# SUPREME COURT OF QUEENSLAND

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| CITATION: | *Attorney-General for the State of Queensland v Dooley* [2017] QSC 272 |
| PARTIES: | **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**<br>(applicant)<br><br>**v**<br><br>**NEILSON HAROLD DOOLEY**<br>(respondent) |
| FILE NO: | 5247 of 2017 |
| DIVISION: | Trial Division |
| PROCEEDING: | Application |
| DELIVERED ON: | 17 November 2017 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 9 October 2017 |
| JUDGE: | Brown J |
| ORDER: | **1. As per the draft order with amendments.**<br><br>**2. Interim supervision order revoked.**<br><br>**3. Liberty to apply.** |
| CATCHWORDS: | CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the applicant seeks an order pursuant to s 13 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) (the Act) - where the respondent opposes the making of the order – where the respondent pleaded guilty to one count of rape and three counts of indecent treatment of children under 16 which constitute the index offences – where the respondent submits the psychiatric evidence does not support that there is an unacceptable risk of the respondent committing a serious sexual offence, namely involving violence of against a child, if released without a supervision order – whether the respondent is a serious danger to the community in the |

absence of a division 3 order when released from custody – if the respondent is such a danger, whether the Court should make a further order for his continuing detention or supervision

*Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld)

*Attorney-General for the State of Queensland v Fardon* [2011] QCA 111*Attorney-General for the State of Queensland v Francis* [2007] 1 Qd R 396
*Attorney-General for the State of Queensland v S* [2015] QSC 157

COUNSEL: J Tate for the applicant
J Crawford for the respondent

SOLICITORS: Crown Law for the applicant
Legal Aid Queensland for the respondent

[1] This is an application by the Attorney-General for the State of Queensland seeking an order pursuant to s 13 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (the Act) in relation to the respondent, Mr Neilson Harold Dooley. It is opposed by the respondent. Mr Dooley has been released under an interim supervision order. The matters which are to be determined by this Court are:

(a) Whether Mr Dooley is a serious danger to the community in the absence of a Division 3 order when released from custody; and

(b) If the Court is satisfied that he is a serious danger to the community, whether the Court should make a further order and particularly in the present case an order that he be detained in custody for an indefinite time or released from custody subject to the requirements it considers appropriate in an order, namely a supervision order.

***Serious danger to the community***

[2] Section 13(2) of the Act provides that 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 the prisoner is released from custody or if the prisoner is released from custody without a supervision order being made.

[3] A serious sexual offence means an offence of a sexual nature whether committed in Queensland or outside Queensland either involving violence or against a child.

[4] In making such a determination, the Court has to be satisfied by acceptable cogent evidence and to a high degree of probability that the evidence is of sufficient weight to justify the decision. The Court is required to have regard to the factors set out in

s 13(4) of the Act in determining whether a prisoner is a serious danger to the community.

***Past offending and index offences***

[5] The respondent pleaded guilty in the District Court to one count of rape and three counts of indecent treatment of children under 16 years of age, which constitute the index offences. The respondent was sentenced to six years' imprisonment for the offence of rape and two years' imprisonment on the three counts of indecent treatment.

[6] The circumstances of the offence as found by the sentencing judge was that the respondent had come across two girls, 14 and 15 years of age and invited them back to his place for a few drinks. The respondent provided the girls with alcohol. He touched one of the girl's breasts, bottom and genitals on a number of occasions, drew on her naked breasts with a pen and rubbed her leg with his penis. During the night he had sexual intercourse with the other complainant who was 14 and asleep at the time. He locked the doors to prevent the girls from leaving. According to the sentencing judge the girls gave him no encouragement for what he did. At the time he was heavily affected by alcohol and drugs, which his Honour noted had been a problem for most of his life. The sentencing judge rejected the respondent's statements that he thought the girls were older than they were and considered that he knew that they were young and underage.

[7] The respondent has a long history of offending including property, drug related and traffic offences but not in respect of sexual offences. The respondent had previous offences of a sexual nature, although his Counsel quite properly submitted that they were not sexual offences. In 2002, he was convicted of behaving in an indecent manner in a public place as a result of fornicating with his partner on a train. The respondent has a history of physical violence.

***Personal background***

[8] The respondent is now 36 years of age. He has had a troubled childhood. His father died when he was 16 years of age and his brother died of a drug overdose the following year. He ran away from home on a number of occasions and considered that he was subject to excessive corporal punishment by his parents. At the age of 11, he was diagnosed with attention deficit hyperactivity disorder. At the age of 13, he deliberately tried to burn down the family home. In his teenage years, he lived with his grandmother and spent time in foster homes or youth hostels. At the age of 14, he was sent to BoysTown to begin Grade 9. He reported to Dr Sundin that he was pack raped while at BoysTown and the boys were never charged. After BoysTown, he lived on and off with his parents, in youth shelters, on the streets and with friends.

[9] Mr Dooley had a disrupted education and was disruptive while at school. He was suspended from school at least twice and expelled in primary school. In Grade 8, he took a knife to school and threatened a teacher by holding a knife to the teacher's throat. As a result of that incident he went to BoysTown.

[10] His employment history is also a chequered one and there is no evidence that he has had a consistent period of employment save for a period when he was a horse breaker.

[11] He has had two de facto partners and, according to him, numerous other partners. He has five children.

[12] Mr Dooley has a history of consuming excessive alcohol from a very young age, as well as taking cannabis and amphetamines.

***Medical and psychiatric history***

[13] The respondent has been receiving psychiatric care while incarcerated and was prescribed anti-depressants. He also suffers from chronic migraines. According to Mr Dooley, he has made multiple suicide attempts. He reported to Dr Sundin that he has flashbacks of his experience at BoysTown, various motor vehicle accidents and has feelings of anxiety and paranoia associated with his amphetamine abuse. Those symptoms occur regularly but have abated over time. He has been diagnosed as suffering from PTSD, which unfortunately was untreated for many years.

***Time spent in custody***

[14] Two incidents have occurred in 2015 and 2016 while incarcerated which involved substance detection, supply and possession.

