[10] In *Director of Public Prosecutions (Cth) v D'Alessandro* [2010] VSCA 60, Harper JA stated that this aspect of CEM in particular 'demands that general deterrence must be a paramount consideration'. Australian appellate courts have compiled a 'list of factors' that judges 'ordinarily' take into account in assessing

---

[4] *R v Porte* [2015] NSWCCA 174 (2 July 2015) [59].

[5] *R v De Leeuw* [2015] NSWCCA 183 (10 July 2015) [72], citing *Assheton v R* [2002] WASCA 209; 132 A Crim R 237, 246-7 [35]-[36]; *DPP (Cth) v D'Alessandro* (2010) 26 VR 477, 483-4 [21].

[6] *R v De Leeuw* [2015] NSWCCA 183 (10 July 2015) [72], citing *DPP (Cth) v D'Alessandro* (2010) 26 VR 477, 484 [23].

[7] *R v Booth* [2009] NSWCCA 89 (6 April 2009) [47], quoted in *R v Porte* [2015] NSWCCA 174 (2 July 2015) [71].

[8] *R v De Leeuw* [2015] NSWCCA 183 (10 July 2015) [72], citing *R v Jones* [1999] WASCA 24, 52 [9]; *DPP (Cth) v D'Alessandro* (2010) 26 VR 477, 484 [23]; *R v Coffey* [2003] VSCA 155; 6 VR 543, 552 [30].

[9] *DPP v D'Alessandro* (2010) 26 VR 477, 483 [21] (Harper JA), quoted in *DPP v Garside* [2016] VSCA 74 (20 April 2016) [21].

[10] *Fitzgerald v The Queen* [2015] NSWCCA 266 [33] (Hoeben CJ), quoted in *DPP v Garside* [2016] VSCA 74 (20 April 2016) [20]. See also *R v Cartwright* [2018] ACTSC 132 (12 April 2018) [32].

[11] *DPP (Cth) v D'Alessandro* (2010) 26 VR 477 [21].

the 'objective seriousness' of CEM offences for sentencing purposes (though they emphasise that the list is 'not closed') (*Minehan v R* (2010) 201 A Crim R 243; *R v De Leeuw* [2015] NSWCCA 183).[12] Principally, courts need to consider 'the nature and content of the pornographic material, including the age of the children and the gravity of the sexual activity portrayed' (*Minehan v R* (2010) 201 A Crim R 243; *DPP (Cth) v D'Alessandro* (2010) 26 VR 477).[13] Courts have relied on different classification scales that categorise CEM in order to evaluate its nature and gravity, including the COPINE Scale (Combatting Paedophile Information Networks in Europe) and the '*Oliver* scale' (which derived from the English Court of Appeal case of *R v Oliver, Hartrey, Baldwin* [2002] EWCA Crim 2766).[14] At present, Australian courts generally refer to the Australian National Victim Image Library (ANVIL), which is a database updated by Australian law enforcement agencies as new CEM is identified, and the Child Exploitation Tracking System (CETS), software that helps store and collate images in line with an adapted version of the *Oliver* scale that comprises six categories.[15]

Appellate courts have, however, emphasised that judges should exercise 'caution' in 'assessing the objective gravity of offending by reference to the categorisation of material'; specifically, judges need to 'ensure that the absence of material in higher levels of classification, does not unconsciously result in a minimisation of the objective gravity of possession of lower level categories of material' (*DPP v Garside* [2016] VSCA 74).[16] In a scale with 'escalating gravity of the conduct depicted in the images', the lowest classification

---

[12] *Minehan v R* (2010) 201 A Crim R 243, 261-2 [95]-[96]; *R v De Leeuw* [2015] NSWCCA 183 (10 July 2015) [72].

[13] *Minehan v R* (2010) 201 A Crim R 243, 261-2 [95]-[96]; *DPP (Cth) v D'Alessandro* (2010) 26 VR 477 [21].

[14] See *R v Porte* [2015] NSWCCA 174 (2 July 2015) [73]. Courts in England and Wales now apply the Sentencing Council's *Sexual Offences Definitive Guideline* (12 December 2013) <https://www.sentencingcouncil.org.uk/publications/item/sexual-offences-definitive-guideline/>.

[15] See *R v Porte* [2015] NSWCCA 174 (2 July 2015) [16]-[17], [74]; *DPP (Cth) v Jedrzejczyk* [2018] VCC 231 (8 March 2018) [7]; *Maine v The Queen* [2018] VSCA 56 (8 March 2018) [6]; and *R v De Leeuw* [2015] NSWCCA 183 (10 July 2015) [11]-[12].

[16] *DPP v Garside* [2016] VSCA 74 (20 April 2016) [67], [71].

level can still comprise 'material … capable of possessing significant gravity', which is not 'mild' (*R v Porte* [2015] NSWCCA 174).[17] It is also considered necessary for sentencing judges to view 'sample images … to allow an impression to be formed of the material and its degree of depravity' (*R v Porte* [2015] NSWCCA 174).[18]

Other matters that sentencing courts can consider in assessing the 'objective seriousness' of CEM offences include: 'the number of images or items of material possessed by the offender' (*DPP (Cth) v D'Alessandro* (2010) 26 VR 477);[19] 'the number of children depicted and thereby victimised'; and 'the length of time for which the pornographic material was possessed' (*R v De Leeuw* [2015] NSWCCA 183).[20] Courts may also have regard to the risk of the CEM being seen or acquired by 'vulnerable' people or those 'susceptible to act in the manner described or depicted'; 'the degree of planning, organisation or sophistication employed by the offender in acquiring, storing, disseminating or transmitting the material'; and whether the offender acted alone or as part of a network (*Minehan v R* (2010) 201 A Crim R 243).[21] In addition, sentencing courts take into account the offender's purpose in obtaining the CEM, including if it is 'for the sexual gratification of the offender' (*R v Cartwright* [2018] ACTSC 132);[22] 'for … sale or further distribution' and 'whether the offender will profit from the offence' (*DPP (Cth) v D'Alessandro* (2010) 26 VR 477)[23]

---

[17] *R v Porte* [2015] NSWCCA 174 (2 July 2015) [77], quoted in *DPP v Garside* [2016] VSCA 74 (20 April 2016) [68]. See also *DPP (Cth) v Zarb* [2014] VSCA 347; 46 VR 832 [30].

[18] *R v Porte* [2015] NSWCCA 174 (2 July 2015) [76], citing *Smit v State of Western Australia* [2011] WASCA 124 (1 June 2011) [17].

[19] *DPP v D'Alessandro* (2010) 26 VR 477 [21] (Harper JA), quoted in *DPP v Garside* [2016] VSCA 74 (20 April 2016) [24]. See also *R v De Leeuw* [2015] NSWCCA 183 (10 July 2015) [72]; *Minehan v R* (2010) 201 A Crim R 243 [94].

[20] *R v De Leeuw* [2015] NSWCCA 183 (10 July 2015) [72], quoted in *DPP v Garside* [2016] VSCA 74 (20 April 2016) [25].

[21] *Minehan v R* (2010) 201 A Crim R 243 [94], quoted in *R v Porte* [2015] NSWCCA 174 (2 July 2015) [63].

