SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General (Qld) v Nallajar* [2016] QSC 317
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **EDWARD GEORGE NALLAJAR** (respondent)
FILE NO/S:	BS No 6021 of 2016
DIVISION:	Trial Division
PROCEEDING:	Originating application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED EX TEMPORE ON:	16 December 2016
DELIVERED AT:	Brisbane
HEARING DATE:	5 and 14 December 2016
JUDGE:	Burns J
ORDER:	**1. The court, being satisfied to the requisite standard that the respondent, Edward George Nallajar, is a serious danger to the community in the absence of an order pursuant to Division 3 of Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld), orders that the respondent be released from custody subject to the requirements set forth in the Schedule to these reasons, until 16 December 2026.** **2. The court directs that a copy of these reasons be supplied to those persons who, within corrective services, are responsible for managing and treating Mr Nallajar.**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY– where there is an application pursuant to s 5 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 for an order pursuant to Division 3 of Part 2 of that Act – whether the respondent is a serious danger to the community in the absence of a Division 3 order – where the court may order a continuing detention order or a

supervision order pursuant to s 13(5) of the Act – whether the adequate protection of the community can be reasonably and practicably managed by a supervision order – whether the requirements under s 16 of the Act can be reasonably and practicably managed by corrective services officers

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 2, s 3, s 5, s 13, s 16

Attorney-General (Qld) v Beattie [2007] QCA 96, followed
Attorney-General (Qld) v Fardon [2011] QCA 111, cited
Attorney-General (Qld) v Francis [2007] 1 Qd R 396; [2006] QCA 324, cited
Attorney-General (Qld) v Kanaveilomani [2013] QCA 404, cited
Attorney-General (Qld) v Kennedy [2016] QSC 287, followed
Attorney-General (Qld) v Lawrence [2010] 1 Qd R 505; [2009] QCA 136, cited
Attorney-General (Qld) v Phineasa [2013] 1 Qd R 305; [2012] QCA 184, cited
Attorney-General (Qld) v Sutherland [2006] QSC 268, followed
Fardon v Attorney-General (Qld) (2004) 223 CLR 575; [2004] HCA 46, cited
Kynuna v Attorney-General for the State of Queensland [2016] QCA 172, cited
Turnbull v Attorney-General (Qld) [2015] QCA 54, cited

COUNSEL: B H P Mumford for the applicant
T Ryan for the respondent

SOLICITORS: G R Cooper Crown Solicitor for the applicant
Legal Aid Queensland for the respondent

[1] HIS HONOUR: By this application, the Honourable Attorney-General for the State of Queensland seeks an order pursuant to Div 3 of Pt 2 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld), detaining the respondent, Edward George Nallajar, in custody for an indefinite term for care, treatment or control: s 13(5)(a). In the alternative, if the court is minded to release Mr Nallajar from custody, the Attorney-General asks that he be released subject to a supervision order under the Act: s 13(5)(b). Mr Nallajar's full-time release date is today.

[2] Mr Ryan of counsel, who appeared on behalf of Mr Nallajar at the hearing of this application, conceded that the evidence of the examining psychiatrists would satisfy the court that he is a serious danger to the community in the absence of an order pursuant to Div 3. However, it was submitted that the adequate protection of the community can be ensured by his release, subject to a supervision order that is fashioned to address the particular risk factors that exist in his case.

[3] Mr Mumford of counsel appeared on behalf of the Attorney-General. Although he submitted in writing that it was by no means clear that a supervision order will be capable of managing the risk that Mr Nallajar will reoffend sexually against a child, that submission was made prior to the three psychiatrists – Dr Harden, Dr Moyle and Dr Sundin – giving oral evidence. In any event, if the court is minded to make a supervision order, a draft order containing a range of conditions was supplied by Mr Mumford. That draft order is exhibit 3 in the proceeding.

[4] For the reasons that follow, I am satisfied by acceptable, cogent evidence and to the high degree of probability required by the Act that Mr Nallajar is a serious danger to the community in the absence of an order pursuant to Div 3 of Pt 2 of the Act. Further, I am satisfied that the adequate protection of the community can be ensured by the making of a supervision order, that the adequate protection of the community can be reasonably and practicably managed by a supervision order and that the requirements under s 16 of the Act can be reasonably and practicably managed by corrective services officers. The order shall be in the terms of the draft order, which is exhibit 3, and it shall be for a period of 10 years.

[5] I turn now to my reasons.

[6] The principles to be applied on an application such as this were considered by me and summarised in *Attorney-General (Qld) v Kennedy* [2016] QSC 287 as follows:

> "**The legislation**
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> [21] The objects of the Act are to provide for the continued detention in custody or supervised release of a particular class of prisoner to ensure adequate protection of the community and to provide for the continuing control, care or treatment of such prisoners to facilitate their rehabilitation.[1]
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> [22] To those ends, the Act provides for the continued detention in custody or supervised release of prisoners but only if the court is satisfied that they represent a "serious danger to the community" in the absence of an order providing for their continuing detention or supervision under Division 3 of Part 2 of the Act.[2] The Attorney-General may apply for such an order,[3] and bears the onus of proving that the subject of any such application is indeed a "serious danger to the community".[4]
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> [23] A prisoner is a "serious danger to the community" if there is "an unacceptable risk" that the prisoner will commit a "serious sexual offence" if released from custody or if released without a supervision order being made.[5] A "serious sexual offence" means, relevantly, an offence of a sexual nature involving violence or

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1 Section 3.
2 Section 13(1).
3 Section 5(1).
4 Section 13(7).
5 Section 13(2).

against a child.[6] The expression, "unacceptable risk", is not defined in the Act. Although it is incapable of precise definition, it is an expression that calls for the striking of a balance.[7] So far as the assessment of risk is concerned, "risk" means the possibility, chance or likelihood of the commission of a serious sexual offence. A risk will be at an unacceptable level if the adequate protection of the community cannot be ensured.

[24] On the hearing of the application, the court may decide that a prisoner poses a serious danger to the community only if it is satisfied by acceptable, cogent evidence, and to a high degree of probability, that the evidence is of sufficient weight to justify the decision.[8] The court's assessment is to be carried out with respect to "the prisoner's current state and in respect of release at the time the application is determined, and not at some indeterminate time in the future".[9]

[25] The paramount consideration in deciding whether to make a continuing detention order or a supervision order is the need to ensure adequate protection of the community.[10] In addition, the court must consider whether adequate protection of the community can be "reasonably and practicably managed by a supervision order" and whether the requirements for such orders specified in s 16 can be "reasonably and practicably managed by corrective services officers".[11]

[26] Section 13(4) provides that, in deciding whether a prisoner is a serious danger to the community, the court must have regard to the following:

"(aa) any report produced under section 8A;

(a) the reports prepared by the psychiatrists under section 11 and the extent to which the prisoner cooperated in the examinations by the psychiatrists;

(b) any other medical, psychiatric, psychological or other assessment relating to the prisoner;

(c) information indicating whether or not there is a propensity on the part of the prisoner to commit serious sexual offences in the future;

(d) whether or not there is any pattern of offending behaviour on the part of the prisoner;

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6 Section 2 and the Schedule to the Act, being the Dictionary. See also *Attorney-General (Qld) v Phineasa* [2013] 1 Qd R 305; [2012] QCA 184 at [23]-[45] (Muir JA); *Kynuna v Attorney-General for the State of Queensland* [2016] QCA 172 at [56] (McMurdo P).

7 See *Fardon v Attorney-General for the State of Qld* (2004) 223 CLR 575 at [22], [60] and [225].

8 Section 13(3).

9 *Attorney-General for the State of Queensland v Kanaveilomani* [2013] QCA 404 at [118]-[120] (Morrison JA).