[15] The respondent has completed a number of educational courses while serving time in custody and has been employed in the light fabrication workshop where he has had a good work history. The respondent has undertaken and completed a number of programs while in custody which include:

(a) Stepping Up Program;

(b) Getting Started Preparatory Program;

(c) Substance Abuse Maintenance Intervention Program;

(d) High Intensity Sexual Offending Program; and

(e) Sexual Offending Maintenance Program.

[16] In relation to the high intensity sexual offending program, the facilitators noted that the respondent had difficulty in managing his low mood states and external stressors, which resulted in his non-attendance at sessions and reverting to the use of avoidance. His attendance did, however, improve towards the end of the program. The respondent identified his high risk factors as including emotional suppression, avoidance coping, feeling disconnected and low self-esteem/depression. He told the facilitators that he gave himself permission to offend by thinking the victim is drunk so it is going to be alright, and proceeded to sexually offend against the victim. The facilitators noted that there was some partial blame displaced by Mr Dooley onto his drug and alcohol use. The facilitators recommended that he seek further professional counselling from a forensic psychologist or psychiatrist to address his deviant sexual interests and to allow for treatment to be fully addressed in order to

minimise and manage the risk of that behaviour. While the respondent completed the sexual offending maintenance program in 2015, the facilitators found it difficult to determine whether the respondent had made any advancement or consolidated the gains previously made in the high intensity sexual offenders program due to his erratic, fluctuating engagement in the program. The respondent did, however, identify the need to continue to work on strategies surrounding his emotional management and regulation and identified avoidance coping by drug use. The program facilitators again recommended that the respondent engage with a specialist psychologist.

[17] The respondent was refused parole because, *inter alia*, he would be an unacceptable risk to the community. That was at least in part due to the lack of suitable accommodation.

***Psychiatric reports and risk assessments***

*Dr Sundin*

[18] Dr Josephine Sundin prepared a risk assessment for the purposes of Crown Law, assessing the respondent's risk of sexual recidivism in relation to a possible application under the Act. She also provided two addendum reports. She interviewed the respondent on 2 December 2016. The report was based on the interview as well as his criminal history, extraction of files from the Office of the Director of Public Prosecutions and Queensland Corrective Services and transcripts of the relevant proceeding. Those matters were also the subject of evidence at the hearing.

[19] Dr Sundin diagnosed the respondent as having:

(a) Substance use disorder in terms of cannabis, amphetamines and alcohol, which was in sustained remission whilst incarcerated;

(b) Mixed personality disorder;

(c) Anti-social and avoidant personality traits, but found he did not meet the criteria for psychopathy;

(d) Post-traumatic stress disorder;

(e) Attention deficit hyperactivity disorder in childhood.

[20] Dr Sundin considered that Mr Dooley appeared to have a limited understanding of the pathway to his offending behaviour and continued to provide a partial excuse to his offending by focusing on his intoxication. His lack of insight and express plan to re-engage with an avoidant coping style according to Dr Sundin heightens the respondent's risk of rapidly relapsing back into abuse of intoxicating substances if he is not adequately supervised. While Dr Sundin found he did not present as either a predatory or repeat sexual offender, she did find that the index offences represented an escalation of offending. In her report of 28 September 2017, Dr Sundin noted that the stalking charges were subject to *nolle prosequi* and the complainants received a restraining order. She had noted previously that she had no

material indicating the changes proceeded. Her opinion did not alter from that previously expressed.

[21] Dr Sundin opined that the respondent represented a moderate risk for future sexual recidivism and a high risk for future general recidivism. She considered that his risk for sexual recidivism would rise to high should he revert back into abuse of intoxicating substances, and that future offences were likely to occur opportunistically in the setting of intoxication and may involve teenage girls or adult women. She recommended that he be placed under a supervision order so that his risk factors around substance abuse, avoidant coping and emotional dysregulation problems can be better managed.

[22] In an addendum report dated 12 December 2016, Dr Sundin considered some further information which included newspaper cut outs found on the respondent's desk and pages of a torn out novel which were found under his mattress. She indicated that the material gave rise to concern on the basis it suggested that the respondent may have a greater level of deviant sexual preoccupation than previously evident. That reinforced her view that the respondent needed to be referred to a forensic psychologist for individual treatment as part of a new supervision order. Further evidence was given in this regard which is discussed below.

[23] The respondent submitted that Dr Sundin has not identified the risk she foresees as a risk of committing further serious sexual offences. Dr Sundin found the respondent did not exhibit paedophilic or paraphilic tendencies. Dr Sundin however opined that teenage girls were particularly at risk in terms of future offending by the respondent. She considered that the respondent posed a moderate risk of reoffending sexually, rising to a high risk if he reverts back to abuse of intoxicating substances if released into the community without supervision. Dr Sundin has in my view identified the risk of reoffending by the respondent in terms of serious sexual offences for the purposes of the Act.

*Dr Moyle*

[24] Dr Moyle was appointed by the court to carry out a risk assessment under the Act. Dr Moyle saw the respondent on 5 August 2017. He diagnosed the respondent as suffering from:

(a) Anti-social personality disorder;

(b) Drug and alcohol use disorder;

(c) Post-traumatic stress disorder.

[25] Dr Moyle saw the respondent and also reviewed material which is set out in Appendix B of his report and was in evidence. He provided a report and a supplementary report following his review of the opinion of Dr Phillips.

[26] According to Dr Moyle, the respondent poses a moderately high risk of serious sexual reoffending despite the injuries to his penis on his sexual performance. Using the various risk assessment tools and on the basis of his clinical impression, he considered that the respondent is at high risk of reoffending if not subject to the Act.

[27] In his view, the respondent displays a resistance to therapy even in groups. Dr Moyle considered the respondent's history of complying with community supervision orders, fine option orders and the like, in terms of his compliance with supervision orders in the future.

[28] Upon release into the community Dr Moyle considers that the respondent needs to have structured and developed plans for living offence free, including a plan for maintaining friendships in the community and using people who are pro-social who he can call on to provide emotional support. Dr Moyle states that "I believe that Mr Dooley has considerable work to do prior to his release to reassure the Court that he has taken seriously his Antisocial Personality and Drug and Alcohol Use Disorders, and has addressed the ongoing treatment needs and sexually deviant interests." He considers that he is "an impulsive man who enjoys breaking the law and drawing attention to himself, in violent and non-violent ways, feeling free to express himself and displace responsibility onto drug and alcohol use. The PTSD doesn't account for the long history of antisocial offending behaviours. He will need ongoing treatment for mood disorders and PTSD."