[22] *R v Cartwright* [2018] ACTSC 132 (12 April 2018) [29].

[23] *DPP (Cth) v D'Alessandro* (2010) 26 VR 477 [21], quoted in *DPP v Garside* [2016] VSCA 74 (20 April 2016) [24].

(though 'the fact that an offender … was not involved in the distribution or sale of child pornography does not mitigate the offending') (*R v De Leeuw* [2015] NSWCCA 183).[24]

> The Victorian Court of Appeal in *Maine v R* [2018] VSCA 56 confirmed:

> An assessment of the objective seriousness of a child pornography offence is only part of the assessment that must be undertaken by a sentencing judge in determining an appropriate sentence. An assessment of the offender's prospects of rehabilitation and the weight to be given to specific deterrence is also important.[25]

Courts rely on psychologists' opinions about individual CEM offenders' prospects of rehabilitation,[26] and interpret various matters as reflecting this likelihood. Examples of those factors include: whether they have prior convictions for similar offences and, if so, the duration of time between their punishment for previous offences and their reoffending;[27] and whether offenders have demonstrated genuine remorse and/or shame for the offending and taken responsibility for it (an early plea may be viewed as indicating remorse).[28] Courts also consider that CEM offenders' prospects of rehabilitation may be evident from their mental state and responses to therapeutic treatment. Specifically, they may take into account whether: the offenders' mental illness led to their offending; the offenders have been diagnosed with paedophilia; the offenders are attracted to or repulsed by CEM; they have insight into their condition and will receive appropriate treatment for it so that they can 'manage' it in the future;[29] and 'with time and appropriate care, [the offenders] could be

---

[24] *R v De Leeuw* [2015] NSWCCA 183 (10 July 2015) [72], citing *R v Coffey* 6 VR 543, 552 [30]. See also *R v Cartwright* [2018] ACTSC 132 (12 April 2018) [29].

[25] *Maine v The Queen* [2018] VSCA 56 (8 March 2018) [18].

[26] See, eg, *DPP (Cth) v Garside* (Unreported, County Court of Victoria, Judge McInerney, 23 September 2015) [54], quoted in *DPP v Garside* [2016] VSCA 74 (20 April 2016) [41].

[27] See, eg, *Maine v R* [2018] VSCA 56 (8 March 2018) [14], [19]-[20].

[28] See, eg, *DPP (Cth) v Jedrzejczyk* [2018] VCC 231 (8 March 2018) [38]-[39]; *R v Cartwright* [2018] ACTSC 132 (12 April 2018) [27]; *DPP v Smith* [2010] VSCA 215 (23 August 2010) [28]-[29], quoted in *DPP v Garside* [2016] VSCA 74 (20 April 2016) [58].

[29] See, eg, *DPP (Cth) v Jedrzejczyk* [2018] VCC 231 (8 March 2018) [27], [30]-[32], [39].

restored to a proper sexual orientation'.[30] In contemplating offenders' likelihood of

rehabilitation, courts have also referred to whether the offenders committed CEM crimes

after participating in rehabilitation programs and/or other therapy,[31] and, alternately, whether

therapy or other treatment the offenders have undertaken has already assisted them.[32]

Nevertheless, assessments of CEM offenders' likelihood of rehabilitation – and their

risk of recidivism – generally only plays a significant role in sentencing where the probability

of the offender being rehabilitated is deemed to be low, and his/her risk of reoffending is

considered high, in which case the need for specific deterrence assumes greater importance.

In *Maine v R* [2018] VSCA 56, for instance, the Court concurred with the sentencing judge

that the 'importance of specific deterrence' was 'elevated' because the offender had prior

convictions for similar crimes and reoffended soon after completing both his parole period

and a rehabilitation program (and thus the Court implied that the offender was presumed to

have low prospects of rehabilitation).[33] In *R v Dieu* [2017] NSWDC 375, Norrish J referred to

authorities that confirm, 'where the [offender] remains a danger to the community specific

deterrence may result in an increase to the sentence'.[34]

Where CEM offenders are assessed as having high prospects of rehabilitation – and

therefore minimal risk of reoffending – the need for specific deterrence is perceived as

receding. Thus, in *DPP (Cth) v Jedrzejczyk* [2018] VCC 231, Wilmoth J informed the

---

[30] *DPP v Smith* [2010] VSCA 215 (23 August 2010) [28]-[29], quoted in *DPP v Garside* [2016] VSCA 74 (20 April 2016) [58].
[31] See, eg, *DPP (Cth) v Jedrzejczyk* [2018] VCC 231 (8 March 2018) [41]; *Maine v The Queen* [2018] VSCA 56 (8 March 2018) [14], [19]-[20].
[32] See, eg, *DPP (Cth) v Garside* (Unreported, County Court of Victoria, Judge McInerney, 23 September 2015) [55], quoted in *DPP v Garside* [2016] VSCA 74 (20 April 2016) [16].
[33] *Maine v R* [2018] VSCA 56 (8 March 2018) [10], [14]-[15], [19].
[34] *R v Dieu* [2017] NSWDC 375 (20 September 2017) [85], citing *DPP v De La Rosa* (2010) NSWLR 194; and *R v Engert* (1995) 84 A Crim R 67.

offender, 'your prospects of rehabilitation can be said to be reasonably good and specific deterrence need not rank high in my sentencing task'.[35]

Even where specific deterrence is considered unnecessary due to a CEM offender's high likelihood of rehabilitation, courts have clarified that these prospects generally will not mitigate penalty and may have 'reduced significance', due to the nature of the offending, the superior importance of the other sentencing objectives, and the fact that many offenders demonstrate attempts at rehabilitation (*R v Porte* [2015] NSWCCA 174).[36] In *R v Porte* [2015] NSWCCA 174, Johnson J observed, 'it is not uncommon, in sentencing cases for child pornography offences, for there to be a body of evidence available to the Court with respect to … rehabilitation', which is 'favourable to the subjective circumstances of the offender'.[37] Yet Johnson J emphasised, 'it is important that an offender's subjective circumstances, including prospects of rehabilitation … not be allowed to overshadow the objective seriousness of the offences for the purpose of sentence, nor the need for a sentence to reflect general deterrence and denunciation'.[38]

In *DPP v Garside* [2016] VSCA 74, Redlich and Beach JJA provided a further reason why a CEM offender's good prospects of rehabilitation 'must be given less weight than they ordinarily would in sentencing': 'such offenders generally … are of prior good character'.[39] Indeed, appellate courts reinforce that, in sentencing CEM offenders, judges can only attribute to prior good character as a mitigating factor 'limited weight' (*DPP (Cth) v*

---

[35] *DPP (Cth) v Jedrzejczyk* [2018] VCC 231 (8 March 2018) [31].
[36] *R v Porte* [2015] NSWCCA 174 (2 July 2015) [72], [71], quoting *R v Booth* [2009] NSWCCA 89 (6 April 2009) [47] (Simpson J).
[37] *R v Porte* [2015] NSWCCA 174 (2 July 2015) [146]. See also *R v De Leeuw* [2015] NSWCCA 183 (10 July 2015) [97].
[38] *R v Porte* [2015] NSWCCA 174 (2 July 2015) [147], citing *R v Booth* [2009] NSWCCA 89 (6 April 2009) [47]. Note that, in *R v De Leeuw*, the Court of Appeal found that the sentencing judge had approached the respondent's prospects of rehabilitation in an erroneous way 'with the consequence that the Respondent's subjective circumstances were allowed to overshadow the substantial objective gravity of this [sic] crimes': *R v De Leeuw* [2015] NSWCCA 183 (10 July 2015) [136].
[39] *DPP v Garside* [2016] VSCA 74 (20 April 2016) [63].