10 Section 13(6)(a).

11 Section 13(6)(b).

(e) efforts by the prisoner to address the cause or causes of the prisoner's offending behaviour, including whether the prisoner participated in rehabilitation programs;

(f) whether or not the prisoner's participation in rehabilitation programs has had a positive effect on the prisoner;

(g) the prisoner's antecedents and criminal history;

(h) the risk that the prisoner will commit another serious sexual offence if released into the community;

(i) the need to protect members of the community from that risk;

(j) any other relevant matter."

[27] Section 13(5)(a) then goes on to provide that, if the court is satisfied that a prisoner is a serious danger to the community in the absence of a Division 3 order, the court may order that the prisoner be detained indefinitely for control, care or treatment pursuant to a continuing detention order[12] or released pursuant to a supervision order subject to such requirements as the court considers appropriate.

[28] The onus of demonstrating that a supervision order affords inadequate protection to the community is on the applicant.[13] However, before a supervision order can be made, it must appear on all the evidence that such an order would be, "efficacious in constraining the respondent's behaviour by preventing the opportunity for the commission of sexual offences"[14] or to put it another way, "… the likely effect of a supervision order in terms of reducing the opportunities for the appellant to engage in acts of [serious sexual offending] to an acceptably low level".[15]

[29] The correct approach to a consideration of the issues arising under these provisions was explained by McMurdo J (as his Honour then was) in *Attorney-General (Qld) v Sutherland*[16] as follows:

> "No order can be made unless the court is satisfied that the prisoner is a serious danger to the community. But if the court is satisfied of that matter, the court may make a continuing detention order, a supervision order or no order.[17] There is no submission here that if the prisoner is a serious danger to the community, nevertheless no order should be made. As already mentioned, it is conceded on behalf of the prisoner that I could be satisfied in terms of s 13(1) and that a supervision order would be appropriate.

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12 As to which, see *Attorney-General (Qld) v Francis* [2007] 1 Qd R 396; [2006] QCA 324 at [29].

13 See *Attorney General for the State of Queensland v Lawrence* [2010] 1 Qd R 505; [2009] QCA 136.

14 See *Attorney-General for the State of Queensland v Fardon* [2011] QCA 111at [29] (Chesterman JA).

15 See *Attorney-General for the State of Queensland v Beattie* [2007] QCA 96 at para 19 (Keane JA).

16 [2006] QSC 268.

17 *Fardon v Attorney-General (Qld)* (2004) 223 CLR 575; [2004] HCA 46 at [19], [34]; cf in relation to s 30 *Attorney-General (Qld) v Francis* [2007] 1 Qd R 396; [2006] QCA 324 at [31].

The court can be satisfied as required under s 13(1) only upon the basis of acceptable, cogent evidence and if satisfied 'to a high degree of probability that the evidence is of sufficient weight to justify the decision.' Those requirements are expressed within s 13(3) by reference to the decision which must be made under s 13(1). They are not made expressly referable to the discretionary decision under s 13(5). The paramount consideration under [s 13(6)] is the need to ensure adequate protection of the community. Subsection 13(7) provides that the Attorney-General has the onus of proving the matter mentioned in s 13(1). There is no express requirement that the Attorney-General prove any matter for the making of a continuing detention order, beyond the proof required by s 13(1). So s 13 does not expressly require, precedent to a continuing detention order, that the Attorney-General prove that a supervision order would still result in the prisoner being a serious danger to the community, in the sense of an unacceptable risk that he would commit a serious sexual offence. However in my view, such a requirement is implicit within s 13.

The paramount consideration is the need to ensure adequate protection of the community. But where the Attorney-General seeks a continuing detention order, the Attorney-General must prove that adequate protection of the community can be ensured only by such an order, or in other words, that a supervision order would not suffice. The existence of such an onus in relation to s 13(5) appears from Attorney-General v Francis[18] where the Court allowed an appeal from a judgment which had made a continuing detention order upon the primary judge's view that the Department of Corrective Services would not provide sufficient resources to provide effective supervision of the prisoner upon his release. The Court found an error in that reasoning because of the absence of evidence that the resources would not be provided.[19] The Court observed:[20]

> 'The question is whether the protection of the community is adequately ensured. If supervision of the prisoner is apt to ensure adequate protection, having regard to the risk to the community posed by the prisoner, then an order for supervised release should, in principal, be preferred to a continuing detention order on the basis that the intrusions of the act upon the liberty of the subject are

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18 [2007] 1 Qd R 396; [2006] QCA 324.
19 Ibid [37].
20 Ibid [39].

> exceptional, and the liberty of the subject should be constrained to no greater extent than is warranted by the statute which authorised such constraint.'

Thus the absence of evidence of the inadequacy of resources was important because that matter had to be proved, as a step in persuading the court that only continuing detention would suffice.

The Attorney-General must prove more than a risk of re-offending should the prisoner be released, albeit under a supervision order. As was also observed in Francis, a supervision order need not be risk free, for otherwise such orders would never be made.[21] What must be proved is that the community cannot be adequately protected by a supervision order. Adequate protection is a relative concept. It involves the same notion which is within the expression 'unacceptable risk' within s 13(2). In each way the statute recognises that some risk can be acceptable consistently with the adequate protection of the community.

The existence of this onus of proof is important for the present case. None of the psychiatrists suggests that there is no risk. They differ in their descriptions of the extent of that risk. But the assessment of what level of risk is unacceptable, or alternatively put, what order is necessary to ensure adequate protection of the community, is not a matter for psychiatric opinion. It is a matter for judicial determination, requiring a value judgement as to what risk should be accepted against the serious alternative of the deprivation of a person's liberty."[22]

[30] Finally, it is with respect helpful to keep in mind the following observations of Chief Justice de Jersey regarding the character of Division 3 orders in *Attorney-General v Fardon*:[23]

> "These orders have the character of a compact between the prisoner and the community: the prisoner is accorded a measure of personal freedom, but only provided he is willing to, and does, submit to a regime of tight control. Of substantial present concern is the respondent's demonstrated unwillingness to submit fully to that regime, hence Dr Grant's conclusion that 'there must be considerable doubt therefore about the prospect of

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21 Ibid.

22 [2006] QSC 268 at [26]-[30]. See also *Attorney-General for the State of Queensland v Kanaveilomani* [2013] QCA 404 at [118]-[120] (Morrison JA); *Turnbull v Attorney-General (Qld)* [2015] QCA 54 at [36]-[37] (Morrison JA).

23 [2011] QCA 155.

> successful management in the community under such a supervision order'."[24]

…

[45] In this context, it is necessary to recall what was said by Keane JA (as his Honour then was) in Attorney-General (Qld) v Beattie,[25] that "whether or not a moderate risk is unacceptable must be gauged by taking into account the nature of the risk and the consequences of the risk materialising".[26] As such, even if the risk that Mr Kennedy might reoffend in a sexually violent way is only at a low to moderate level, there remains a high risk of very serious harm being caused to a future victim if he lapses back into substance abuse. Given the index offending, his past history of substance abuse and breaches of parole, the risk that Mr Kennedy will commit a serious sexual offence within the meaning of the Act if he is released from custody or, alternatively, released from custody without a supervision order being made is unacceptably high. The Attorney-General has established this by acceptable cogent evidence and to the high degree of probability required under the Act.

…

Which order?

