SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v DBJ* [2017] QSC 302
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **DBJ** (respondent)
FILE NO:	BS 9151 of 2010
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED ON:	11 December 2017
DELIVERED AT:	Brisbane
HEARING DATE:	4 December 2017
JUDGE:	Bowskill J
ORDER:	**1. The application for a further supervision order is dismissed.**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – application for a further supervision order under s 19B of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 – where the respondent was convicted of serious sexual offences against children in 2001 and 2003, being sentenced to nine years imprisonment in 2001 – where the respondent committed further, but different, sexual offences in 2007, whilst on parole – where an order was made in 2010 for the release of the respondent subject to a supervision order under the *Dangerous Prisoners (Sexual Offenders) Act* 2003 for a period of seven years – where in the period since the supervision order was made the respondent had not reoffended, had not contravened the supervision order, had developed a substantial support network of people who know about his offending history, stable accommodation and employment, had been participating in treatment with a forensic psychologist who considers that he has no outstanding treatment needs and represents a low risk of reoffending – where there is psychiatric opinion to the effect that he presents as a low to below moderate risk of reoffending, with the risk being associated with complacency

in the absence of supervision – where the respondent will become subject to reporting obligations under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act* 2004 upon expiry of the supervision order, and remain under those obligations for life – whether the court is satisfied the respondent is a serious danger to the community in the absence of a further supervision order under the *Dangerous Prisoners (Sexual Offenders) Act* 2003 – whether there is an unacceptable risk that the respondent will commit a further serious sexual offence if a further supervision order is not made – consideration of the relevant principles which apply in determining what is an "unacceptable risk"

Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004 (Qld)
Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)

Attorney-General for the State of Queensland v Beattie [2007] QCA 96
Attorney-General for the State of Queensland v Bulger [2017] QSC 261
Attorney-General for the State of Queensland v Fardon [2011] QCA 111
Attorney-General for the State of Queensland v Foy [2014] QSC 304
Attorney-General for the State of Queensland v Francis [2007] 1 Qd R 396
Attorney-General for the State of Queensland v Kanaveilomani [2013] QCA 404
Attorney-General for the State of Queensland v Loudon [2017] QSC 146
Attorney-General for the State of Queensland v S [2015] QSC 157
Attorney-General for the State of Queensland v Sutherland [2006] QSC 268
Attorney-General for the State of Queensland v Van Dessel [2006] QSC 16
Attorney-General for the State of Queensland v Watt [2012] QSC 291
Fardon v Attorney-General for the State of Queensland (2004) 223 CLR 575
Lynn v State of New South Wales [2016] NSWCA 57
Nigro v Secretary to the Department of Justice (2013) 41 VR 359

COUNSEL: J Rolls for the applicant
S Ryan QC for the respondent

SOLICITORS: Crown Law for the applicant
Fisher Dore Lawyers for the respondent

Introduction

[1] In March 2001 the respondent was convicted, on his plea of guilty, of two counts of rape and two counts of indecent treatment, in each case the victim being his then ten year old daughter. He was sentenced to nine years' imprisonment.

[2] In August 2003 he pleaded guilty to two further counts of indecent treatment, offences which pre-dated the offences he was convicted of in March 2001, this time concerning his son, then aged between four and five, and another daughter, aged three. These offences were disclosed by the respondent while in custody, during courses he was doing. He was sentenced to three years' imprisonment, to be served concurrently with the sentence imposed in March 2001.

[3] The respondent was released on parole in September 2005.

[4] In 2007, whilst on parole, the respondent committed further offences, being three charges of attempting to make child exploitation material, possession of child exploitation material and making recordings in breach of privacy. The respondent was discovered at a shopping centre attempting to covertly film a young girl with a video camera hidden in a backpack. Police found "up skirt" images of young girls at his home and footage on his computer showed him manoeuvring a camera up the skirts of young females. He was convicted of these offences in June 2009 and sentenced to 18 months' imprisonment.