[29] The respondent submitted that Dr Moyle has not identified the type of sexual offending that is likely to occur or that such predicted sexual offending is in fact violent sexual offending or sexual offending against children. That does not accord with the fact that he considers the respondent is at a high risk of reoffending if not subject to the Act and, for example, paragraph 159 of his report in relation to the risk of sexual violence protocol (RSVP) where he states that:

> "This is a development from the Sexual Violence Risk 20 (SVR-20). I think he is at high risk if frustrated, isolated, unattached or detached, alone, intoxicated, and there are children in the vicinity that give him opportunity to approach teenage girls, some of whom might be vulnerable, gradually build discussion around sex, using alcohol to lower resistance, and the ultimate offence could be rape after depriving the children of their liberty, or, if his reading matter is anything to go by, rape/murder."

[30] Dr Moyle considers that there is a likelihood of moderately high severe sexual violence. He identifies a number of factors that lead him to that view. It is based not only on the assessment tools but also his clinical impression. He reiterated that position in oral evidence[1] although he agreed that the possible risk of rape leading to murder was based on the possibility of sexual deviancy arising from the material found in the respondent's prison cell.

[31] Dr Moyle's additional concerns are a result of the material found in the respondent's cell, particularly the torn out pages of a novel under the mattress. The only evidence as to the nature of that material is described in IOMS Reports. The documents are not in evidence nor was evidence given by the prison officer who reviewed the material. That is a matter to which I will return.

*Dr Phillips*

[32] Dr Phillips reviewed the respondent to prepare a risk assessment pursuant to the Act. She saw the respondent on 22 July 2017. She also had regard to the transcript

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1 T1-5/7-40 and T1-10/10-24.

of proceedings in the District Court matters and prison mental health and offender service records, which were in evidence.

[33] Dr Phillips found the respondent had developed an anti-social personality disorder and that he met the criteria for a diagnosis of alcohol and cannabis dependence and amphetamine abuse. She stated that at the time of her assessment he had chronic residual symptoms of PTSD with depressive symptoms largely in remission. She did not consider that the respondent met the criteria for paraphilia or paedophilia or sexual sadism.[2]

[34] Based on her clinical assessment and utilising the actuarial and other assessment tools, Dr Phillips assessed the respondent's risk of reoffending as moderate to high range if released without a supervision order. If released with a supervision order, his risk of reoffending would be reduced to a moderate range. She found that "if he were to be released from custody with a supervision order, in the context of psychological intervention, abstinence from substances and robust supervision in the community, that his risk of sexual reoffending would be in the moderate range. The risk of sexual reoffending would increase in the setting of relapse to alcohol or illicit substance use, acute intoxication or psychosocial stressors, for example, relationship breakdowns, difficulty accessing his children, or unstable accommodation." She further considered that the risk of sexual reoffending would increase in the setting of increased sexual preoccupation or rejection. In her opinion, the victim of future offending would likely be female, either adult or underage, post-pubescent. Given the nature of the index sexual offences, she considered that there is the potential for the sexual offending to be of a serious nature, including penetrative sexual assault, which may cause physical or psychological harm to the victim. She reiterated her opinion in oral evidence.[3] Dr Phillips also was of the opinion that the respondent would benefit from individual psychological intervention with a forensic psychologist.

[35] Given the above, I do not accept the submission of the respondent that Dr Phillips does not find what type of sexual offending may be committed and did not address whether the respondent has a risk of violent sexual offending or is likely to offend against children.

***Affidavit of the respondent***

[36] The respondent provided an affidavit which addresses some of the matters raised by the psychiatrists in their reports. He was not cross-examined. In that affidavit he stated that he intended to reside with his mother and his brother, his mother being a non-drinker who would not tolerate alcohol in her home. In relation to the newspaper cut outs located on his desk in his cell, he stated that they related to a series of pranks that inmates played on each other. As to the pages of the novel which were located under his mattress, he stated that that material was given to him by another inmate who was going back to secure, and he put the crumpled torn out pages under his mattress to straighten them out and was planning to put the book back together.

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2 She did, however, consider the explicit material found in his cell raised the possibility of Mr Dooley having a sexual deviancy he has not disclosed. She did, however, note that he had denied looking at the material or that the subject matter sexually aroused him.

3 T1-29/44-47 and T1-30/1-10.

[37] Neither the pages nor the book were retained. Nor were the newspaper cut outs retained. The respondent was not the subject of a breach in relation to the material. While the respondent's explanation for possession of pages of the torn novel may seem to be an unlikely scenario, he was not cross-examined in relation to it and as such I accord little significance to that material in the assessment of risk for the purposes of the Act on the basis of the respondent's explanation.

[38] The respondent further deposed to the fact that he had undertaken various sexual offenders' programs while in custody and believed that he had benefitted from those programs. He believed that his parole had been refused previously because he did not have suitable accommodation. That receives some support from the fact that the records of parole do indicate that the accommodation he nominated was not regarded as suitable.

[39] The respondent identifies his high risk factors as revolving around drugs and alcohol abuse and misuse, feelings of loneliness and anger management. He states that he intends to link into a drug and alcohol centre upon his release. If residing at Inala with his mother, he also intends to schedule an appointment with a doctor and ask to be put on a mental health plan. He stated he was committed to ongoing psychiatric care on release. He is aware that he can access support services such as the Salvation Army for food and clothing and would attend Centrelink on his release to have his disability pension restarted. He would like to reskill through TAFE and is interested in obtaining a forklift licence.

[40] The respondent states that he would also like to recommence contact with his children but before doing so he would make contact with the Department of Communities, Child Safety and Disability Services and accepts that any contact will be supervised. He is determined to never come back to prison again or to reoffend. Obviously in any risk assessment it is in Mr Dooley's favour that he is focusing on his alcohol and drug misuse and willing to engage in further mental health treatment.