D'Alessandro),[40] or 'less weight' than they would in relation to other offenders (*Mouscas v R* [2008] NSWCCA 181).[41] The rationale provided for this proposition is that greater importance should be attached to general deterrence than to 'matters personal to the offender' (*R v Porte* [2015] NSWCCA 174).[42] Yet it follows, too, that if CEM offences 'are frequently committed by persons of otherwise good character',[43] prior good character may be treated as an unreliable predictor of an offender's risk of recidivism.

Thus, in sentencing CEM offenders, courts strive principally to achieve the objectives of denunciation and general deterrence, and take into account various factors in assessing the objective seriousness of the offences. Courts also focus on specific deterrence, especially where offenders are perceived to have low prospects of rehabilitation (though offenders' high likelihood of rehabilitation will not mitigate their penalty). Judges appear to base their assessments of CEM offenders' likelihood of rehabilitation and risk of reoffending largely on reports provided to them.[44] Such reports may be prepared by the offender's treating psychiatrist or psychologist,[45] or by psychologists employed by community corrections services and individual community corrections officers (sometimes as presentence reports or intensive correction orders assessment reports),[46] forensic psychology services and sex offender programs overseen by government departments.[47] Courts can also order

---

[40] *DPP (Cth) v D'Alessandro* (2010) 26 VR 477 [21], quoted in *DPP v Garside* [2016] VSCA 74 (20 April 2016) [24]. See also *R v Gent* [2005] NSWCCA 370; 162 A Crim R 29 40-44 [48]-[69].

[41] *Mouscas v R* [2008] NSWCCA 181 (6 August 2008) [37], quoted in *DPP v Garside* [2016] VSCA 74 (20 April 2016) [23]. See also *R v Porte* [2015] NSWCCA 174 (2 July 2015) [147].

[42] *R v Porte* [2015] NSWCCA 174 (2 July 2015) [126], citing *Hill v State of Western Australia* [2009] WASCA 4 [28]. See also *Mouscas v R* [2008] NSWCCA 181 (6 August 2008) [37], quoted in *DPP v Garside* [2016] VSCA 74 (20 April 2016) [23].

[43] *State of New South Wales v TT (Final)* [2018] NSWSC 358 [112], citing *R v Gent* (2005) 162 A Crim R 29; [2005] NSWCCA 370, 43-44 [63]; *Mouscas v R* [2008] NSWCCA 181 (6 August 2008) [37].

[44] See, eg, *DPP v Philip John Murphy* [2018] VCC 516 (20 April 2018) [18]-[20]; *DPP v Creely* [2018] VCC 295 (15 March 2018) [42], [45]-[47].

[45] See, eg, *R v Dieu* [2017] NSWDC 375 (20 September 2017) [53], [58]. Note, however, that in *Smit v The State of Western Australia* [2011] WASCA 124 (1 June 2011) [9], the offender's treating psychologist prepared a report, but 'in view of her therapeutic relationship with the appellant … did not provide a risk assessment'.

[46] See, eg. *R v Dieu* [2017] NSWDC 375 (20 September 2017) [4], [51]; *R v Porte* [2015] NSWCCA 174 (2 July 2015) [34]; *R v De Leeuw* [2015] NSWCCA 183 (10 July 2015) [35]-[36], [48]-[49].

[47] See, eg, *R v Porte* [2015] NSWCCA 174 (2 July 2015) [41].

psychological reports.[48] CEM offenders' likelihood of rehabilitation is tied to their risk of recidivism, but these are arguably distinct concepts, and different features displayed by offenders may be more relevant to one or other of them.

It is helpful for the present discussion to consider what is meant by rehabilitation. McNeill (2012) distinguished between four types of rehabilitation: psychological, legal, social and moral. Psychological rehabilitation is principally concerned with promoting individual-level change in the offender, such as implementing strategies to address individual motivations for CEM offending. Legal rehabilitation refers to the requalification of offenders as citizens, while moral rehabilitation refers to reparation and satisfaction of society's moral demands. For example, making formal apologies to victims and making financial restitution could be actions demonstrating moral rehabilitation. The fourth type, social rehabilitation, refers to social recognition and acceptance of reformed offenders. We do not want to emphasise distinctions between these types of rehabilitation too strongly, but they may be helpful in discussing indicators of offenders' potential for rehabilitation that might be considered during sentencing and their connection or lack of connection to their risk of recidivism.

For instance, in considering the relationship between prospects of rehabilitation and risk of recidivism, psychological rehabilitation would seem to be most closely tied to risk of recidivism. Addressing an offender's psychological difficulties that are plausibly linked to his/her CEM offending might inform an assessment of his/her likelihood of recidivism for similar offences. However, psychological rehabilitation might also address psychological issues that are broader than those that might affect an offender's future recidivism. Some influences that lead to an individual's initial offending may not promote their reoffending.

---

[48] See, eg, *Smit v The State of Western Australia* [2011] WASCA 124 (1 June 2011) [9].

Arguably, other categories of offender rehabilitation are less closely linked to recidivism. For example, an offender's undertaking of financial restitution or other forms of reparation for harm might communicate his/her desire to affirm shared societal values and therefore point towards his/her potential for moral rehabilitation. Although such actions by an offender might occur in concert with and be linked to an ongoing process of psychological rehabilitation, they are less indicative of their risk of recidivism than particular psychological disorders or attitudes towards offending.

With the conceptual distinction between different forms of rehabilitation and the link between some of them and risk of recidivism in mind, we now examine empirical research concerning risk of recidivism in CEM offenders, the results of which we consider should inform reports that are prepared for sentencing courts.

II   Predictors of CEM Offenders' Risk of Recidivism

Two types of risk of reoffending are particularly relevant for CEM offenders. First, the risk of reoffending by committing further CEM offences is of concern. Second, judges and other parties in the criminal justice system will be concerned about the risk of CEM offenders committing contact sexual offences against children. We refer to these offences collectively as 'sexual recidivism'.

Several studies have found general trends in CEM offenders' risk of recidivism. Seto, Hanson and Babchishin (2011) conducted a meta-analysis or quantitative review of previous studies of recidivism in online offenders in nine samples from North American, the United Kingdom (UK), and European jurisdictions, using official records. (Online offenders include many CEM offenders, but also solicitation offenders). Over periods of 1.5 to 6 years, 3.4% of online sexual offenders committed further CEM offences, while 2% committed contact sexual offences. Eke, Seto and Williams (2011) examined recidivism in a more specific

sample of 541 male CEM offenders on a Canadian sexual offender registry over 4.1 years. They found that 6.8% committed a new CEM offence and 3.9% committed a further contact sexual offence. In a longer follow-up of almost six years with 201 offenders from this sample, 9.5% committed a new CEM offence, while 6.0% committed contact sexual reoffences.