[5] In August 2010 the Attorney-General brought an application seeking orders under division 3 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003. On 10 December 2010 an order was made under that Act that the respondent be released subject to a supervision order for seven years which is due to expire on 18 December 2017.

[6] The Attorney-General now applies, under s 19B of the Act, for a further supervision order, for a period of two (2) years.

Relevant principles

[7] As to the proper approach to be taken in relation to such an application, the Attorney-General submits that it is apparent from s 19D(1) that the process to be adopted is the same as that which applies when an original order is sought. The respondent agrees with this construction. Given the wording of s 19D(1), I accept that as correct.[1]

[8] The starting point then is s 13 of the DPSOA. Relevantly, with the changes prescribed by s 19D(1), a further supervision order may only be made if the court is satisfied the released prisoner is a serious danger to the community in the absence of such an order (ss 13(5) and 13(1)). A released prisoner is a serious danger to the community if there is

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[1] See also *Attorney-General (Qld) v Foy* [2014] QSC 304 at [19] per Boddice J and *Attorney-General (Qld) v Loudon* [2017] QSC 146 at [3] per Jackson J.

an unacceptable risk that the released prisoner will commit another serious sexual offence if a further supervision order is not made (see s 19D(1)(f) and s 13(2)).

[9] As defined in the schedule to the Act a "serious sexual offence" is, relevantly for the purposes of this case, an offence of a sexual nature against a child.

[10] The court may decide it is satisfied the person is a serious danger to the community only if it is satisfied by acceptable, cogent evidence, to a high degree of probability, that the evidence is of sufficient weight to justify the decision (s 13(3)). As articulated by P Lyons J in *Attorney-General (Qld) v Watt* [2012] QSC 291 at [37] the Act "establishes a rather high hurdle to be overcome before an application for an order under s 13 will be successful". That is plainly appropriate, given the serious consequences of an order under s 13(5)(a) or (b) for a person, having been convicted of an offence and served their sentence, of having their liberty and autonomy – either in absolute terms, by a continuing detention order, or in qualified terms, by a supervision order – further curtailed, for the protection of the community.[2]

[11] The purpose of an order such as a further supervision order is not punishment, but protection of the community.[3] In deciding whether to make a further supervision order the paramount consideration is the need to ensure adequate protection of the community (s 13(6)(a)).

[12] As to what constitutes an "unacceptable risk", that is "a matter for judicial determination, requiring a value judgment as to what risk should be accepted against the serious alternative of the deprivation of a person's liberty".[4] The test is not satisfied by evidence of *any* risk that the released prisoner may commit a further serious sexual offence. What must be established by the Attorney-General, to the requisite standard, is an *unacceptable* risk, the determination of which involves a balancing of competing considerations.[5] The notion of an unacceptable risk recognises that some risk can be acceptable consistently with the adequate protection of the community.[6]

[13] In considering whether a risk is unacceptable it is necessary to take into account, and balance, the nature of the risk and the degree of likelihood of it eventuating, with the seriousness of the consequences if the risk eventuates. In this regard, in a case in which the focus was upon the degree of likelihood, Keane JA said in *Attorney-General (Qld) v Beattie* [2007] QCA 96 at [19]:

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2 *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361-363. See also *Attorney-General v Van Dessel* [2006] QSC 16 at [17] per White J.

3 *Fardon v Attorney-General for the State of Queensland* (2004) 223 CLR 575 at 597 [34] per McHugh J, at [216] per Callinan and Heydon JJ; see also at [19] per Gleeson CJ.

4 *Attorney-General (Qld) v Sutherland* [2006] QSC 268 at [30] per McMurdo J; see also *Attorney-General (Qld) v Fardon* [2011] QCA 111 at [20] per Chesterman JA.

5 *Fardon v Attorney-General for the State of Queensland* (2004) 223 CLR 575 at [22], [60] and [225], referring to *M v M* (1980) 166 CLR 69; see also *Attorney-General (Qld) v S* [2015] QSC 157 at [40].

6 *Attorney-General (Qld) v Sutherland* [2006] QSC 268 at [29] per McMurdo J.