[41] Counsel for the respondent directed the Court to the fact that the respondent has only committed the index offences in terms of his sexual offending and that he has had relationships with a high number of adult women and is a father to five children with four previous partners, but none of those women has ever complained of being his sexual victim. It was also submitted that he has satisfactorily completed all of the available courses in terms of sexual offending treatment in custody and that those matters together with the matters addressed in his affidavit demonstrate that he is not an unacceptable risk of serious sexual offending.

***Cross-examination of the psychiatrists***

[42] Dr Moyle, Dr Phillips and Dr Sundin were all cross-examined and some further oral evidence was led from them. All of them had reviewed the affidavit of the respondent and while they considered it showed a positive approach in relation to the matters addressed, none expressed the view that it changed their opinions as to the risk posed by the respondent in terms of reoffending or their view that the respondent should be released subject to a supervision order in order to sufficiently curtail those risks. In particular, Dr Moyle and Dr Phillips noted the absence of any commitment to supervision, management or treatment of the more criminological

matters to do with sexual or violent offending in the community that he might be subject to in the matters outlined in his affidavit.

[43] Dr Moyle was of the view that the most defensible scenario of the respondent's future offending was that he would come across a child or a youth and try to attract them by offering cigarettes or alcohol and entice them to have sex with him and ultimately if they declined he would rape them. Dr Moyle said that he understood that the rape of the 14 year old was violent insofar as the 14 year old had kicked and punched to escape the respondent. While that was contested by the respondent, Dr Phillips confirmed Dr Moyle's understanding of the index offences including some evidence in relation to the rape. That was correctly derived from the Crown's sentencing submissions. While he agreed in cross-examination that he regarded the most likely scenario for reoffending reflected the index offending because it was the most recent expression of his sexual offending. He had taken account of the fact that the respondent did not have a history of sexual offending, although he had committed an offence of a sexual nature in publicly having sex on a train which was relevant to the risk assessment.

[44] In reaching his opinion, Dr Moyle gave evidence that he took into account that the respondent had reduced sexual functioning due to an accident in the prison and that he wished to stay out of jail, but balanced those matters against his level of impulsivity and irresponsibility. He gave evidence that he not only relied on the actuarial approaches and his inability to put brakes on his behaviour when he wants to do something wrong[4] in reaching his view of risk, but also actuarially informed clinical judgment tools. He agreed that the former would always result in scores of a moderate high risk of reoffending until the respondent was well past 60 years of age but stated the other tools used could mean he could lower the risk.[5]

[45] Dr Moyle agreed that he had not seen any evidence of complaints of sexual offending by the respondent's various partners. It was plain he had not considered otherwise in reaching his opinion.

[46] Dr Moyle did not consider that the National Offenders Reporting Register provided sufficient supervision of the respondent. He regards it as a low-level protective factor.

[47] In terms of the respondent's willingness to continue to engage in psychiatric treatment, Dr Moyle considered that that was a positive factor in his behaviour, but that the respondent needed to be the subject of treatment which was particularly directed at sexual offending behaviour by a professional with the relevant expertise. He considers that there are a lot of clinical issues which are unknown about the respondent.

[48] While Dr Moyle agreed that there was an absence of evidence of the respondent's sexual interest in children per se, he considers that the respondent's sexual interests when out in the community actually are not presently fully understood or tested, such that he cannot be satisfied that he is not targeting children. Dr Moyle's clinical concern is with his behaviours in approaching children aged nine to 15 and his raping a 14 year old. In this regard, he was aware of the terms of the restraining

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4 T1-16/36-41; T1-22/35-41.

5 T1-17/10-15.

order and that while the allegations arose out of the respondent having been alleged to have called out to a ten and 14 year old and run off when adults appeared, those matters were untested.[6] He had regard to the story behind the restraining order and not the fact of the charges themselves which he was aware were subject to a *nolle prosequi*.

[49] Dr Moyle expressed concerns about the respondent engaging in activities where he collected sexual images which indulged a fantasy life of increasing sexual fantasies and encouraged sex as coping.[7] That particularly arose from the material found in his cell. Dr Moyle had not had the opportunity to discuss the material found in the respondent's cell with the respondent. He agreed in cross-examination that he would not have a concern in relation to the material from the novel which raised questions as to lust and murder, if the respondent had not sought out the material or had no interest in it.

[50] While Dr Moyle clearly had greater concerns about the respondent's level of risk as a result of the material said to have been found in the respondent's cell, particularly under his bed, he saw the respondent's explanation to Dr Phillips that the material was under the bed to flatten it out so he could repair a book for a co-prisoner. Dr Moyle in his addendum report remained of the view that the risk of the respondent reoffending was at least moderate if not moderate to high.

[51] Dr Moyle expressed that some caution should be exercised in relation to the respondent's expressed intentions, given his anti-social personality and his resistance in complying with authority and the possibility of the respondent agreeing to certain matters for the sake of release. The need for caution is shared by Dr Phillips.

[52] Dr Phillips had reviewed the respondent's recent affidavit. She noted that it differed in some respects from information that was provided to her and stated that it was difficult to know which one of the accounts of the respondent was correct and accurate. She stated that "…I do think that you need to recognise that I don't think that he's entirely been forthright and open with all of his responses to me, particularly in relation to any concerns about underlying deviance and so forth."[8] She also noted the difference in views expressed by the respondent in the sexual offending programs from those revealed to her by the respondent. She considered that the information the respondent was providing to her could not be entirely taken at face value and, as such, she had regard to both matters in her assessment. She found that the respondent was particularly concerned in his review with her about the present application, and she considered he was cautious and guarded in certain aspects of his presentation. She stated that she found this to be the case in relation to discussions about matters pertaining to risk and in her attempts to explore paraphilia or underlying sexual deviance with the respondent.

[53] Dr Phillips found that the respondent met the DSM-5 criteria for anti-social personality. She noted that he has repeated violations of social norms such that he has been repeatedly arrested for various crimes. She considers that he is impulsive. He has a history of aggression. He also has a history of conduct disorder prior to

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6 T1-19/1-5.
7 T1-23/10-15.
8 T1-27/45-48 and T1-28/1-3; see also T1-28/6-14.

the age of 15 which is quite important diagnostically in terms of making a diagnosis of anti-social personality disorder.[9] The respondent also has significant psychopathic traits but does not display those traits such that he meets the cut off for a diagnosis of psychopathy.