In order to interpret these figures in terms of risk classification, it may be helpful to borrow guidelines from a widely-used risk assessment instrument for contact sexual offenders. The STATIC-99 translates scores on the instrument into risk classifications that correspond to particular rates of recidivism. For example, low risk corresponds to a five-year sexual recidivism rate of 5-6%, while low to moderate risk corresponds to 9-12% sexual recidivism (Harris, Phenix, Hanson, & Thornton, 2003). Application of these risk categories to the recidivism studies described above shows that online or CEM offenders as a group have a low to low-moderate risk of committing new CEM offences, and an overall low risk of committing new contact sexual offences.

Notwithstanding the apparent low recidivism rate of CEM offenders as a group, it is important for the purpose of risk assessment to identify particular factors that may nonetheless increase the risk of sexual recidivism for individual offenders. Factors that may predict sexual recidivism in CEM offenders have been examined in several studies. Seto and Eke (2005) found that CEM offenders with any type of prior criminal history were at greater risk of sexual recidivism than those without such a history. A follow-up study of the same sample with additional cases (Eke, Seto & Williams, 2011) showed that two risk factors predicted sexual recidivism for CEM offenders. These were previous criminal history variables, and younger age at the first criminal charge.

Seto and Eke (2015) reported on a sample of 266 Canadian CEM offenders, assessed from police case files. For the entire sample, predictors of any sexual recidivism included younger offender age and prior criminal history variables, including a juvenile criminal record and prior contact sexual offences. Admission of sexual interest in pre-pubescent or pubescent children was also a predictor of recidivism, as was the specific issue of having more images of boys in the CEM that was the subject of the offences. Different patterns emerged when the sample was divided into different groups based on offenders' criminal history. Those CEM offenders with histories of nonviolent or violent offending, or those with a history of contact sexual offences, reoffended at a greater rate than those offenders who had committed CEM offences only ('CEM-only offenders') with regard to *any offences*. Those CEM offenders who had committed CEM *and* contact sexual offences – so-called 'mixed offenders' – were more likely to be recidivists with regard to *any sexual offences* (28 %) than the other two groups (12-13 %). In addition, more *new CEM offences* were committed by mixed offenders (21%) than by CEM-only offenders (7%). Other variables predicted sexual recidivism for one of these groups, but not for others. For those CEM offenders with histories of contact sexual offending, being aged 35 or younger, having a history of juvenile offending and admitting a sexual interest in children predicted sexual recidivism. For those with histories of CEM and additional nonviolent or violent (but not sexual) offending, and for CEM-only offenders, none of these predictors of sexual recidivism were statistically significant.

The issue of sexual interest in children deserves particular comment. Seto, Hanson and Babchishin (2011) conducted a meta-analysis of 24 samples of online offenders from North America, the UK, Europe and New Zealand, which included CEM offenders and other online sexual offenders. Rates of contact sexual offences according to official records (charges, convictions or arrests) were 12.2% overall. For studies based on self-reports, 55.1%

overall disclosed their previous commission of contact sexual offences. Therefore, online sexual offending overlaps with contact sexual offending, and significant numbers of CEM offenders are likely to have committed contact sexual offences. Furthermore, there is persuasive evidence that CEM offenders in general are sexually interested in children. Using phallometric assessment and clinical interviews, Seto, Cantor and Blanchard (2006) compared CEM offenders, contact sexual offenders against children, rapists and non-offenders. Criteria for paedophilia were met by the majority of CEM offenders, by fewer than half of the contact sexual offenders against children, and by a fifth or less of the rapists and non-offenders. In addition, reviews of previous studies by Babchishin, Hanson and Hermann (2011) and Babchishin, Hanson and VanZuylen (2015) demonstrated that online offenders showed more sexual deviancy than contact sexual offenders, using measures of sexual fantasy about children or penile plesythmograph responses.

Given that most studies are based on identified sexual offenders, and may introduce biases because of this fact, a recent German study of an undetected sample of men who self-referred for their awareness of their sexual preference for children (Kuhle, Schlinzig, Kaiser, Amelung, Konrad, Röhle, & Beier, 2017) is informative. Amongst those participants who had committed sexual offences within the previous six months, CEM offenders showed greater sexual preoccupation and greater interest in early pubescent children than those who had not committed CEM offences. There were similar results for CEM offenders who had committed sexual offences over the course of their lives. Therefore, the finding of greater sexual interest in children in CEM offenders applies more broadly than only to those who are known by authorities to be sexual offenders. The finding of increased sexual interest in children amongst CEM offenders is also supported by the results of an anonymous online questionnaire completed by an extensive German community sample of more than 8,000 male participants (Dombert, Schmidt, Banse, Briken, Hoyer, Neutze, & Osterheider, 2016).

Men who reported viewing CEM showed much higher rates of child sexual fantasies (47%) compared to men who reported that they had not engaged in any contact or CEM sexual behaviour involving children (2.4%).

Thus, findings from several studies demonstrate that many CEM offenders are sexually interested in children. In addition, when contact sexual offending was examined specifically amongst CEM offenders (Seto & Eke, 2015), sexual interest in children predicted sexual recidivism principally for those CEM offenders who had a previous history of contact sexual offending. It is possible that sexual interest in children is a characteristic only of CEM offenders who have a history of contact sexual offending. However, this possibility seems unlikely, as the anonymous participants in the Dombert et al. (2016) study reported similar rates of child sexual fantasies amongst CEM-only and contact sexual offending groups, though both groups reported fewer child sexual fantasies than the CEM *and* contact offending (mixed) group. Paedophilic fantasy *preference* was greater for the CEM group than for participants reporting no sexual behaviour involving children, but less than the contact sexual offending and the mixed groups.

Although sexual interest in children may be a common characteristic of CEM offenders, antisocial histories and attitudes may differentiate CEM offenders with histories of contact sexual offending from those without them. Research reviews have shown that, compared with those who committed contact sexual offences, online sexual offenders showed higher victim empathy, fewer beliefs about the desirability of sexual relations with children, fewer substance abuse problems, and fewer prior offences or problems with correctional supervision (Babchishin et al., 2011; Babchishin, Hanson, & VanZuylen, 2015; Henshaw, Ogloff, & Clough, 2017; Lee, Li, Lamade, Schuler, & Prentky, 2012). In addition, the mixed offenders showed greater antisocial characteristics than CEM-only offenders. Long, Alison and McManus (2012) and McManus, Long, Allison, and Almond (2015) compared CEM-

only offenders with mixed offenders. Mixed offenders were found to be more likely to have previous convictions, particularly for non-sexual offences. Lee et al. (2012) found that contact sexual offenders and mixed offenders showed higher indications of antisocial behaviour, such as previous charges or arrests for non-sexual offences or delinquency, than CEM-only offenders.

The various findings regarding sexual interest in children and antisocial characteristics may be reconciled using Seto's (2013) motivation-facilitation model, applied to CEM offenders. According to this explanation, CEM offenders are generally characterised by sexual deviance, which is commonly manifested in sexual interest in children (Seto, Reeves, & Jung, 2010). However, antisociality factors, which may be reflected in offenders' previous criminal history and attitudes, are likely to be demonstrated by those CEM offenders who commit contact sexual offences, and those who reoffend with either CEM offences or contact sexual offences.