> "For the appellant, it was argued that the expert description of the risk of the appellant's re-offending as 'moderate' meant that the risk fell short of 'unacceptable'. But this argument overlooks the point 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. In this regard, the appellant's likely targets are children, and especially street children: vulnerable members of the community who are likely to be peculiarly susceptible to his seduction techniques. The focus of consideration must, therefore, be upon the likely effect of a supervision order in terms of reducing the opportunities for the appellant to engage in acts of seduction of children to an acceptably low level."

[14] As observed in *Nigro v Secretary to the Department of Justice* (2013) 41 VR 359[7] at [6]:

> "Whether a risk is unacceptable depends upon the degree of likelihood of offending and the seriousness of the consequences if the risk eventuates. There must be a sufficient likelihood of the occurrence of the risk which, when considered in combination with the magnitude of the harm that may result and any other relevant circumstance, makes the risk unacceptable."

[15] For present purposes, what is required is an assessment of the risk of the released prisoner committing a serious sexual offence in the absence of a further supervision order. Relevantly, the object of the DPSOA is to ensure adequate protection of the community (s 3(a)). That does not mean the purpose of the legislation is to guarantee the safety and protection of the community. If that were the case, every risk would be unacceptable.[8] This is the corollary of the point made by the Court of Appeal in *Attorney-General (Qld) v Francis* [2007] 1 Qd R 396 at [39] that the Act "does not contemplate that arrangements to prevent [a particular risk] must be 'watertight'; otherwise orders under s 13(5)(b) would never be made" (as opposed to a continuing detention order). In this regard, as McMurdo J noted in *Attorney-General (Qld) v Sutherland* [2006] QSC 268 at [30]:

> "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."[9]

[16] Section 13(4) sets out a number of matters the court must have regard to. Although some of those matters refer to things that may happen in the future, what s 13 requires is

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7 In an equivalent, but not identical, statutory context, being s 9(1) of the *Serious Sex Offenders (Detention and Supervision) Act* 2009 (Vic), which empowers the court to "make a supervision order in respect of an eligible offender only if the court is satisfied that the offender poses an unacceptable risk of committing a relevant offence if a supervision order is not made".

8 See *Lynn v State of New South Wales* [2016] NSWCA 57 at [61] per Beazley P.

9 See also *Attorney-General (Qld) v Bugler* [2017] QSC 261 at [28]-[29].

an assessment of the released prisoner's current state, at the time the application is determined, not at some indeterminate time in the future.[10] As Boddice J observed in *Attorney-General (Qld) v Foy* [2014] QSC 304 at [18] the relevant factors to be considered in exercising the discretion under s 19D include the matters specified in s 13 but also factors since the making of the initial supervision order, such as the respondent's performance on the existing supervision order and the impact of the imposition of a further supervision order on him.

Relevant background

[17] The respondent is presently 44 years of age. From the reports, he seems to have had an unremarkable upbringing, describing his parents as loving and caring. He continues to have a good relationship with his mother and father (although has been unable to visit his father, due to the supervision order, because he is in a nursing home "down south", and unable to travel), and also with his sister.

[18] He has no criminal history other than the sexual offending outlined above.

[19] He has previously had relationships, the first when he was a teenager, with a teenage girl, which ended when he was about 17, but as a result of which his oldest daughter (and first victim) was born. Shortly after that he formed another relationship, with his first wife, which lasted for 10 years, and in the course of which he had three more children (two of whom he was convicted for offending against). These four children are now all adults. He had a vascectomy several years ago.

[20] After his release from custody in 2005, he started to attend church meetings and met his second wife there. They married in 2006. His second wife had a son from a previous relationship, whom the respondent regards as his son (he is now 16, turning 17 in May 2018).

[21] The respondent completed a sex offender treatment program during his first period in custody, and subsequently participated in the maintenance program for sexual offenders twice while in the community on parole, although was charged with the second set of offences during the second of these programs (according to Dr Harden's report, exhibit 1, at p 8). As recorded by Dr Harden, the respondent "reported that he had felt ashamed of his use of pornography in the community and so he had not told anybody about this or sought any help and saw this as a major failing in his relapse prevention".