[54] Dr Phillips considers that the respondent's risk of sexual violence is moderate to high if it is unmodified without a supervision order.[10] She considers that the risk would increase if he relapsed in terms of alcohol or substance abuse and if he faced certain psychosocial stresses such as relationship breakdowns. She stated that because of his personality vulnerabilities, he has very limited adaptive coping strategies to be able to manage those types of stresses. She considers the imposition of a supervision order would reduce the risk of reoffending to moderate.[11] She considered that there were two particular concerns in relation to the respondent. The first matter is relevant in the context of any supervision order, namely the respondent is untested in the community given his risk. Secondly, there is a lot that is not known about the respondent from a clinical perspective.[12]

[55] Dr Phillips acknowledged there was no perfect method in assessing risk and that she engaged with actuarial tools and clinical judgment.[13] She considered that, while intoxication was an important part of the respondent's risk factors, his risk really derives from "a complex combination of factors, particularly around his disturbed personality, also his intoxication, his limited coping strategies, his use of sex as coping, for example, and his, at times, difficulty empathising with others at times and imposing himself upon others."[14]

[56] In response to questioning about taking account of various matters which were unproven in terms of stalking charges and the respondent's denial of involvement with the torn pages from the novel found his cell, Dr Phillips stated that even if one removed the questions of the pages of the novel, the charges of stalking of the ten and 14 year old children and his presentation at the Princess Alexandra Hospital with fantasies about murder, and looked purely at the index offences, and his broad range of both static and dynamic risk factors for sexual violence, he would still score in the moderate to high range.[15] The respondent would drop a category in the Static-99 to the average risk at 5 so overall there would be a slight decrease but not enough for Dr Phillips to change categories in total, and her opinion remains that he was moderate to high risk.[16]

[57] Dr Sundin agreed with Dr Phillips in this regard.

[58] Like Dr Moyle, Dr Phillips considers that the national reporting regime would offer some level of protection but it would be minimal. Dr Phillips considered that the importance of the supervision order in addressing the risk posed by the respondent is not just monitoring, but rather the intervention that will be required for the respondent to engage in drug and alcohol treatment and the individual forensic

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9 T1-29/15-20.
10 T1-29/45-46.
11 T1-30/32-33.
12 T1-32/15-19.
13 T1-37/36-44.
14 T1-38/42-46.
15 T1-40/5-12.
16 T1-47/1-41.

psychological intervention for his offending as well as ongoing treatment for his PTSD and depression.[17] While Dr Phillips accepted that, in his affidavit, the respondent indicated a willingness to engage in drug and alcohol services and counselling, she had some level of doubt about whether he would in fact do it, given that, at the time she assessed him, he did not see any benefit or reason to do further drug and alcohol intervention and while he was prepared to engage in treatment for his mental health, it was unclear whether that was exclusively to be treatment for his PTSD and depression rather than to work on some outstanding offending treatment goals.[18]

[59] Dr Phillips considers that Mr Dooley has made progress in the time that he has been in custody but her concerns lie in his ability to maintain the gains that he has made once he was in the community.[19]

[60] Dr Phillips does not have sufficient information to be satisfied that Mr Dooley does not have a sexual interest in children but agreed that other than the index sexual offence where he raped at 14 year old girl, there was no evidence that he was interested in children.[20] In that regard, I note that it was put to Dr Phillips that the respondent was sentenced on the basis that he had a reasonable belief as to her age being older. The sentencing judge in fact rejected the respondent's submission that he thought the victims were older.

[61] Dr Sundin was also cross-examined. Dr Sundin was not prepared to comment on the issue of the material found under the bed of the respondent or in his cell as she had not seen the material or spoken to the person who had seen it, nor had she spoken to the respondent about it. She considered it may raise clinical issues, but in the absence of anything further she would not offer an opinion and did not take it into account in her assessment or risk.

[62] Her previous opinion had altered in light of looking at Dr Moyle's opinion and Dr Phillips' report, only insofar as the material obtained by Dr Moyle and considered by Dr Phillips raised clinical questions which would need to be released to treating forensic psychologists so that they could be followed up and the issues better understood.[21]

[63] Dr Sundin remains of the view that the respondent requires a supervision order. Dr Sundin particularly considers that the respondent's reduced insight and expressed plan to re-engage with an avoidant coping style heightens his risk of relapsing into abuse of intoxicating substances if not supervised. She considers that while he has made progress as a result of his participating in the programs undertaken in custody, he still has a reduced understanding of his pathway to offending and minimises his personal responsibility for the offending by focusing on intoxication. She gave evidence that:[22]

> "He historically has a history of having been quite an impulsive man. He has poor problem-solving skills. He has problems with emotional dysregulation.

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17 T1-41/17-23.
18 T1-41/33-35.
19 T1-42/14-21.
20 T1-42/25-40.
21 T1-51/1-11.
22 T1-49/19-24.

> He has a poor record of compliance with supervision orders. The transition back into the community is a likely stressful time. I thought that if we took all of those factors together, that without close supervision, there was a very high risk of relapse back into intoxication, which would increase his risk for sexual recidivism."

[64] Dr Sundin was also well aware of the limitations of the relevant actuarial tools, but pointed out that Static-99R and the HARE Psychopathic Checklist have been tested and re-tested numerous times, and that there are thousands of research articles around their reliability. She agreed that they are not perfect but they are good guidelines. She stated that she reached her view looking at those matters in conjunction with her clinical experience.