[47] Being so satisfied, the next question is whether, under s 13(5) of the Act, there should be a continuing detention order or a supervision order. Section 13(6) provides:

> "(6) In deciding whether to make an order under subsection (5)(a) or (b) –
>
> (a) the paramount consideration is to be the need to ensure adequate protection of the community; and
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> (b) the court must consider whether –
>
> (i) adequate protection of the community can be reasonably and practicably managed by a supervision order; and
>
> (ii) requirements under section 16 can be reasonably and practicably managed by corrective services officers."

[48] The need to ensure adequate protection of the community as required by s 13(6)(a) was explained by the Court of Appeal in Attorney-General (Qld) v Francis[27] in the following way:

> "The Act does not contemplate that arrangements to prevent such a risk must be 'watertight'; otherwise, orders

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24 Ibid [29].
25 [2007] QCA 96.
26 Ibid [19].
27 [2007] 1 Qd R 396; [2006] QCA 324.

> under s 13(5)(b) would never be made. The question is whether the protection of the community is adequately ensured. If supervision of the prisoner is apt to ensure adequate protection, having regard to the risk to the community posed by the prisoner, then an order for supervised release should, in principle, be preferred to a continuing detention order on the basis that the intrusions of the Act upon the liberty of the subject are exceptional, and the liberty of the subject should be constrained to no greater extent than is warranted by the statute which authorised such constraint."[28]
>
> …"[29]

[7] Turning then to the evidence, Mr Nallajar is an indigenous man aged 41 years. He is one of eight children in a family who lived on Palm Island. Mr Nallajar told Dr Harden that he was the only child in the family who had any difficulties with the police, apart from his brother, who committed a number of driving offences. His father had high expectations of him and was strict when they were growing up. His father died some years ago, but his mother still resides on Palm Island, as do most of his siblings.

[8] Mr Nallajar was educated to year 10 level on Palm Island and then attended boarding school on the mainland for at least year 11. It does not appear that he completed his secondary education. When he left school, he went to work on a banana plantation for about 12 months before returning to Palm Island. Unfortunately, it was not long after that when he was incarcerated for an offence of manslaughter, which offence involved Mr Nallajar shooting and killing a man who was said to have been a paedophile. Mr Nallajar was sentenced for this offence on 3 September 1993 to imprisonment for six years. He was released on parole on 11 March 1996.

[9] On 19 February 2004, Mr Nallajar pleaded guilty in the District Court at Townsville to one count of taking a child for immoral purposes with a circumstance of aggravation, one count of indecently dealing with a child under the age of 12 years and two counts of rape. Each of these offences were committed in one episode that occurred on 25 April 2003. The circumstances of this offending was summarised by the Crown prosecutor at the sentencing hearing in this way:

> "Two witnesses saw the complainant child follow the prisoner through a hole in a fence into the school grounds of St Michael's Catholic School on Palm Island. There was no-one else in the grounds at the time because it was a public holiday.
>
> A short time later Ms (redacted) and Ms (redacted) heard the complainant screaming out in a terrified voice, and ran to get some help. They saw (her) come through the hole in the fence crying and shaking with her back dirty and her clothes partially undone. She ran home and the two female witnesses followed her.
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> When they arrived at the complainant child's house, the witnesses told her parents what they had seen. The complainant herself told her parents that a

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28 Ibid [39].

29 *Attorney-General (Qld) v Kennedy* [2016] QSC 287, [21]-[30], [45], [47]-[48].

man had done something dirty to her. The police were subsequently contacted. A section 93A interview was conducted with the complainant that day.

In the interview she stated she was eight years old and in grade four at school. She stated earlier that day a man had approached her and offered her $20 to come with him to get some marijuana. She said he took her shorts and underwear off and his own pants off and threw her on the ground lying on top of her where she then stated ‘he done sex’ or ‘did a root’ with her.

When asked to describe what this meant, she was non-specific saying it meant ‘to be rude with people’ and could not offer further what that meant. She said he told her to bend over and he ‘touched her bum and her front part with his front part’ and that it hurt and that she was crying the whole time. She said at one stage she had been bending forwards and he had been ‘pulling his own front part’. She said she had been crying to go home and asking him if she could go home and he'd put his hand over her mouth.

He told her not to tell her mum and dad and to trust him. That same day the complainant child was examined by a doctor. The doctor noted she was emotionally distressed and crying. She had bruises and abrasions on her upper back, right knee, and left heel. She had three anal tears at 12 o'clock, 3 o'clock and 6 o'clock, and was faecally incontinent. She also had vaginal abrasions on the labia; however, her hymen was intact indicating penile penetration was unlikely.

The prisoner was interviewed on the 26th of April 2003, the following day. He was properly warned and had a Justice of the Peace present with him. During the interview he made full admissions to the offences. He stated he knew … her parents. He said the day before he had been drinking and smoking marijuana when he saw the complainant. He said that he had since found out she was eight years old but at the time he thought she was 10 or 11. He said she looks like a child and has no pubic hair and no breasts.

He invited her to come with him and offered her $20. He took her to St Michael's School where he laid her down and took her pants and his pants off. He stated he put his penis on to her vagina and pressed up against her, rubbing his penis on her vagina but stated his penis did not penetrate her vagina. She cried out at this time and he told her he wouldn't give her the $20 if she cried out.

He said that initially she tried to push him away but he assured her that everything would be all right and reminded her about the $20 he was going to give her and she calmed down. He then placed his finger in her vagina and in her anus while she was standing up. He said she screamed out when he put his finger in her vagina and when he put his finger in her anus and that he had put a hand over her mouth.

He said he had his finger in her anus for approximately a minute … and approximately two or three inches deep, and that he put his finger in her vagina for a couple of seconds. He then moved away from her and masturbated himself to ejaculation while she was putting her clothes back on.

> He said that she didn't want it and when asked if he had any permission to do what he did, he said, 'No, hell no, no, I had no permission whatsoever.' He said she was visually upset and that she was crying and frightened. He said afterwards he told her not to tell her Mum and Dad because they would be upset and get him in trouble. The reason he gave for committing the offences was to satisfy his overwhelming desire to have sex with a child. He stated he knew what he had done was wrong and that she had trusted him and he'd taken advantage of her.'[30]

[10] Mr Nallajar was sentenced to imprisonment for eight years and a serious violent offender declaration was made. Pre-sentence custody of 299 days was declared as time already served under that sentence. On 11 May 2011, Mr Nallajar was released from prison.

[11] Precisely one week later, on 18 May 2011, Mr Nallajar committed the index offences. In that regard, he pleaded guilty in the District Court at Townsville on 29 March 2012 to one count of being in premises with intent to commit an indictable offence, one count of indecent dealing with a child under 12 years and one count of deprivation of liberty. His sentence was adjourned to 11 July 2012, and on that day, he also pleaded guilty to three counts of entering premises and committing an indictable offence and two charges of breaching his conditions of bail. The circumstances of the index offence were summarised by the Crown prosecutor as follows:

> "The complainant was 11 years old. She was playing marbles in the yard of a house on Palm Island with three other male children. There were also two other female children in the same yard playing nearby.
>
> The defendant approached them and –… showed them an alfoil which he said had cannabis in it. He asked if an adult person was there and the children said that she was not, a particular adult person that he asked for.
>
> The defendant told the children to come into the laundry with him and said he would chop up the cannabis. He also showed them a fifty dollar note to encourage them to go with him. The four children entered the laundry with the defendant. The laundry is at the back of the house and it is entered from a door on the veranda.
>
> The defendant then grabbed the complainant by the arm and told all the boys to get out. He shut the door of the laundry with the boys outside, and the girl inside with him, closed the door and held it shut. He tried to pull his shorts down.
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> The complainant shouted out for help to the other children and the defendant told her to be quiet; he said, 'Shhh.' The children (redacted) and (redacted) tried to push the door open but could not. On a second attempt they managed to push the door open and (redacted) grabbed the complainant and pulled her out of the laundry. The complainant was close to tears and the defendant walked away."[31]

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30 Quoted in Outline of Submissions on behalf of the Applicant, par 16.