[22] As noted above, the respondent committed further offences, in 2007, whilst on parole. In a report dated 6 September 2010 – prior to the first supervision order being made – Dr Michael Beech said that:

> "These new convictions, in my opinion, indicate both statistically and dynamically that he is in the group of people who are at high risk of re-

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10 *Attorney-General (Qld) v Kanaveilomani* [2013] QCA 404 at [18]-[120].

> offending within the community without supervision. The use, let alone the covert production, of child exploitation material is in my opinion a poor prognostic factor. It speaks to the limits of the benefits he has gained from his courses. It is my opinion that the use of pornography can have only acted to refresh and strengthen his paedophile fantasies. For him this would raise the risk that he would then continue to [commit] contact sexual offences against children who come within his association. It would seem that the supports he cited to me in the community have not been sufficient to contain his urges."

[23] The making of the supervision order in December 2010 was not opposed by the respondent.

[24] In terms of events subsequent to the making of the supervision order, this is dealt with in each of the reports most recently prepared by the psychiatrists. For convenience, I refer to the following summary in Dr Beech's April 2017 report, at pp 18-19:

> "He was released to a supervision order in 2010. There have been many breaches and contraventions since that time, but many appear to be GPS tracker disruptions, or ventures into parks, or similar matters. The two most important 'contraventions', in my opinion, have related to his ongoing contact with SS, his wife from 2006, and her teenage son, JS. He had been given a direction not to have unsupervised contact with JS, which was problematic. He was subsequently given a direction not to have contact with JS at all, during a period when SS had sought divorce. The alleged contravention involved [the respondent] having contact with JS, alone and unsupervised, at a Church function. This was dismissed when, apparently, witnesses gave varying accounts. The other significant contravention occurred in 2016 when his ex-wife, apparently, turned up unexpectedly at his residence with her infant daughter. Surveillance officers arrived and she panicked and went into his bedroom, where she was found. The gestalt of the information seems to point to an impulsive unplanned incident that was serendipitously discovered by surveillance officers.
>
> Throughout the supervision he appears to have bridled at the restrictions placed on him in relation to associations, travel, and curfew. This is not so much as an overt rejection of supervision per se, but certainly a resentful and disgruntled response to what are admittedly onerous conditions.
>
> That aside, he has made significant progress. He has obtained stable employment and accommodation. He has developed a range of social supports, from his employers and the Church. He has engaged in psychological counselling. The material and his account indicates overall, I believe, that he has matured and settled in the community and is now pursuing a pro-social lifestyle. There is nothing to indicate ongoing sexual preoccupation, and he has met adversity with some affective responses but

> overall he has done well under trying circumstances. He appears to have weathered his relationship with SS, and their breakup, and her subsequent pregnancy reasonably well. He engages in social and recreational pursuits with his support persons. There have been no indications of substance misuse while he has been on the supervision order. Emotionally, his mood has been maintained and despite episodes of distress, again around SS and alleged contraventions, he has not gone into what I would see of any sustained period of emotional collapse. He has occupations and pursuits now that are adult-focused. He has reasonable plans for his future."

[25] As indicated in this passage from Dr Beech's report, the respondent continued his relationship with his second wife after he was released from custody at the end of 2010, but the marital relationship came to an end in 2015, something which it seems the respondent attributes to the strains and restrictions of the supervision order, and its management by Corrective Services. She has since had a child with another man, a daughter who is now aged about two. The respondent says he and his ex-wife are still good friends, and she remains a support for him. She has provided an affidavit in this proceeding which confirms this.

[26] The respondent has a trade qualification as a welder, and has been working for the same employer, fabricating trailers and caravans, for the past seven years, since his release in 2010. His employer is fully aware of his offending history, and is also supportive of him.