[65] Dr Sundin considers that the respondent requires not only psychiatric treatment but also treatment by a forensic psychologist.[23] She considers that a mental health plan was limited and insufficient because it would only enable the respondent to have 10 counselling sessions in a period of 12 months. She accepted that the national reporting register has some protective capacity but nothing near the efficacy of being under a supervision order certainly in terms of the reduction of risk for sexual recidivism.[24]

[66] The respondent submitted that all the psychiatrists failed to exercise caution in forming their opinions based on historical descriptions and assessments contained in documents provided to them without questioning. It was submitted that their reasoning in reaching their final conclusions was prejudiced by their acceptance of that information, particularly what was said to be the subject matter of the torn pages of the novel found under the respondent's mattress. It was evident from the cross-examination that, while Dr Moyle and Dr Phillips had clinical concerns about the material found in the respondent's cell, their opinion of the risk posed by the respondent in terms of reoffending relevant to the Act did not alter significantly in its absence. Dr Sundin still considered that the respondent was a moderate risk of reoffending which could increase to high in certain circumstances without having any regard to the material found. All of the psychiatrists were aware that the stalking charges had not been pursued and a restraining order had been made in relation to that matter. They were matters which could be and were considered as part of their assessment. In any event, those matters made little difference in their assessment of risk. I do not find that the psychiatrists failed to exercise caution in assessing the material put before them in reaching their opinions. The documentation otherwise relied upon was in evidence and I do not find that it was accepted without caution by the psychiatrists.

[67] Despite cross-examination, none of the psychiatrists altered their opinions in any significant way. It was plain on their evidence that even if they disregarded the material found in the respondent's cell and the stalking charges in relation to the ten and 14 year olds, the respondent's risk remained at least moderate, increasing to high if he engaged in drug or alcohol abuse as certain psychological stressors emerged. They had clearly weighed up the relevant matters both in respect of positive protective factors in the respondent's favour and the factors indicating that the respondent was likely to reoffend in terms of a serious sexual offence if released without a Division 3 order.

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23 T1-56/38-41.

24 T1-57/33-36.

[68] Criticisms were made of the use of the conclusions of Dr Sundin and Dr Phillips that the score of 25 in respect of psychopathic traits was elevated. It was submitted that there was no supporting psychiatric literature that such a view of the tool as a sliding scale was to be preferred to the usual scoring guideline to assist in the diagnosis of psychopathy where a score of above 30 is required. Both are experienced psychiatrists and did not over-emphasise the importance of the elevated psychopathic traits in reaching their opinions. The respondent also submitted that there were limitations in the application of the actuarial assessments. All of the psychiatrists were well versed in the use of and limitations of those assessments and used them in combination with their clinical judgments in assessing the question of risk. All of the psychiatrists took into account the steps taken by the respondent in rehabilitation even though not reflected in Static 99R or HCR-20. I do not consider that their use of the tools in any way undermines their opinion.

[69] A further matter that was raised on behalf of the respondent was that Dr Sundin considered that the offending of the respondent had escalated and it was contended that was on the basis of the erroneous classification of discontinuing stalking charges as a sexual offence which resulted in a restraining order. As set out above, Dr Sundin was aware of that fact and it did not cause her to change her opinion.

[70] Dr Moyle, Dr Sundin and Dr Phillips all impressed me as experienced forensic psychiatrists who were well qualified to carry out the risk assessments and provide opinions as to risks posed by the respondent reoffending by committing a serious sexual offence. I considered that they had carefully considered the material before them as well as making their own clinical assessments. All were cross-examined, but that did not result in the exposure of any apparent deficiency in their reports or lack of consideration of relevant factors which weighed for and against the respondent in the assessment of risk. They were measured in their views, making appropriate concessions and appreciating the limitations in respect of the actuarial assessment tools as to risk. All agreed that the respondent had an anti-social personality, an alcohol and drug abuse disorder and suffered from PTSD. They all assessed the respondent as at least a moderate risk of reoffending relevant to the Act without being subject to a supervision order, with Dr Moyle and Dr Phillips considering his risk of reoffending was in the moderate to high range. They held this view despite the fact that the respondent had only committed the index offences in terms of his sexual offending and had not been diagnosed as having paedophilia or any other paraphilia. While Dr Moyle originally questioned whether the respondent could be released under a supervision order, he considered in light of the respondent's affidavit and Dr Phillips' report, his risk could be adequately contained by a supervision order. Overall, I accept their evidence and the opinions expressed which do not differ in any significant way. I have separately considered their evidence in terms of any proposed supervision order where their views differed in some respects.

***Consideration***

[71] Having regard to all of the evidence in relation to the respondent which is relevant to the factors set out in s 13(4) of the Act, and particularly the evidence contained in the psychiatric opinions, I am satisfied that the respondent does pose an unacceptable risk of serious sexual offending if released into the community without a supervision order.

[72] At the time of the index offences being committed, the respondent was a mature man. He had a lengthy history of criminal offending. The index offences are the only sexual offences which have been committed by him that have been taken into account by the psychiatrists in their assessment of risk. While they also took into account the subject matter of the stalking charges which led to a restraining order and the offence involving exhibitionist behaviour of sex on a train, they were matters on which all the psychiatrists gave evidence and were properly part of their assessments. While Dr Moyle and Dr Phillips took account of the torn pages from the novel and the newspaper articles found in the respondent's cell, it was clear from the evidence they gave in cross-examination that they were not a critical part of their assessment of the risk posed by the respondent in terms of reoffending of a serious sexual nature, being a moderate risk.

[73] I do not find that Dr Phillips' or Dr Moyle's assessment of risk as being moderate to high was dependent on the fact that from a clinical perspective they considered that there are a number of matters that are unknown, nor that that is the basis for their considering a supervision order is necessary. While Dr Phillips and Dr Moyle considered there may be dynamic risk factors which are not fully known, they were not uncertain as to the level of risk about his reoffending. The question of matters unknown was relevant to the terms of any conditions they considered should be imposed.

[74] The respondent submitted that a case such as the respondent's, where he has only committed the index offences and does not have a history of paedophilia or paraphilia or sexual offending, is not one which would generally be found to fall under the Act. While those matters are relevant considerations, the ultimate question is whether the respondent poses an unacceptable risk of committing a serious sexual offence. They were matters considered by all the psychiatrists in their assessments of the risk posed by the respondent.

[75] The respondent also has an anti-social personality disorder and a long history of alcohol and substance abuse which escalates his risk of reoffending if present. I accept the opinion of Dr Moyle, which is largely supported by Dr Phillips and Dr Sundin, that the respondent is an impulsive man who is anti-authoritarian and finds it difficult to put the brakes of society on when he wants to do something, even if it is wrong. I also accept the opinion of Dr Sundin that the respondent has limited insight into his offending and the pathways to his offending, which affects his ability to control the factors which affect his risk of reoffending.