Based on the research discussed above, the following tentative conclusions may be advanced regarding risk of recidivism in CEM offenders. CEM offenders with a previous criminal history of contact sexual offences may have an increased risk of sexual recidivism, including by committing new CEM offences, above the general level for CEM offenders. In addition, for those with a history of CEM and contact sexual offending, younger age, juvenile offending history and admitted sexual interest in children may be predictors that raise individual offenders' risk of sexual recidivism, although additional studies are required to confirm these predictors. However, CEM-only offenders in general tend to have a low to low-moderate risk of sexual recidivism.

III   Assessing CEM Offenders' Risk of Reoffending

Some of the professional reports on which sentencing courts rely refer to actuarial risk assessments that have been administered to assess CEM offenders' risk of reoffending,[49] while other professionals' opinions are based on different information, such as the nature of the offender's engagement in therapy and his/her need for further treatment.[50] It is, however, unhelpful to rely on either of these approaches to assess risk of recidivism, as we discuss. To take the latter matter first, offenders' engagement in therapy may indicate their motivation to be rehabilitated and thus suggest their potential for psychological rehabilitation. Furthermore, the therapy may address relevant risk factors related to recidivism, but engagement in therapy alone may not reduce an offender's likelihood of recidivism. Indeed, we believe that it is important to distinguish between prospects for rehabilitation and risk of reoffending. An offender's lack of reoffending may not confirm that he/she is engaged in rehabilitation (for instance, he/she may simply lack opportunity to offend), while an offender who seems to be engaged in a process of rehabilitation (according to one or more of the four types of rehabilitation discussed above) may reoffend. Nevertheless, risk of reoffending and potential for rehabilitation may be related to one another.

With regard to actuarial risk assessments, we discuss below current research that suggests that they do not constitute an adequate approach for risk assessment of CEM offenders. We outline available evidence regarding actuarial risk assessments and suggest an alternative approach to risk assessment for CEM offenders.

(a) Actuarial assessments

---

[49] See, eg, *R v De Leeuw* [2015] NSWCCA 183 (10 July 2015) [48].
[50] See, eg, *R v Dieu* [2017] NSWDC 375 (20 September 2017) [58]; *Smit v State of Western Australia* [2011] WASCA 124 (1 June 2011) [13].

Actuarial or statistical predictions are based on empirically-established correlations between numerical scores obtained with a risk measure (typically based on known characteristics of both the offender and the offence) and the rates of recidivism of individuals who obtain similar scores. Actuarial instruments use combinations of empirically-supported variables that predict recidivism to provide a composite score, which is used to rank offenders according to their likelihood of recidivism (Mossman, 2006). The score on an actuarial tool ranks an individual offender in relation to similar offenders. The result of an actuarial assessment can be reported in terms of risk categories and is often reported as the probability of a person with a similar score offending again within a set period of time.

Therefore, an individual offender should be similar in terms of offending to those offenders for whom the instrument was developed and validated. Most commonly used actuarial instruments for sexual offenders, such as the STATIC-99 and STATIC-99-R, have not been validated on groups of CEM offenders, and do not focus specifically on non-contact sexual offending. Therefore, the use of such instruments on CEM offenders compares them with sexual offenders who have committed contact sexual offences and are not necessarily similar to them (see Babchishin et al., 2011; Babchishin et al., 2015; Henshaw et al., 2017; Lee et al., 2012). In support of our recommended cautionary approach to making actuarial predictions in relation to CEM offenders, an empirical study showed that the STATIC-99 overestimated the risk level for a sample of CEM offenders in the UK (Osborn, Elliott, Middleton, & Beech, 2010). Additionally, a recent review of literature on risk assessment of CEM-only offenders (Garrington, Chamberlain, Rickwood, & Boer, 2017) noted that actuarial assessment tools that are commonly used either do not mention, or actually exclude, these offenders. It has also been noted in case law that actuarial tools are not suited to assessing CEM offenders' risk of reoffending, even though some who write professional reports for sentencing courts have apparently used these tools with CEM offenders. In *R v*

Dieu [2017] NSWDC 375, where the offender was assessed as falling 'within a "low risk" category of committing further offences',[51] Norrish J noted that such an assessment:

> 'is a common practice and various actuarial tools were used and it is pointed out that there is no "actuarial assessment tool" that at this stage has been validated to use regarding what are described as "hands off sexual offences such as child pornography". In other words, the actuarial tools like Static 99R have to be adapted from their primary purposes which is the assessment of risk presumed by a person who has been actively involved in sexual assault of children to those persons who are committing offences "online", which are nearly all the child pornography offences charged nowadays'.[52]

It might be argued that established actuarial instruments for predicting sexual recidivism may be suitable to use in relation to those CEM offenders who have an official history of contact sexual offending. However, we suggest that this is not appropriate, as these mixed offenders may differ from the contact sexual offenders on whom the actuarial instruments were validated, with regard to demographic variables, empathy, and sexual deviancy (see Babchishin et al., 2015; Dombert et al., 2016). In light of these considerations, we would caution strongly against the practice of 'adapting' commonly used actuarial tools from their primary purpose of assessing contact sexual offenders' risk of reoffending for the purpose of assessing CEM offenders' risk of recidivism in the absence of supporting evidence of their validity for this function. The use of actuarial instruments to assess CEM offenders' risk of recidivism may only be appropriate if they have been developed specifically for CEM offenders, or trialled on samples of CEM offenders, and demonstrated their accuracy in predicting CEM offenders' risk of reoffending.

---

[51] *R v Dieu* [2017] NSWDC 375 (20 September 2017) [52].
[52] *R v Dieu* [2017] NSWDC 375 (20 September 2017) [51].

We next discuss two actuarial instruments that were adapted for and trialled on CEM offenders and one actuarial instrument that has been developed for the risk assessment of CEM offenders. We note that none of these instruments have shown sufficient predictive ability for CEM offenders, particularly those offenders with a history of CEM-only offences. Wakeling, Howard, and Barnett (2011) examined the predictive ability of two actuarial risk instruments on recidivism after one and two years with a large sample of CEM offenders in the UK. The authors provided separate analyses of CEM-only and mixed offenders. The Risk Matrix 2000's (RM2000) three scales (for sexual, violent, or sexual and non-sexual violent recidivism) assess static or unchanging risk factors in males who have been convicted of a sexual offence. The items include offenders' age, sexual and non-sexual criminal history, as well as features of the victims of sexual offences, including their gender or relationship to the offender. The Offender Group Reconviction Scale (OGRS3) is an actuarial scale of general offending that includes static factors of age, gender of offender, and criminal history. The RM2000 sexual and combined recidivism scales and the OGRS3 showed moderate accuracy for predicting sexual recidivism over two years. However, when used separately for CEM-only and mixed offender groups, prediction of sexual reoffending with this scale was relatively poor for mixed sexual offenders and extremely poor for CEM-only offenders.