Psychological report of Dr Madsen

[27] The respondent started seeing Dr Lars Madsen, a forensic psychologist, in 2011, after his release from custody, and has continued to do so up until quite recently. He has clearly developed a very good rapport with Dr Madsen, and benefited considerably from Dr Madsen's treatment of him.

[28] Dr Madsen provided a brief progress report dated 15 May 2017. He describes the respondent as "very cooperative" and as having engaged well. He says the respondent answered all his questions in what seemed to be a candid and straightforward manner. Dr Madsen notes that, in terms of social support, the respondent identifies individuals from his church, his family and workplace as being positive supports for him.

[29] Dr Madsen expresses the following opinion:

> "Since my earlier report, [the respondent] has continued living in the community with no obvious problems or difficulties. He remains employed full-time; and associates with a small group of people that he has come to know through his church and work. His mood is unremarkable and he appears to be both optimistic and realistic about the challenges for him going forward.

> In terms of risk, it is my view that he represents **low risk**. He has lived in the community for a long time. His mood is stable and positive; and there is no evidence that he is hostile or antagonistic in his day-to-day thinking processes. In his day-to-day, he appears to be surrounded by individuals who are a positive influence upon him (ie encourage compliance, restraint) and they, themselves, do not appear to have problems or difficulties that could be cause for concern (ie mental illness, substance and alcohol misuse, criminal activity). There is also no evidence to suggest that [the respondent] is struggling with sexual behaviour problems. [The respondent] is aware of his 'risk factors' and his conditions; and describes a motivation to comply. Furthermore, he describes what seem to be realistic goals and plans for the future that are essentially pro-social. Finally, it is of course important to note that [the respondent] is not psychopathic; nor does he meet the criteria for Antisocial Personality Disorder. He has completed group-based sex offender specific intervention in custody and engaged in individual treatment for a number of years in the community. Taken together therefore, when bearing in mind the challenges confronted by individuals placed on a DPSOA order, [the respondent] has done remarkably well and I would regard his current circumstances to be probably as 'good as it gets' for someone in his situation.
>
> At this time, it is my view that [the respondent] presents with no outstanding treatment needs with regard to his sexual offending risk. …"[11]

[30] In his oral evidence Dr Madsen identified the aim of treatment of the respondent's paraphilia as being not to find a "cure" – which Dr Madsen said is not a helpful approach, because it breeds complacency and a false sense of security – but rather to focus on learning and practising cognitive, behavioural and aversion skills to enable the respondent to manage inappropriate, unhelpful thoughts. Of the respondent, Dr Madsen said he is someone who presents with a "very sensible position with regards to these chronic and enduring problems that he experiences".

[31] Dr Madsen identified as particular protective factors for the respondent: his work, in respect of which he feels valued and has good relationships with people; and his very strong connection to his religion and to his church, and some people within that church community, which helps him to feel connected to people, less alone and socially isolated.

[32] Dr Madsen said the supervision order had been helpful for the respondent, in terms of establishing him in the community in a way that has meant he has been regulated and supervised for a long period of time, but said he did not think it "necessarily offers any more protection for the community … than what is already there for him".

[33] Although Dr Madsen expressed the view that the respondent had no future treatment needs, the respondent said he was keen to keep seeing Dr Madsen, and Dr Madsen is

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[11] Underlining added.

happy for that to occur, describing this as "more like a maintenance thing" and said he had also discussed with the respondent the ability to call him to arrange an emergency appointment if at any point he felt he was not coping.

Psychiatrists' reports

[34] The court had the benefit of evidence from three psychiatrists who have assessed the respondent. Two of them, Dr Beech and Dr Harden, have had a reasonably long association with the respondent, having been involved in his assessment prior to the original application for a supervision order, and in the intervening period. Dr Timmins saw the respondent for the first time for the purposes of preparing a report for this application.

Dr Eve Timmins

[35] Dr Timmins provided a report dated 8 November 2017, following an interview on 5 October 2017 (exhibit 2).