31 Ibid par 9.

[12] By way of mitigation of sentence, a report prepared by a psychologist, Ms Richards, was tendered. The account Mr Nallajar provided to Ms Richards regarding the offences was recorded in the report as follows:

> "Mr Nallajar described his offending behaviour in a very mechanical and unfeeling way. He reported 'I felt like having sex with a young girl so when I saw the victim walking down the street, I grabbed her and did sexual things to her.' He displayed little remorse for the victim although he tried to use words to give the impression that he felt remorse for the victim. An example of such is when he stated, 'I knew she was uncomfortable with my sexual actions towards her, she was distressed.' When asked how did he gauge she was uncomfortable or distressed and what sort of behaviours was the child showing to make him think this, he said 'I just knew that she was uncomfortable and distressed and then I heard people around so I let her go....I did not want to get caught… I did not want her to feel uncomfortable or distressed anymore.'[32]

[13] As to the circumstances leading up to the offences, Mr Nallajar told Ms Richards the following:

> "Mr Nallajar reported that he is pleading guilty to the charges because he did grab the victim but denies that there was a sexual motivation. Although, throughout the interview Mr Nallajar admitted that he did have sexual thoughts regarding the victim and that he did attempt to remove his shorts and show her his penis. Furthermore when discussing the giving of money to keep the victim quiet about the offence, he gave the assessor the impression that if he had given her more money, maybe she would have stayed. When this was explored further with Mr Nallajar, he believed that if the money was higher like $50.00, the victim would have stayed and possibly been happy to engage with him in a sexual manner. Mr Nallajar stated 'most children on Palm Island are not virgins…having sex with a child has become a cultural thing…money is short, children don't get so much so maybe for a bigger sum of money she would have let me have sex with her.' The assessor also asked Mr Nallajar what would have happened if the boys did not help her out of the laundry; he stated 'I would have tried to have sex with her.' It is clear from Mr Nallajar's statements regarding the offence that there was a strong sexual motivation for the offence and that despite him minimising the offence and trying very hard to downplay the sexual motivation behind the offence; the sexual motivation continues to be obviously present in the offence and even in his mind during recollecting the offence."[33]

[14] On 27 July 2012, the learned sentencing Judge imposed the following sentences: for the count of being in premises with intent to commit an indictable offence, imprisonment for five years; for the count of indecently dealing with a child under the age of 12 years, imprisonment for two years; and for the count of deprivation of liberty, imprisonment for two years. His Honour declared that Mr Nallajar had served 220 days in pre-sentence custody and, further, that this time was time already served under those sentences. It was also declared, in relation to the count of being in premises with intent

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32 Ibid par 48.

33 Ibid par 49.

to commit an indictable offence, that Mr Nallajar had been convicted of a serious violent offence. The sentencing proceedings were, however, reopened on 12 March 2013. The serious violent offender declaration was removed and 12 June 2014 was fixed as the day on which Mr Nallajar would become eligible for parole. It is not clear, on the material, whether Mr Nallajar actually applied for parole, but whether he did or not, the fact is that he has never been released on parole with respect to the sentences that will expire today. In other words, he will today have served the full terms of imprisonment imposed on 27 July 2012.

[15] I have already mentioned that Drs Harden, Moyle and Sundin gave evidence at the hearing. Dr Harden was engaged, on behalf of the Attorney, to prepare a report for the purposes of deciding whether to bring an application under the Act. Drs Sundin and Moyle, on the other hand, were appointed by the Court to examine, and then provide reports, regarding Mr Nallajar. Mr Mumford provided a summary of the effect of those reports at paragraphs 20 to 46 of his submissions. It was as follows:

> "**Preliminary Psychiatric Assessment**
>
> **Dr Scott Harden**
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> 20. Dr Harden was engaged by Crown Law to prepare a report for the Attorney-General's consideration whether to bring an application under the Act.
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> 21. Dr Harden interviewed the respondent at Lotus Glen Correctional Centre on 4 September 2015. He was provided with an array of material for his consideration, including completion reports from sexual offender treatment programs, and the report of Ms Richards.
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> 22. At the interview, the respondent gave details to Dr Harden of his offending history, and his personal history.
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> 23. Dr Harden administered a number of risk assessment instruments to underpin the risk of the respondent sexually reoffending. Mr Nallajar scored:
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> (a) On the STATIC 99R – the respondent scored 6 on this risk assessment instrument, placing him in the High risk category relative to other adult male sex offenders;
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> (b) On the Stable 2007 - a score of 18 out of a possible score of 26 which placed him in the High needs group in terms of sexual offender's dynamic risk;
>
> (c) On the Sex Offender Risk Appraisal Guide, a score of 27 which placed him in the category 8. In general people that are in this category in the study populations had a 75% rate of violent or sexually violent re-offending at 7 years and an 89% rate at 10 years. This is a pure actuarial scale and will not alter over time;
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> (d) On the Hare Psychopathy Checklist - an overall score of 28. This score is elevated compared to custodial populations but not quite elevated enough to meet the USA arbitrary threshold of 30 for psychopathic personality disorder. On the facet scores

it was particularly elevated with regard to interpersonal style and antisocial behaviour;

(e) On the SVR-20 - the respondent was assessed as being positive for 8 items out of 20 and possibly positive for 6 items, placing him generally in a Moderate to High risk category on this measure of Sexual Violence Risk.

24. Dr Harden made the following diagnoses:

> 'In my view he would meet diagnostic criteria for Paedophilia, non-exclusive type (deviant sexual attraction to prepubertal girls).
>
> He would meet diagnostic criteria for Antisocial Personality Disorder with some significant psychopathic features.
>
> He has poly-substance abuse in remission because of incarceration.
>
> Although he has an unusual communication style and presentation at interview, this seems consistent over many years on the information available, does not seem associated with other clear psychotic symptoms or major mood disorder and therefore is most likely related to his rather severe personality dysfunction. If further information to suggest a more serious mental health problem was obtained this diagnostic view would have to be modified. From a risk assessment perspective it is probably a moot point as he needs to be managed 'as he is'. It might however alter medication management options.'

25. Dr Harden considers that the respondent's ongoing unmodified risk is in the high range. In Dr Harden's opinion:

> 'His greatest risk factors are in my opinion, his paraphilic interest in prepubertal girls, his personality disorder with consequent impulsivity and relationship difficulties with other people, his poor problem-solving skills and his likely difficulties with supervision because of his attitudes towards those in authority and females.
>
> If he were to be placed on a supervision order in the community, in my opinion the risk of sexual recidivism would be reduced somewhat to moderate.'

26. Dr Harden recommends:

> 'If released into the community he should have ongoing psychological therapy with an appropriately skilled practitioner to continue to explore issues associated with his previous offending and risk management in the community. This should in particular focus on his interpersonal and relationship skills as well as management of his likely deviant sexual attraction and substance misuse.

> In my view he should have no unsupervised contact with girls under 16 years of age.
>
> He should abstain completely from alcohol and drug use.
>
> I would recommend that subpoenaed relevant mental health files be made available to check that his presentation at interview is consistent over time (this is most likely and accords with the material currently available) and does not represent some kind of mood disorder or psychotic illness.'