More recently, Seto and Eke (2015) developed a structured risk checklist specifically for assessing CEM offenders' risk of recidivism, called the Child Pornography Offender Risk Tool (CPORT). From case files of 301 CEM offenders in Ontario, the researchers coded seven empirical predictors of recidivism, including: criminal history and substance misuse; self-reported sexual interest in children; CEM content depicting prepubescent children; and opportunities for contact with children. Predictive ability of the CPORT was tested using a five-year follow-up sample of 286 offenders, of whom 4% committed subsequent contact sexual offences against children and 12% committed new CEM offences. Overall, the

CPORT showed moderate predictive validity for any sexual recidivism and for contact sexual recidivism. However, when separate groups were considered, the CPORT did not significantly predict sexual recidivism among CEM-only offenders, but a compact version of the CPORT did show moderate predictive ability for sexual recidivism in mixed offenders. The authors cautioned that the CPORT was not predictive for CEM-only offenders and has not been cross-validated on a separate sample of offenders, so that the recidivism probabilities tied to particular CPORT scores should not be used for any CEM offenders.

The lack of substantial evidence of the suitability of actuarial risk assessment methods to assess the risk of recidivism of CEM offenders, and particularly CEM-only offenders, in the two studies above (Seto & Eke, 2015; Wakeling et al., 2011), is understandable when the prevalence of CEM offenders' recidivism generally is considered. According to applications of Bayes' theorem to risk prediction, it is important to consider base rates or prevalence of the phenomenon of interest in the population one is examining. Predictive ability depends on both the properties of the predictive test and the prevalence or base rate (Meehl & Rosen, 1955). Under conditions of a low base rate of recidivism, which is the situation for CEM offenders, many errors of classification are likely to occur even when a risk assessment instrument is well-constructed. Therefore, we are not hopeful that actuarial approaches will prove useful for the risk assessment of CEM offenders.

Based on the research reviewed in the second part of this article, the most accurate statement that can at present be made about risk of recidivism amongst CEM offenders generally is that, as a group, they are at low to low to moderate risk of sexual recidivism. We do, however, acknowledge that most research has been based on official records of arrests, charges and convictions, and that these figures are likely to underestimate the true rate of recidivism amongst CEM offenders. CEM offenders with a history of contact sexual offending tend to have increased risk of sexual recidivism, and additional risk factors may be

relevant for individuals with such criminal histories. We suggest that those who provide professional reports to sentencing courts should take these findings into account and also use a more individualised approach to risk assessment that links offenders' risk of recidivism with their potential for rehabilitation where appropriate.

(b) Structured professional judgment

The structured professional judgment (SPJ) approach is an individualised clinical risk assessment in which the list of risk factors used in clinical assessments is drawn from research literature (Doren, 2002). Actuarial and SPJ approaches to sexual recidivism have been compared directly in a few studies. Comparison of the SPJ instrument, Sexual Violence Risk-20, with an actuarial approach in one study showed that the actuarial approach was superior in predictive validity (Sjöstedt & Långström, 2002), while another study showed that the SPJ approach was a significantly better predictor of sexual recidivism than the actuarial approach (de Vogel, de Ruiter, van Beek, & Mead, 2004). Therefore, accuracy of prediction may be similar for both approaches.

We suggest that the SPJ instrument, Risk for Sexual Violence Protocol (RSVP) (Hart, Kropp, Laws, Klaver, Logan, & Watt, 2003), provides a suitable framework for risk assessment of CEM offenders, which can also usefully help to evaluate their potential for rehabilitation. In one study that did not include CEM offenders, the RSVP demonstrated adequate levels of interrater reliability overall, and a good level of interrater reliability for summary judgments and supervision recommendations (Sutherland et al., 2012). The RSVP was also used in a study of Scottish individuals who were considered to pose a risk of sexual violence and 16.5% of whom had committed CEM offences (Darejee et al., 2016). Evaluation of these offenders using the RSVP showed that items and summary judgments overall demonstrated good to excellent interrater reliability. We note that the RSVP's capacity to predict recidivism amongst CEM offenders has not yet been demonstrated and therefore

summary judgments of levels of risk in relation to these offenders should be viewed with caution. However, the RSVP *framework* may be helpful in informing sentencing courts about the prospects for rehabilitation of CEM offenders, as it includes evaluation of possible risk scenarios and risk-management strategies.

Importantly, it is possible to adapt the SPJ approach to take into account empirical research regarding CEM offenders. The RSVP is administered in six steps. At the first step, case information is gathered regarding history of sexual violence, and functioning in interpersonal, social, biological, sexual, and intrapersonal (antisocial attitudes, mental disorder, and substance abuse) domains. According to research conducted in relation to CEM offenders, specific issues should be covered during the case information phase, including the type and number of CEM images that were the subject of the CEM offence (Long et al., 2012), and the offender's history of sexual offending (Seto et al., 2011). Relevant information regarding interpersonal and social functioning includes experiences of childhood difficulties and physical and sexual abuse (Babchishin et al., 2015), intimate relationships, social relationships and employment (Babchishin et al., 2011; Babchishin et al., 2015), and history of non-sexual offending (Babchishin et al., 2015; Eke et al., 2011; Lee et al., 2012; Long et al., 2012; Seto & Eke, 2005). Intrapersonal functioning information that is relevant to CEM offenders includes beliefs about sexual relationships with children and victim empathy (Babchishin et al., 2015; Elliott, Beech, & Mandeville-Norden, 2013; Seto et al., 2011), internet preoccupation (Lee et al., 2012), internet use (Babchishin et al., 2015), substance misuse (Seto, 2013), and impulsivity (Elliott et al., 2013). Additionally, assessment of CEM offenders should include sexual interest and fantasy regarding children (Babchishin et al., 2011; Babchishin et al., 2015), whether prepubescent (Seto et al., 2006) or early pubescent (Kuhle et al., 2017), and sexual preoccupation (Kuhle et al., 2017).

Given that the research literature indicates that there can be various motives for CEM offending, assessment at step 1 should also include an exploration of the motivation for offending. Possible motives reported in the CEM literature include aiding sexual arousal and fantasy (Merdian, Curtis, Thakker, Wilson and Boer, 2013; Quayle & Taylor, 2002; Seto, Reeves, & Jung, 2010; Sheldon & Howitt, 2007;Surjadi, Bullens, Van Horn and Bogaerts, 2010), facilitating collecting behaviour (Quayle & Taylor, 2002; Sheldon & Howitt, 2007), avoidance of real life (Surjadi et al., 2010), facilitation of social relationships (Quayle & Taylor, 2002; Sheldon & Howitt, 2007; Surjadi et al., 2010), emotional relief (Merdian et al., 2013), addiction to pornography or to the internet, indiscriminate sexual interests, curiosity, or accidental access (Seto et al., 2010).

RSVP guidelines also recommend obtaining information from multiple sources in order to counteract potential biases from interviews with offenders. When applied to CEM offenders, other sources could include reports from police and/or mental health professionals. Another relevant source of information for CEM offenders is the content of images that are the subject of the offences, which are classified according to characteristics such as age or gender (Glasgow, 2010). These suggestions may also be relevant to evaluating CEM offenders' risk of recidivism because, as noted above, Seto and Eke (2015) found that offenders' access to CEM content that comprised images of boys was associated with their increased risk of recidivism.