[76] While I accept that the respondent does not wish to return to jail in the future and that that is a factor which drives against his reoffending, his ability to control his impulsiveness, his anti-social personality and his lack of insight support the fact that he presently does not have the ability to contain the factors which drive his offending and support the fact that he is an unacceptable risk in the absence of a division 3 order.

[77] I have taken into account the respondent's commitment to addressing his mental health, his commitment to rehabilitation by undertaking the sexual reoffending programs and that he has indicated through his affidavit his commitment to drug and alcohol counselling and receiving ongoing mental health assistance. However, I accept the evidence of the psychiatrists that, while he may have those intentions, his ability to execute them in the absence of a supervision order is doubtful given the

above matters. The absence of any commitment to obtain treatment and intervention in relation to his offending behaviour is significant.

[78] While he has engaged in sexual offender programs while in custody and made positive gains, I accept the evidence of Dr Moyle, Dr Phillips and Dr Sundin, that he has not made sufficient gains to reduce his risk of reoffending to an acceptable level and requires further treatment from a forensic psychologist which will be provided while under the supervision order. The community does need to be protected from the risk posed by the respondent, given the likely nature of his reoffending is against teenagers or women with violence. In that regard, I note that is supported by the facilitators of the high intensity program recommending that he have individual treatment from a psychologist to address sexual deviancy.

[79] I also accept that the respondent sought to minimise his account of his sexual offending and did not fully engage in discussion as to any sexual deviancy or sexual interests with Dr Moyle and Dr Phillips. He also indicated to Dr Sundin that he intended to re-engage with an avoidant coping style upon release. Those factors militate his ability to manage and constrain his conduct without monitoring and intervention by treatment under a supervision order. His impulsiveness and anti-social personality supports the fact that, unsupervised, he is an unacceptable risk and that he needs a supervision order to ensure that he does not engage in conduct such as alcohol and substance abuse and that he has intervention by way of treatment through a forensic psychologist in order to reduce his potential to reoffend by serious sexual offences to at least a moderate risk.

[80] The underlying evidence relied upon by the psychiatrists was before the Court. I am satisfied that there is acceptable cogent evidence and to a high degree of probability that the evidence is of sufficient weight to justify a decision that the respondent poses an unacceptable risk that he will commit a serious sexual offence if released without a supervision order being made.

***The order to be made***

[81] The paramount consideration in determining whether to make a supervision order is the need to ensure adequate protection of the community. That requires the Court to consider whether adequate protection of the community can be reasonably and practicably managed by a supervision order and whether the requirements under s 16 of the Act can be reasonably and practicably managed by Corrective Services officers.

[82] The purpose of orders under s 13 is not punishment but the protection of the community. As was stated by the Court in *Attorney-General v Francis*:

> "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".[25]

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25 *Attorney-General for the State of Queensland v Francis* [2007] 1 Qd R 396 at [39].

[83] In determining the terms of an appropriate supervision order, the Court considers whether the order can provide protection against the risks posed as defined under s 13(1) and s 13(2) of the Act.[26] Any supervision order must be framed so as to impose no greater intrusion on the respondent's liberty than is warranted by the risks posed, to ensure adequate protection of the community. The Court must be satisfied that the supervision order would be efficacious in constraining the respondent's behaviour by preventing the opportunity for the commission of sexual offences.[27] The Court may take into account matters which are unknown but which are real possibilities.

[84] It is open to the Court to make no order, however, having regard to the psychiatric evidence that has been presented in this case, I do not consider that adequate protection of the community could be ensured without a supervision order.

[85] The effect of the psychiatric evidence is that the adequate protection of the community can be ensured through a properly framed supervision order and a continuing detention order is not necessary. That was conceded by the Attorney-General on behalf of the applicant at the end of the hearing. However, there was considerable debate as to some of the terms of the Attorney-General's proposed supervision order.

[86] As has been acknowledged by a number of judgments in this Court, no order can be "risk free" or "water tight".[28]

[87] There is no issue that, on the basis of all of the psychiatric evidence, any supervision order would need to provide:

(a) That the respondent abstain from alcohol and other intoxicants;

(b) That he be required to undertake psychiatric treatment and also to see a forensic psychologist;

(c) That there be provision for random breath alcohol testing and urine drug scans;

(d) That the term of any order needs to be at least five years, although Dr Phillips and Dr Moyle considered that an order needs to be for 10 years, because of the nature of the afflictions suffered by the respondent such that his progress is likely to be slow.

[88] The conditions outlined in the proposed supervision order are extensive. Some of the proposed conditions are the result of suggestions by the psychiatrists, particularly by Dr Moyle.

[89] In terms of the draft order that has been provided to me, I consider that conditions 1 to 8 are conditions properly addressed to constraining the respondent's behaviour to prevent the opportunity for the commission of a sexual offence. I consider that condition 9, that the respondent not commit an indictable offence during the period

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26 *Attorney-General for the State of Queensland v S* [2015] QSC 157.
27 *Attorney-General for the State of Queensland v Fardon* [2011] QCA 111 at [29].
28 *Attorney-General for the State of Queensland v Sutherland* [2006] QSC 268 at [29].

of the order, is too broad, however I consider that a condition limited to indictable offences arising out of domestic violence or in respect of a child would be appropriate. The index offending of the respondent was directed to a 14 year old and Dr Sundin's evidence was that aggression in intimate relationships is one of the potential areas of risk in respect of future reoffending of a serious sexual offence by the respondent.

[90] Paragraph 25 of the proposed order is one considered by Dr Moyle to be appropriate, given his risk of grabbing a vehicle and taking off and not adhering to conditions under the supervision order.[29] That behaviour, however, would be addressed by his breaching other conditions of the order, particularly paragraphs 2, 3 and 12 of the order. I do not consider that that condition is properly directed to protecting the public from the unacceptable risk of reoffending and accordingly do not impose that condition.