Court Appointed Psychiatrists

Report of Dr Josephine Sundin dated 6 October 2016

27. Dr Sundin interviewed the respondent at Townsville Correctional Centre on 9 September 2016. Dr Sundin was provided with four volumes of documentary material for her consideration.

28. Dr Sundin noted the contents of previous reports undertaken by the respondent, the proceedings from the respondent's previous offending, files held by Queensland Corrective Services, and the pre-sentence report prepared by Tracey Richards, psychologist.

29. The respondent provided Dr Sundin with an overview of his personal history, including the circumstances surrounding his previous offences. In relation to the earlier sexual offending:

> 'He acknowledged that the sexual assault in 2003 was both a taboo and morally wrong. However, he described himself as having being caught up in the excitement of the moment.
>
> He repeatedly reverted to themes of alcohol and drug influences as both explanation and mitigation for his sexual offending behaviour.'

30. The respondent told Dr Sundin that, upon his release from prison, he returned to Palm Island to stay with his older brother. He described him as a strong, positive influence. Despite that, he told Dr Sundin that he began spending time with former anti-social associates. The respondent described one in particular as:

> 'having frequent intercourse with underage girls. He said that this male friend was known in the local area as a paedophile but had not ever been convicted for his offending behaviour. He now understands that he should have modelled himself on his older pro-social brother rather than his friend.'

31. The respondent described the Medium Intensity Sexual Offending Program as a helpful program – although he was unable to describe the ways in which it was helpful to him - but was unhelpful to him in dealing with the sexual attraction he felt after his return to Palm Island.

32. Dr Sundin summarised the respondent's account of his time in the community after his release from custody:

> 'He claims that within Palm Island he had no social support network within the community when he was released; while simultaneously acknowledging that he had been given a home and the offer of support by his older brother. He acknowledges that during the week that he was in Palm Island, that his brother was expressing frequent concern as to his level of alcohol and cannabis consumption and trying to engage him in alternative pro-social solutions. He describes having seen his mother at least two or three times during that week in Palm Island and acknowledges that he had contact with many of his other siblings. He said that his siblings encouraged him to keep a low profile but made suggestions as to how he might be able to access work opportunities.
>
> He expresses vivid resentment that no one in the community had asked him whether the Medium Intensity Sexual Offending Program had helped him. He said that he felt socially excluded within the Palm Island Community.
>
> He was recurrently intoxicated during the first week back in Palm Island. He remembers seeing the girl playing with her friends and found himself sexually attracted to her. He offered the girl money hoping to have sex with her. He characterises this as an impulsive, unconsidered action. He did not acknowledge seeking to prevent the girl from leaving. He denies that he was motivated by a desire to return to jail.'

33. On mental state examination, Dr Sundin noted the following presentation:

> '…He was fully oriented in time, place and person.
>
> His speech was very rapid. The content was filled with a range of disconnected, often irrelevant, polysyllabic words and phrases. He tended to fixate on pseudo-intellectual themes. There was a distinct quality of minimisation of the seriousness of his offending behaviour and a tendency to displace responsibility for his offending into cultural issues and indigenous disadvantage.
>
> While the rate of his thoughts was accelerated, there was no clear flight of ideas. There was no definitive formal thought disorder, although, Mr Nallajar was hard to follow at times. With encouragement, he could slow down and explain himself
>
> His affect was somewhat bland and there was a rather grandiose quality to his self evaluation.
>
> His mood was euthymic, i.e. neither elevated nor depressed.

> There were no reported disorders of perception. While there were some paranoid themes in relation to interactions with other prisoners, there was no frankly delusional material reported. His IQ appeared to be in the low average range. His insight and judgement for day to day events appears reduced.
>
> There was a somewhat narcissistic and paranoid theme to many of his cognitions, with his belief that others were against him; but as previously noted this may be a reflection of his status as a sexual offender within the prison and/or may reflect the nature of other's responses to his inappropriate interpretation of social cues and behaviours with others.'

34. In Dr Sundin's opinion, the respondent meets the DSM V criteria for:
Paedophilic Disorder, attracted to pre-pubescent females, not limited to incest Anti-Social Personality Disorder (with elevated psychopathy scores)
Substance Use Disorder (cannabis, alcohol) in sustained remission whilst incarcerated.

35. Dr Sundin found no evidence of a major mood disorder or psychotic disorder.

36. Dr Sundin used a range of actuarial instruments and physician's guidelines to underpin the risk of sexual reoffending. Dr Sundin notes that caution needs to be used in the interpretation of these guidelines, as that they speak in group figures rather than with any particular specificity to the individual offender. Additionally, caution needs to be taken in their interpretation given that the material has been developed from a North American Prison Population and similar material is not as yet available from the Australian Prison Population. In particular, material is not as yet available from the Australian Indigenous Prison Population.

37. Dr Sundin scored the respondent as follows:

    (a) On the Static-99R - a score of six. This is an instrument which seeks to predict risk of sexual recidivism in males over the age of 18 known to have committed at least one sexual offence. This score places the respondent in a high risk category relative to other adult male sexual offenders;

    (b) On the Sex Offender Risk Appraisal Guide (SORAG) - a raw score of 27, placing him in Category 8. Like the Static-99R, this is a historical assessment tool. Individuals within Category 8 in Study Populations are said to have a 75% rate of violent or sexually violent recidivism at 7 years and an 89% risk of recidivism at 10 years.

    (c) On the Hare Psychopathy Rating Scale - a score of 29. This does not meet the cut-off criteria of 30/40 which is required for an individual to attract the label of psychopath; nonetheless, this is a very elevated score in the Australian prison population. In Dr

Sundin's opinion, it is of significance that the respondent scores highly on both inter-personal and anti-social facets of this rating scale.

(d) On the Sexual Violence Risk Scale (SVR-20, Boer et al), Dr Sundin noted the following items to be present:

- Sexual deviation
- Psychopathy
- Substance use problems
- Relationship problems
- Employment problems
- Past non-sexual violent offences
- Past non-violent offences
- Past supervision failures
- Physical harm to victim in sex offences
- Lacks realistic plans

On this physician's guideline, Dr Sundin considers that the respondent's risk for sexual violence is in the moderate to high risk category.

38. Taking all of these factors together, Dr Sundin considers that the respondent represents an unacceptable, unmodified risk for a future sexual violence. His ongoing unmodified risk for sexual recidivism within the community is in the moderate to high range.

39. Dr Sundin opines:

> 'His risk is informed by his deviant sexual orientation, his personality dysfunction with impaired capacity for remorse and empathy, his past pattern of impulsivity, his past preparedness to set his own judgement above that of the law, his history of poor problem solving skills and his continuing evidence of hostile attitudes towards women. These are aggravated by his past attitudes of sexual entitlement and his fearful avoidant attachment style.
>
> His risk would be greatest in the context of alcohol or disinhibiting substance abuse, either in the form of cannabis or some synthetic form of cannabis. Victims are most likely to be pre-pubertal females. There is a substantial risk of a level of physical coercion within the offending and the capacity for Mr Nallajar to persist with the offending despite the victim's evident distress. The offending is likely to be opportunistic rather than an involving grooming behaviour.'