At Step 2, the presence of individual risk factors is determined more than one year prior to the evaluation, as well as within the year prior to the evaluation, in order to help the professional who conducts the assessment ('evaluator') to consider the causal role that any particular factor may play. At Step 3, the evaluator considers the relevance of identified risk factors for future risk management strategies, such as treatment, monitoring, supervision, and/or victim safety planning. At Step 4, the evaluator considers possible risk scenarios, that

is, projections about what could happen, rather than predictions about what will happen. At Step 5, the evaluator recommends risk management strategies for scenarios developed at Step 4. At the final step, the evaluator communicates a summary judgment of risk, according to categories of low, moderate, or high risk. As we have noted, summary judgments of risk from the application of the RSVP should be treated cautiously, as prediction of the RSVP has not yet been tested with groups of CEM offenders.

For assessment of CEM offenders, risk factors identified at Steps 2 and 3, risk scenarios at Step 4 and risk management strategies at Step 5 according to the RSVP framework could be related to offenders' potential for rehabilitation. For example, an evaluator may identify paedophilic interest as a risk factor in an individual with a history of CEM and contact sexual offending, and recommend strategies to address this particular risk factor. Information that the offender had taken active steps voluntarily or with his/her treating professional to control his/her sexual fantasies would inform an assessment of his/her prospects for rehabilitation and steps to address risk of recidivism.

IV   Recommendations for Professional Reports

As discussed above, in sentencing CEM offenders, Australian courts treat general deterrence and denunciation as the paramount considerations. The principle of specific deterrence is also relevant to sentencing some CEM offenders, especially those who are deemed to have low prospects of rehabilitation and a high risk of recidivism. Therefore, it is desirable that professional reports produced for sentencing courts address both offenders' risk of recidivism and their prospects of rehabilitation. In line with our discussion above of four types of rehabilitation (McNeill, 2012) and the relationship between rehabilitation and reoffending, offenders' risk of reoffending and prospects of rehabilitation should be both distinguished

from and related to one another in professional reports (with assessments of offenders' risk of reoffending and prospects for rehabilitation informing one another where appropriate). The present state of knowledge regarding risk of recidivism amongst CEM offenders is that CEM-only offenders are generally, as a group, at low to low to moderate risk of recidivism (though, as noted above, this understanding is based on known offenders and much CEM offending and reoffending may be undetected), and no additional information regarding risk factors would seem to be relevant. Those mixed offenders with a history of contact sexual offending in addition to CEM offences appear to be at higher risk of recidivism. For this group, sexual interest in children seems to be a potential risk factor for recidivism (Seto & Eke, 2015), although this finding requires replication. For mixed offenders, sexual interest in children as well as recommendations for managing this risk factor could be reported under the domain of risk assessment using the RSVP framework. However, when the RSVP is applied to CEM-only offenders, sexual interest in children or other motivations for offending should be reported as issues of psychological rehabilitation rather than of risk assessment, as no specific predictors of sexual recidivism have been established for this group to date.

Reporting in relation to CEM offenders' prospects of psychological rehabilitation could include their engagement in therapeutic efforts to address any identified risk factors. Such reports might refer to whether therapy or other treatment that offenders have undertaken has already proved beneficial, or whether they have committed sexual offences after participating in rehabilitation programs or other therapy. Where offenders reoffend following their conviction for similar offences, it is possible to link their prospects of rehabilitation with their risk of recidivism, as this reoffending suggests the offender's lower prospects of rehabilitation, and proves their risk of recidivism.

Other issues, including offenders' insight into their offending patterns, and repulsion in response to CEM images would also inform the domain of prospects of rehabilitation. The

former can be regarded as an example of prospects for psychological rehabilitation, while the latter arguably points to potential for both psychological and moral rehabilitation, as repulsion to CEM images may be an expected response to such images in the community. Remorse should not be reported under the heading of risk of recidivism, as it is not an established predictor of recidivism (Proeve & Tudor, 2010). However, offenders' remorse might be regarded as informing their prospects for rehabilitation in more than one rehabilitation domain, as it can reflect a change in their psychological attitude toward offending, as well as their affirmation of shared moral values.

Finally, further investigation into the predictive ability of risk assessment instruments, and specifically the SPJ approach, with CEM offenders is recommended. The RSVP framework can inform assessment of offenders' risk of reoffending as well as their prospects of rehabilitation. However, because the low base rate of CEM-only offenders' recidivism is likely to present a similar problem for the predictive ability of SPJ instruments as it does for actuarial risk instruments, large samples of CEM offenders would be needed for such studies.

Conclusion

It is crucial that professional reports that are prepared in relation to CEM offenders for sentencing courts are as comprehensive and accurate as possible. In particular, given courts' objective of specific deterrence in certain cases, it is important that the reports comment on offenders' risk of recidivism and their prospects of rehabilitation. To some extent, the latter will inform the former. We have recommended that professional reports apply the SPJ approach, rather than rely on actuarial assessments, for several reasons. Application of the SPJ approach can produce thorough and individualised evaluations of CEM offenders' risk of recidivism, and reflect current research findings regarding such offenders' risk factors

generally. Where appropriate, the SPJ approach can link offenders' prospects for

rehabilitation with their risk of recidivism (such as by referring to rehabilitative efforts that

offenders have already undertaken and their efficacy, which can have implications for their

risk of reoffending), but also report on these matters separately, including by indicating

rehabilitation that might be required.

Declaration of interest

The authors report no conflict of interest.

Ethical approval

This article does not contain any studies with human participants or animals performed by

any of the authors.

References

Babchishin, K. M., Hanson, R. K., & Hermann, C. A. (2011). The characteristics of online

sex offenders: a meta-analysis. *Sexual Abuse: A Journal of Research and Treatment,*
23, 92-123. doi: 10.1177/1079063210370708

Babchishin, K. M., Hanson, R. K., & VanZuylen, H. (2015). Online child pornography

offenders are different: a meta-analysis of the characteristics of online and offline sex

offenders against children. *Archives of Sexual Behavior, 44*, 45-66. doi:

10.1007/s10508-014-0270-x

Darejee, R., Russell, K., Forrest, L., Milton, E., Savioe, V., Baron, E., Kirkland, J. and

Stobie, S. (2016), "Risk for sexual violence protocol (RSVP): a real world study of

the reliability, validity and utility of a structured professional judgement instrument in

the assessment and management of sexual offenders in South East Scotland",

available at:

www.rmascotland.gov.uk/files/7814/5311/6043/Risk_for_Sexual_Violence_

Protocol_-_RSVP.pdf (accessed 17 April 2018).

de Vogel, V., de Ruiter, C., van Beek, D., & Mead, G. (2004). Predictive validity of the SVR-

20 and Static-99 in a Dutch sample of treated sex offenders. *Law and Human*

Behavior, 28, 235-251. doi:10.1023/B:LAHU.0000029137.41974.eb

Dombert, B., Schmidt, A.F., Banse, R., Briken, P., Hoyer, J., Neutze, J., & Osterheider, M.

(2016). How common is men's self-reported sexual interest in prepubescent children?

Journal of Sex Research, 53, 214-223. doi: 10.1080/00224499.2015.1020108

Doren, D.M. (2002). *Evaluating sex offenders: A Manual for Civil Commitments and Beyond.*

Thousand Oaks, CA: Sage.