[91] In relation to conditions 35 to 39, the evidence differed amongst the psychiatrists as to the need for such conditions. Dr Moyle, is not satisfied that the respondent's offending may be directed to children and considered that such conditions are appropriate, given the lack of knowledge of Mr Dooley's sexual interests when out in the community and his ability to control them. Dr Phillips considered that there are concerns, from a clinical perspective at least, that there may be an underlying sexual interest in children that the respondent has not been prepared to disclose. However, she stated that while those things are suggested, they are far from definitive. She considered that the decision to put those conditions in place or not would depend on whether it was preferable to take a risk averse conservative approach with additional conditions until there was an opportunity for further exploration of whether or not the respondent has any deviant interest in children.[30] Dr Sundin, however, considered that there was nothing in the respondent's history to suggest any kind of grooming behaviour around seeking out children or access to child exploitation material. As such, she was unconvinced about the need for those conditions. Dr Sundin indicated that the provision for "without prior approval of a Corrective Services officer" provides for engagement and discussion with supervising Corrective Services officers, but on the "flip side", if the respondent has no paedophilic interest, imposing such conditions has the potential to be very counter-therapeutic and to create an antagonistic atmosphere between himself and the supervising order. While I consider a condition must be included to protect against the possibility identified by Dr Phillips and Dr Moyle and given one of the victims was fourteen, I accept Dr Sundin's evidence that the proposed conditions may be counter-therapeutic. There is provision for no contact with children without approval. In my view an appropriate conditions would be that:

(a) The respondent disclose to a Corrective Services officer or his treating psychiatrist or psychologist any visits to schools, child care centres, child minding areas or play areas, public parks or any club or facility where there are children and the reason for his attending those places. areas that occurred in the period prior to meeting with them.

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29 T1-9/31-33.

30 T1-32/44-48.

[92] It was also contended that paragraph 43 of the conditions providing for the respondent to obtain prior approval from a Corrective Services officer before accessing a computer or the internet. Dr Moyle considered that such a condition was appropriate in order to give the respondent every opportunity to discuss his fantasy life, whether it be found in books, devices, internet, computers or things like that. Dr Phillips indicated that it would be useful to know if he was accessing internet information from a clinical perspective, particularly content around children or sexual violence, but accepted that in terms of clinical and therapeutic interventions it could be managed by condition 44. Dr Sundin indicated that it was reasonable from the point of view that Corrective Services would need to know of his accessing such computers, but she understood that it would be a one-off conversation that was not required every time he accessed a computer. On the strict wording of the condition, it requires prior written approval before accessing a computer or internet on each occasion. In my view, the appropriate condition is for him to notify a Corrective Services officer before acquiring a computer or arranging for access to the internet from a service provider in similar terms to paragraph 40 of the proposed order. That provides for Corrective Services being aware of the fact that the respondent intends to have a computer or to access the internet by any other equipment (other than a mobile phone) by which he may access the internet.

[93] Paragraphs 46 to 47 of the conditions were regarded by Dr Sundin as essentially covered by the condition in [44]. Dr Phillips had a concern about the respondent accessing material that could have the potential to reinforce any underlying deviance.[31] The respondent's counsel points out that accessing child exploitation material is an offence and as such there is no need for a condition in that regard. Dr Moyle regarded paragraph 46 as extending to the sort of images that might stir up violent and sexually violent themes in the respondent's mind.

[94] I consider that condition 45 of the order should remain, given it will show who the respondent is having contact with and whether such contact is with girls or women who may be within the group identified as potentially at risk from the respondent. The collection of child exploitation material is illegal so an order is unnecessary. In relation to condition 46, I consider it should be changed to read "not to access material containing sexually violent themes on a computer or on the internet, or in any other format without the prior approval of a Corrective Services officer in consultation with the treating psychiatrist or psychologist". I do not consider that condition 47 is required on the evidence for the purposes of reducing the level of risk and protecting the public. I consider that condition 48 should remain, given the identification of pornographic material by the psychiatrists as an area which requires management and potential treatment and intervention to minimise the respondent's potential risk of reoffending and engaging in avoidant coping behaviour.

[95] Paragraph 49 is broad and ambiguous and is of questionable value in terms of the psychiatric evidence in addressing the matters identified as unacceptable risk. There is no evidence suggesting that such violence has occurred, notwithstanding that the respondent has had multiple partners and sexual partners. It does not appear to be one which facilitates topics of conversation about violence or aggression as contended for by Dr Moyle.[32] Dr Phillips thought it was covered by earlier conditions and appeared to be uncertain of its meaning. Her concern is around the

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31 T1-44/35-39.

32 T1-9/1-4.

respondent not committing sexual or violent offences during the period of the supervision order. Dr Sundin thought that it was directed to interpersonal violence within an intimate partner relationship. I consider that, to the extent such a condition may necessary to constrain behaviour giving rise to the risk of reoffending by the respondent, it is sufficiently addressed by the reformulated condition 9. I am not satisfied that such a condition is otherwise warranted on the basis of the evidence before me and consider that it is too ambiguous to be capable of proper enforcement and should not be made by this Court.

[96] As to paragraph 50, it is again far too broad in its terms as it could extend to having advertising material that has pictures of children. That is different, however, from material which has sexually violent themes. In the case of sexually violent themes, it does appear that that carries with it the risk of the respondent engaging in a fantasy life and slipping back into an avoidant coping pattern, which increases the respondent's risk of reoffending. Dr Sundin, however, considered that it was important that any material with sexually violent themes was the subject of discussions with the Corrective Services officer. Having regard to the evidence, I think the appropriate condition is one that provides for the respondent to be directed to produce any sexually violent material and dispose of it if directed by a Corrective Services officer, in consultation with the treating psychiatrist or psychologist.

[97] As to the term of the order, while I accept Dr Moyle and Dr Phillips' evidence that the respondent may be slow in responding to treatment and addressing and managing his areas of risk, I consider the appropriate length of the order is five years given the intrusion upon the liberty of the individual should be no greater than warranted. That is supported by Dr Sundin's evidence. The Attorney-General may apply for a further order under s 19B of the Act if it is considered necessary.

***Orders***

[98] The terms of the draft order are otherwise uncontentious and I make an order in those terms with the changes referred to above and give liberty to apply. That order should provide for the interim supervision order to be revoked.