40. Dr Sundin concludes her report as follows:

> 'Mr Nallajar is a 41-year-old single indigenous man who has now had convictions for three serious violence offences. These included manslaughter in 1992, rape and indecent treatment of an underage female child in 2003 and indecent dealing and deprivation of liberty of another young girl in

> 2011. This latter offence occurred within a week of Mr Nallajar being released from prison, having completed a Medium Intensity Sexual Offending Program and Substance Abuse Treatment Programs.
>
> Despite being released back into a supportive environment of mother and siblings, all of whom by Mr Nallajar's description were extremely encouraging; he quickly re-affiliated himself with an anti-social peer, whom he describes as having a paedophilic pattern of behaviour. Whilst Mr Nallajar seeks to rationalise this as the community failing to give him appropriate support, the more likely explanation is that he and his anti-social associate had similar deviant sexual interests, hence their association.
>
> In my interview of him, Mr Nallajar shows evidence of having made some limited progress as a consequence of his participation in High Intensity Sexual Offending Program but there was still a degree of minimisation and seeking to deflect responsibility onto indigenous disadvantage as a rationalisation for some of his past behaviours.
>
> He gives a very clear history of a longstanding problem with alcohol and cannabis and a lack of engagement with meaningful goal setting or recreational activities. He describes being raised in an environment of strict discipline by his father but in a culture where he describes sexual entitlement and misogynistic attitudes as present. How truly this reflects the situation is not clear, it may just reflect Mr Nallajar's personal bias.
>
> Institutional records indicate that while this man has made some progress, he continues to have a degree of volatility of mood and vulnerability to aggressive outbursts. He frequently behaves inappropriately towards females and fails to identify social cues indicating the discomfort of others. He has issues with a lack of trust with others which further aggravates his sense of social exclusion. In the past, he has dealt with these difficult emotions by seeking to connect with anti-social peers in the setting of alcohol and substance abuse. The HISOP has identified his emotional discomfort with adult females. This will be a continuing source of tension into the future for Mr Nallajar given that he expresses a desire to have a family but has a fearful attachment style.
>
> Taking all of these factors together, he is an individual whom I consider does represent an unacceptable, unmodified risk to the community and who needs to, if released, be managed under a closely planned supervision order.'

41. In the event that the respondent is released on a supervision order, Dr Sundin makes the following recommendations as to the conditions of such an order:

> 'The supervision order would need to include requirements for absolute abstinence from alcohol and other disinhibiting mood substances, referral to a clinical psychologist to address his paraphilic cognitions and interpersonal relational difficulties, referral to Relationships Australia to help him to develop a greater skills in relationships with others and attendance at ATODS to assist him to maintain sobriety in the community. He should be required to complete the Sexual Offenders Maintenance Program within the community.
>
> I recommend that for at least the first year he be managed only by a male Corrective Services Officer and that as recommended by the facilitators from the HISOP, that close attention is paid to who he is associating with, how he is occupying his time and how he is managing emotionally. Linking him into indigenous pro-social elders will also be advantageous. He does appear to have some family connections within the Townsville area. It seems to me more appropriate for him to be released into the Townsville District rather than to Palm Island.
>
> I would recommend that any supervision order would need to in place for a period of 10 years; although, I acknowledge that if Mr Nallajar can remain offence-free for five years, that his actuarial risk of recidivism will reduce substantially at which time, consideration may be able to be given to further easing the stringency of his supervision order.'

Report of Dr Robert Moyle dated 7 November 2016

42. Dr Moyle interviewed the respondent at Townsville Correctional Centre on 22 August 2016. Dr Moyle was provided with the same material provided to Dr Harden and Dr Sundin.

43. The respondent refused to discuss with Dr Moyle the circumstances of his previous sexual offending.

44. Dr Moyle considers that the respondent:

> 'presents a conundrum. From an apparently well functioning family, raised on an island with many dysfunctional elements in the community, he chose to follow the values of the dysfunctional elements in his adult life than the childhood values of his parents. There is no evidence dearly showing he had early childhood problems. He was the fourth of five children and had reasonable relationships with his older siblings and his parents and deeply missed his father when his father died. At school he thought he was doing well and reports doing well enough to earn a scholarship to a mainland school, where he failed. This would have been demoralising. He was proud of his achievements at the Palm Island school.
>
> …

> I am not sure why he would sexually offend against pre-pubertal females. The sexual development and the ages of the 8 year-old and 11 year-old would not have matched that girl's age. He seems to have developed a paedophilic interest as he aged. His reluctance to discuss this development with me and to some degree Tracy Richards, leaves me reliant on the Information given to the Sexual offenders treatment programs he has completed in jail. It does not allow me to be sure that he has exclusive or non-exclusive heterosexual paedophilia. On both occasions, the behaviour occurred when he observed a child. It is unknown whether he stalked the first child or not. If not an available victim is a trigger. The inmate experience suggests that he is sensitive to criticism implied or overt from women.'

45. Dr Moyle used a number of risk assessment instruments, and scored the respondent as follows:

    (a) On the Psychopathy Checklist Revised – a score of 21, considerably below Dr Harden and Ms Richards;

    (b) On the Stable – a score of 8, placing him in the moderate range;

    (c) On the Static 99 – an overall score of 7, placing him in the high risk category;

    (d) On the VRAG – around a 50/50 chance of violent reoffending in seven to 10 years;

    (e) On the SORAG – between 60% and 75% chance of sexual reoffending in 10 years:

    (f) On the SVR 20 – at a moderately high risk of sexual reoffending.

46. Dr Moyle offers these conclusions:

> 'It is my opinion that Mr Nallajar poses a moderately severe risk of very serious sexual reoffending against child victims, possibly resulting in damage to the child, and this risk is increased if he is intoxicated with marijuana and alcohol, socially isolated, criticised or rejected by adult women and this is likely to happen on release if he is not under a Supervision Order. That risk is only likely to be lowered in the fullness of time, with him gradually being carefully reintroduced to a community where he can have work, education, friendship, leisure activities and the possibility of meeting and sustaining relationships while encouraged to talk about his sexual interests and relationships with women. There is a suggestion of Paedophilia, probably regressive, and a suggestion that his drives are so powerful that, even though he had just done the Sex Offender Program, he felt overwhelmed enough to reoffend within a week of getting out of jail. I think it is wise that he is also seen by a psychiatrist as he has a possible history of Schizophrenia,

> treated with medicines, and some residual features presently, along with some ongoing suspiciousness.
>
> Although a lot of these factors seem to be attitudinal and he told me they were acquired from common beliefs on Palm Island or .in jails, I am not totally convinced they are not residual psychotic phenomena. If he was indeed a socially awkward child who thought he had a relationship with somebody for a couple of years in his late teens and his failure at school on the mainland was due to his difficult language style and his reports to me of a semi-paranoid experience of possibly misinterpreting if not hearing self-referential threats, then I would probably place his personality in the Schizotypal range, with the possibility he has an Autistic Spectrum Disorder like. Asperger's to a mild degree that interferes with his social relating, his ability to form empathic understandings, and his communication style. If, however, there is no suggestion of that from his early childhood, then there is some residual problem that has arisen in his adult years since he first went to jail to account for his unusual communication style more than defensive digression about his offending. Deafness may play a role and that should be examined.
>
> Therefore, I think there are many reasons why I believe that, even though he is moderately high risk of serious harm to children, he probably would meet the requirements for the DPSOA and that the next step for this man is a gradual reintroduction to life outside of jail through a Supervision Order. The Supervision Order would prevent his return to Palm Island and encourage ongoing psychological treatment and psychiatric treatment to be considered, including, if he wished it and found the drives powerful, offering medicines that might allow his sexual drive to be lowered, albeit his being aware of the positive benefits and the adverse effects. This is only going to affect spontaneous fantasy to sex and predatory behaviour. Even with medicines, if paedophilic interest occurs in the vicinity of potential victims, he can still become aroused and still offend. There is no medicine that would absolutely prevent that outcome. In those circumstances, it would be very wise that he teams strategies to avoid areas where children gather. He should, of course, be abstinent from drugs and alcohol. He will need considerable rehabilitative support to learn to live as an accepted prosocial citizen.'[34]

[16] Mr Ryan, who appears for Mr Nallajar, accepts the above summary to be accurate.