Eke, A. W., Seto, M. C., & Williams, J. (2011). Examining the criminal history and future

offending of child pornography offenders: an extended prospective follow-up study.

Law and Human Behavior, 35, 466-478. doi: 10.1007/s10979-010-9252-2

Elliott, I. A., Beech, A. R., & Mandeville-Norden, R. (2013). The psychological profiles of

internet, contact, and mixed internet/contact sex offenders. *Sexual Abuse: A Journal*

of Research and Treatment, 25, 3-20. doi: 10.1177/1079063212439426

Garrington, C., Chamberlain, P., Rickwood, D., & Boer, D. (2017). Risk assessment of online

child abuse material (CAM) offenders: a review of existing tools. *Journal of Criminal*

Psychology. doi: 10.1108/JCP-05-2017-0022.

Glasgow, D. (2010). The potential of digital evidence to contribute to risk assessment of internet offenders. *Journal of Sexual Aggression, 16*, 87-106. doi:10.1080/13552600903428839

Harris, A., Phenix, A., Hanson, R.K., & Thornton, D. (2003). *STATIC-99 Coding Rules Revised – 2003.* Ottawa: Solicitor General Canada.

Hart, S.D., Kropp, P.R., Laws, D.R., Klaver, J., Logan, C., & Watt, K.A. (2003). *The Risk for Sexual Violence Protocol (RSVP): Structured professional guidelines for assessing risk of sexual violence.* Burnaby, BC: Mental Health, Law, and Policy Institute, Simon Fraser University.

Henshaw, M., Ogloff, J.R.P., & Clough, J.A. (2017). Looking beyond the screen: A critical review of the literature on the online child pornography offender. *Sexual Abuse: A Journal of Research and Treatment, 29,* 416-445. doi: 10.1177/1079063215603690

Kuhle, L. F., Schlinzig, E., Kaiser, G., Amelung, T., Konrad, A., Röhle, R., & Beier, K. M. (2016). The association of sexual preference and dynamic risk factors with undetected child pornography offending. *Journal of Sexual Aggression, 23*(1), 3-18. doi:10.1080/13552600.2016.1201157

Lee, A. F., Li, N.-C., Lamade, R., Schuler, A., & Prentky, R. A. (2012). Predicting hands-on child sexual offenses among possessors of Internet child pornography. *Psychology, Public Policy, and Law, 18*(4), 644-672. doi:10.1037/a0027517

Long, M. L., Alison, L. A., & McManus, M. A. (2013). Child pornography and likelihood of contact abuse: a comparison between contact child sexual offenders and noncontact offenders. *Sex Abuse, 25*(4), 370-395. doi:10.1177/1079063212464398

McManus, M. A, Long, M. L., Alison, L. A., & Almond, L. (2015). Factors associated with contact child sexual abuse in a sample of indecent image offenders. *Journal of Sexual Aggression, 21*, 368-384. doi: 10.1080/13552600.2014.927009

McNeill, F. (2012). Four forms of 'offender' rehabilitation: Towards an interdisciplinary perspective. *Legal and Criminological Psychology, 17*, 18–36. doi:10.1111/j.2044-8333.2011.02039.x

Meehl, P.E., & Rosen, A. (1955). Antecedent probability and the efficiency of psychometric signs, patterns, or cutting scores. *Psychological Bulletin, 52,* 194-216. doi:10.1037/h0048070

Merdian, H. L., Curtis, C., Thakker, J., Wilson, N., & Boer, D. P. (2011). The three dimensions of online child pornography offending. *Journal of Sexual Aggression, 19*(1), 121-132. doi:10.1080/13552600.2011.611898

Mossman, D. (2006). Another look at interpreting risk categories. *Sexual Abuse: A Journal of Research and Treatment, 18*, 41-63. doi: 10.1177/107906320601800104

Osborn, J., Elliott, I.A., Middleton, D., & Beech, A.R. (2010). The use of actuarial risk assessment measures with UK internet child pornography offenders. *Journal of Aggression, Conflict and Peace Research, 2*, 16-24. doi:10.5042/jacpr.2010.0333

Proeve, M., & Tudor, S. (2010). *Remorse: Psychological and Jurisprudential Perspectives*. Farnham, UK: Ashgate.

Quayle, E. & Taylor, M. (2002). Child pornography and the internet: Perpetuating a cycle of abuse. *Deviant Behavior, 23*, 331-361. doi: 10.1080/01639620290086413

Seto, M.C. (2013). *Internet sex offenders.* Washington, DC: American Psychological Association.

Seto, M. (2017). Research on online sexual offending: what have we learned and where are we going? *Journal of Sexual Aggression, 23*, 104-106. doi:10.1080/13552600.2016.1251021

Seto, M.C., Cantor, J.M., & Blanchard, R. (2006). CP offenses are a valid diagnostic indicator of pedophilia. *Journal of Abnormal Psychology, 115*, 610-615. doi:10.1037/0021-843X.115.3.610

Seto, M.C., & Eke. A.W. (2005). The future offending of child pornography offenders. *Sexual Abuse: A Journal of Research and Treatment, 17*, 201-210. doi: 10.1177/107906320501700209

Seto, M. C., & Eke, A. W. (2015). Predicting recidivism among adult male child pornography offenders: Development of the Child Pornography Offender Risk Tool (CPORT). *Law Hum Behav, 39*(4), 416-429. doi:10.1037/lhb0000128

Seto, M. C., Hanson, R. K., & Babchishin, K. M. (2011). Contact sexual offending by men with online sexual offenses. *Sex Abuse, 23*(1), 124-145. doi:10.1177/1079063210369013

Seto, M. C., Reeves, L., & Jung, S. (2010). Explanations given by child pornography offenders for their crimes. *Journal of Sexual Aggression, 16*(2), 169-180. doi:10.1080/13552600903572396

Sheldon, K., & Howitt, D. (2007). *Sex offenders and the internet.* Chichester, UK: Wiley.

Sjöstedt, G. & Långström, N. (2002). Assessment of risk for criminal recidivism among rapists: A comparison of four different measures. *Psychology, Crime and Law*, 8, 25-40. doi:10.1080/10683160290000879

Surjadi, B., Bullens, R., van Horn, J., & Bogaerts, S. (2010). Internet offending: Sexual and

    non-sexual functions within a Dutch sample. *Journal of Sexual Aggression, 16*(1), 47-

    58. doi:10.1080/13552600903470054

Sutherland, A.A., Johnstone, L., Davidson, K.M., Hart, S.D., Cooke, D.J., Kropp, P.R.,

    Logan, C., Michie, M., & Stocks, R. (2012). Sexual violence risk assessment: An

    investigation of the interrater reliability of professional judgments made using the

    Risk for Sexual Violence Protocol. *International Journal of Forensic Mental Health,*

    11, 119-133. doi: 10.1080/1499013.2012.690020

Wakeling, H. C., Howard, P., & Barnett, G. (2011). Comparing the validity of the RM2000

    scales and OGRS3 for predicting recidivism by Internet sexual offenders. *Sex Abuse,*

    23(1), 146-168. doi:10.1177/1079063210375974