[17] When Drs Harden, Moyle and Sundin were called to give evidence on the hearing of this application, each accepted that Mr Nallajar's unmodified risk of committing a

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[34] Ibid pars 20 – 46.

serious sexual offence in the future would be reduced to some degree by the making of a supervision order.

[18] Absent a supervision order, Mr Nallajar's risk of committing a serious sexual offence was assessed by Dr Moyle to be moderately high, and by Dr Sundin as being in the moderate to high risk category. Dr Harden considered that, under a supervision order, Mr Nallajar's risk would be reduced to a moderate level. Each discussed what appeared to be the critical factors in the management of this man's case if he is released on supervision. They are (1) abstinence from alcohol and any illicit drugs; (2) preventing Mr Nallajar from returning to Palm Island, where he would be exposed to contact with persons contributing to the environment in which the index offences were committed; (3) prohibition from any unsupervised contact with children; and (4) continuation of treatment, whether it be medical, psychological or psychiatric, to address Mr Nallajar's persisting conditions.

[19] It was accepted on behalf of Mr Nallajar that he should not return to live on Palm Island and, also, that the use of alcohol and illicit drugs is to be completely avoided.

[20] As to the oral evidence given by the three psychiatrists, each expressed a concern that the index offences were committed so soon after his release from custody – only one week. Concern was also expressed about the nature of that offending, being of itself extremely serious.

[21] Dr Harden, on balance, supported Mr Nallajar's release on supervision, provided each of the conditions incorporated in exhibit 3 are made as part of the Court's order and, further, that they are enforced. Dr Moyle was of essentially the same opinion. Dr Sundin was somewhat more guarded. At page 28 of her written report, she expressed the opinion that Mr Nallajar, if released, will need to be managed under "a closely planned supervision order." Her concerns about Mr Nallajar were expanded in oral evidence before me. They bear repeating in these reasons:

> "My concerns about Mr Nallajar occur at several levels. First and foremost [they] revolve around his having completed a medium intensity sexual offending program for his first sexual offence against a child, and then having gone out into the community and within one week reoffended, and reoffended extremely seriously. He reoffended despite having very substantial pro-social support in terms of his brother and his extended family on Palm Island. Despite having done the program and having done an alcohol and drug treatment program, he rapidly remitted back into substance abuse, and he's described on two assessors that he was sexually attracted to the child, and had the other children present not intervened he would have gone ahead with the act. The next level of my concern is that … I didn't think his exit report from the SOPM was all that good. I thought he had a variable level [of] demonstration of acquisition of the skills normally associated with that program. And then on the final level, his institutional behaviour has really been quite concerning. He has continued to be breached for unacceptable behaviour, and a large amount of that behaviour has involved aggression and quite inappropriate sexually offensive language directed against women, all of which cause me to hesitate and wonder well, has he learned anything from having done the

> HISOP, and how strong is the risk that, once again, he will impulsively act out and … reoffend very quickly."

[22] As against those concerns, Dr Sundin pointed out that if Mr Nallajar is released on supervision it will be in different circumstances to his release in 2011 and his last spate offending. That is because he will be accommodated in one of the precincts, be subject to a 24 hour curfew and subject to very high levels of random screening for alcohol and drugs through urine and breath testing. None of these precautions were in place at the time he went back to the Palm Island community in 2011. Dr Sundin said in evidence that the ability to maintain that very high level of supervision would, in the ordinary way, have the ability to moderate the risk that exists in this man's case. She cautioned, however, that Mr Nallajar has an ongoing pattern of impulsivity, which may be difficult to manage under a supervision order. She said that, unfortunately, this is one of those cases where the "proof will be in the pudding." Importantly, Dr Sundin agreed when giving evidence that the proposed supervision order, that is, exhibit 3, should function as an early warning system with respect to one of the critical factors I have already identified, that is, relapse back into the use or abuse of alcohol or illicit substances. She pointed out that on the last occasion when Mr Nallajar offended, there was a period of four to five days of abuse of substances, followed by the offending itself. Dr Sundin believed that Mr Nallajar, at the time of the offending, was disinhibited by the intoxicants or substances, felt sexually aroused and acted upon impulse. As such, Dr Sundin said, "by controlling the substances, we lessen the level of impulsivity to some degree." Dr Sundin also agreed that the proposed supervision order would provide something of an early warning regime in terms of his proposed associations with other persons. She agreed that this is important and will be advantageous. Dr Sundin also made the point that corrective services are "really very strict about the initial curfews and they're very strict about staging progressions", and that this would "help pose an early warning sign."

[23] Importantly, Dr Sundin said this:

> "If we see him demonstrating impulsivity or aggression or antiauthority approaches within the 24 hour curfew, that would also be an early warning sign, and would, to my mind, be a situation where I would be suggesting to QCS that they should be making an instant application for return."

[24] A short time later, I asked Dr Sundin whether what was needed was for Mr Nallajar to be "watched like a hawk." Dr Sundin replied:

> "Absolutely. Yes. Yes. And needs to be supervised primarily by males and yes, watched like a hawk. And … for QCS to have a very, very low tolerance to any sort of breach. Sometimes you'll find situations where they will try and give a prisoner the benefit of the doubt, and when you look back with the wisdom of hindsight, what you can see is an escalation building over a period of days or weeks. Given someone such as Mr Nallajar, with his history, I would be suggesting there should be zero tolerance. It should be, you know, instant limit setting."

[25] As I stated at the outset, it was not in issue on the hearing of this application that Mr Nallajar is a serious danger to the community in the absence of a Div 3 order. It was nonetheless still necessary for the court to independently consider that question. Given the nature of Mr Nallajar's past offending, including the index offences, his past history

of abuse of alcohol and illicit substances and his rapid return to very serious and relevant offending following his release from prison in 2011, the risk that Mr Nallajar will commit a serious sexual offence within the meaning of the Act if he is released from custody, or alternatively, released from custody without a supervision order being made, is unacceptably high. The Attorney-General has established this to my satisfaction by acceptable, cogent evidence and to the high degree of probability required under the Act.

[26] Being so satisfied, the next question is whether, under s 13(5) of the Act, there should be a continuing detention order or a supervision order. I have already summarised the evidence of the three psychiatrists. Drs Harden and Moyle supported release on supervision and Dr Sundin's evidence may be taken as also supporting release, providing the conditions incorporated in exhibit 3 become part of the supervision order and are strictly enforced.

[27] To my mind, the balance of the evidence favours the release of Mr Nallajar on supervision, in accordance with those conditions. However, I feel it necessary to echo the opinions expressed by Dr Sundin when giving evidence before me. In particular, in this man's case, the conditions of the supervision order must be strictly enforced and the approach to be taken by those responsible for managing and treating Mr Nallajar, must – in the initial stages at least – be one of zero tolerance. He must be – as I put to Dr Sundin and she agreed – watched like a hawk.

[28] Assuming that this will occur, the conditions incorporated in exhibit 3 will in my opinion be such as to substantially reduce the risk that Mr Nallajar will, in the future, commit a serious sexual offence within the meaning of the Act. The paramount consideration in the court's decision whether to make a detention order or a supervision order is, of course, the need to ensure the adequate protection of the community. In addition, the Court must consider whether the adequate protection of the community can be reasonably and practicably managed by a supervision order and whether the requirements for such orders specified in s 16 can be reasonably and practicably managed by corrective services officers. I have considered each of these matters and am satisfied that the adequate protection of the community can be ensured by Mr Nallajar's release on the conditions incorporated in exhibit 3. It will therefore be ordered that he be released from custody, subject to the requirements set forth in that exhibit, until 16 December 2026.

[29] Lastly, I direct that a copy of these reasons be supplied to those persons who, within corrective services, are responsible for managing and treating Mr Nallajar. It is terribly important in the circumstances of this case that the approach those persons take to Mr Nallajar's compliance with the conditions of this order is that which has been recommended by Dr Sundin and adopted by me in these reasons. In other words, each of the conditions must be complied with at all times, without exception.

SCHEDULE 1

The respondent must:

General terms

(1) be under the supervision of a Corrective Services officer for the duration of the order;

(2) report to a Corrective Services officer at the Queensland Corrective Services Probation and Parole Office closest to his place of residence between 9am and 4pm on the day of his release from custody and at that time advise the officer of the respondent's current name and address;

(3) report to, and receive visits from, a Corrective Services officer at such times and at such frequency as determined by Queensland Corrective Services;

(4) notify and obtain the approval of a Corrective Services officer for every change of the respondent's name at least two (2) business days before the change occurs;

(5) comply with a curfew direction or monitoring direction;

(6) comply with any reasonable direction under section 16B of the Act given to him;

(7) comply with every reasonable direction of a Corrective Services officer that is not directly inconsistent with a requirement of the order;

(8) not commit an offence of a sexual nature during the period of the order;

(9) not commit an indictable offence during the period of the order;

(10) not to have any direct or indirect contact with a victim of his sexual offences;

Employment

(11) seek permission and obtain approval from an a Corrective Services officer prior to entering into an employment agreement or engaging in volunteer work or paid or unpaid employment;

(12) notify a Corrective Services officer of the nature of his employment, or offers of employment, the hours of work each day, the name of his employer and the address of the premises where he is or will be employed at least two (2) business days prior to commencement or any change;

Residence

(13) not leave or stay out of Queensland without the permission of a Corrective Services officer;

(14) reside at a place within the State of Queensland as approved by a Corrective Services officer by way of a suitability assessment and obtain written approval prior to any change of residence;

(15) if this accommodation is of a temporary or contingency nature, comply with any regulations or rules in place at this accommodation and demonstrate reasonable efforts to secure alternative, viable long term accommodation to be assessed for suitability by Queensland Corrective Services;

(16) not reside at a place by way of short term accommodation including overnight stays without the permission of a Corrective Services officer;

Disclosure of weekly plans and associates

(17) respond truthfully to enquiries by a Corrective Services officer about his activities, whereabouts and movements generally;

(18) submit to and discuss with a Corrective Services officer a schedule of his planned and proposed activities on a weekly basis or as otherwise directed;

(19) disclose to a Corrective Services officer upon request the name of each person with whom he associates and respond truthfully to requests for information from a Corrective Services officer about the nature of the association, address of the associate if known, the activities undertaken and whether the associate has knowledge of his prior offending behaviour;

(20) if directed by a Corrective Services officer, make complete disclosure of the terms of this supervision order and the nature of his past offences to any person as nominated by a Corrective Services officer who may contact such persons to verify that full disclosure has occurred;

(21) notify a Corrective Services officer of all personal relationships entered into by him;

Motor vehicles

(22) notify a Corrective Services officer of the make, model, colour and registration number of any vehicle owned by or generally driven by him, whether hired or otherwise obtained for his use;

Alcohol and other Substances

(23) abstain from the consumption of alcohol and illicit drugs for the duration of this order;

(24) submit to any form of drug and alcohol testing including both random urinalysis and breath testing as directed by a Corrective Services officer;

(25) disclose to a Corrective Services officer all prescription and over the counter medication that he obtains;

(26) take prescribed drugs as directed by a medical practitioner;

Treatment

(27) attend upon and submit to assessment, treatment, and/or medical testing by a psychiatrist, psychologist, social worker, counsellor or other mental health professional as directed by a Corrective Services officer at a frequency and duration which shall be recommended by the treating intervention specialist;

(28) permit any medical, psychiatrist, psychologist, social worker, counsellor or other mental health professional to disclose details of attendance and compliance with treatment and provide opinions relating to level of risk of re-offending to Queensland Corrective Services if such a request is made for the purposes of updating or amending the supervision order and/or ensuring compliance with this order;

(29) attend any program, course, psychologist, social worker or counsellor, in a group or individual capacity, as directed by a Corrective Services officer in consultation with treating medical, psychiatric, psychological or other mental health practitioners where appropriate;

Contact with Children

(30) not establish or maintain any supervised or unsupervised contact including undertaking any care of children under 16 years of age except with prior written approval of a Corrective Services officer. The respondent is required to fully disclose the terms of the order and nature of offences to the guardians and caregivers of the children before any such contact can take place; Queensland Corrective Services may disclose information pertaining to the offender to guardians or caregivers and external agencies (i.e. Department of Child Safety) in the interests of ensuring the safety of the children;

(31) not establish or maintain contact with a child under 16 years of age without the prior written approval of a Corrective Services officer; except in the case of the respondent's daughter/son by way of supervised contact and communications in writing or by telephone if agreed between the respondent and the mother of the child or approved by order of a court under *the Family Law Act 1975;*

(32) advise a Corrective Services officer of any repeated contact with a parent of a child under the age of 16. The respondent shall, if directed by a Corrective Services officer, make complete disclosure of the terms of this supervision order and the nature of his past offences to any person as nominated by a Corrective Services officer who may contact such persons to verify that full disclosure has occurred;

Attendance at Places

(33) not visit premises licensed to supply or serve alcohol, without the prior written permission of a Corrective Services officer;

(34) not without reasonable excuse be within 100 metres of schools or child care centres without the prior written approval of a Corrective Services officer;

(35) not access school or child care centre at any time without the prior written approval of a Corrective Services officer;

(36) not visit or attend on the premises of any establishment where there is a dedicated children's play area or child minding area without the prior written approval of a Corrective Services officer;

(37) not visit public parks without the prior written approval of a Corrective Services officer;

(38) notify a Corrective Services officer before attending on the premises of any shopping centre, including the times in which he wishes to attend;

(39) not join, affiliate with, attend on the premises of or attend at the activities carried on by any club or organisation in respect of which there are reasonable grounds for believing there is either child membership or child participation without the prior written approval of a Corrective Services officer;

Access to Information Technology

(40) obtain the prior written approval of a Corrective Services officer before accessing a computer or the internet;

(41) supply to a Corrective Services officer any password or other access code known to him to permit access to such computer or other device or content accessible through such computer or other device and allow any device where the internet is accessible to be randomly examined using a data exploitation tool to extract digital information or any other recognised forensic examination process;

(42) supply to a Corrective Services officer details of any email address, instant messaging service, chat rooms, or social networking sites including user names and password;

(43) notify a Corrective Services officer before possessing any equipment that enables him to take photographs or record moving images;

(44) allow any other device including a telephone or camera to be randomly examined. If applicable, account details and/or phone bills are to be provided upon request of a Corrective Services officer;

(45) advise a Corrective Services officer of the make, model and phone number of any mobile phone owned, possessed or regularly utilised by him within 24 hours of connection or commencement of use, including reporting any changes to mobile phone details;

(46) except with prior written approval from a Corrective Services officer, not own, possess or regularly utilise more than one mobile phone;

Pornography and other Images

(47) not collect any material that contains images of children, and dispose of such material if directed to do so by a Corrective Services officer;

(48) not access child exploitation material or images of children on a computer or on the internet or in any other format.