[36] Consistently with the material already referred to, Dr Timmins recorded (p 15) that the respondent "admitted to sexual thoughts regarding young girls around pre-pubescent ages. He was mindful that he was to manage these thoughts and he did not have any thoughts to act [on] his thoughts". She also said that:

> "His insight into his offending was fair. He seemed to understand that he experienced sexual thoughts that fell outside what was acceptable in society and that he needed to manage these thoughts in pro-social ways so that he did not act [on] these thoughts. He had a variety of supports that he could call on to assist him if distressed or depressed. His judgment appeared to be improved when compared to several years ago."

[37] Dr Timmins expressed the opinion that the respondent meets the criteria for paedophilia (sexually attracted to females, non-exclusive type). She also found evidence of voyeurism; and said that he had alcohol abuse (in sustained remission in a controlled environment) (p 36).

[38] She noted that his risk factors identified in earlier reports included use of pornography, relationship problems, substance use, isolating/withdrawing from friends and family, negative emotional states such as boredom, anger and low mood in addition to stress and overwork (p 37). She acknowledged he has a supportive network through the church, has been in stable accommodation for the last three years, and continues to work in a stable job with a supportive employer who is aware of his offending history (p 37). Dr Timmins says:

> "He has managed to weather the difficulties with being on a supervision order without re-offending. He has admitted to ongoing sexual thoughts pertaining to young girls however manages these by seeking out his support

> network, talking with his psychologist, working and maintaining a routine. He also has not returned to non-contact offending.
>
> On the other hand the recent loss of relationships is a concern as it is one of his risk factors. [The respondent's] relationship with his wife broke down in 2014. She has another child to another man who is now approximately 2 years of age. They remain friends and have phone contact weekly. He sees her 16 year old son regularly. He has consistently denied direct contact with her young daughter however without the supervision order in place there is a risk of further offending as this child falls within [the respondent's] preferred victims being a young female."

[39] Dr Timmins also expressed concern about what she regarded as the respondent's recent increase in working hours (from 38 hours to 44 hours – p 7), and loss of some of his supports, due to a couple of his friends moving away, as she understood the position to be (p 13). In her oral evidence Dr Timmins summarised her concerns as relating to the fact that he is still in contact with his ex-wife, who has a two year old daughter; that he has recently increased his work hours; and her view that some of his friends who had provided him with support had moved away – things which could potentially destabilise him.

[40] The evidence otherwise before the court does not support the latter conclusion as, although one of the respondent's friends has recently moved to Gladstone, they are still in regular contact (and in fact this friend travelled from Gladstone to be present at the hearing of this application); and the other two friends have not moved away.

[41] On a risk assessment analysis, using various tools, Dr Timmins regarded the respondent as posing a **moderate** risk of reoffending. If he reoffends, she says it is likely to occur "during a period of isolation, high stress and over-work with losses of relationships leading to anger and negative thinking patterns" (p 39).

[42] Dr Timmins says the respondent "is likely to always have a risk of reoffending due to historical factors" (p 40). Noting that the respondent has not reoffended whilst being in the community since December 2010, but has been unhappy at times with the restrictions imposed by the supervision order, Dr Timmins in her report suggested a "way to assist the situation could be to continue for a further period of monitoring and supervision" under a DPSOA order, but reduce the conditions "such that he can engage in more activities with the church and increase pro-social friendships thus assisting him in continuing to improve his self-esteem and confidence in his abilities to manage and resist his deviant urges as well as improve his support network" (p 40).

[43] Dr Timmins was of the view that it would be beneficial to be able to see how the respondent manages himself under a reduced supervisory regime – whilst still subject to a supervision order. She noted that although it is to be expected that the supervision requirements under an order will reduce over time that had not occurred in the respondent's case. She considers it would be appropriate to "sort of decrease the

conditions, so that we can see what happens with him, before we go off the order". In particular, she identified removal of conditions requiring the respondent to seek permission before doing things. I will return to this below.

Dr Michael Beech

[44] Dr Beech prepared a report dated 25 April 2017, following an interview on 12 April 2017 (exhibit 4). Dr Beech has provided a number of earlier reports in relation to the respondent (dating back to 2009).

[45] It is Dr Beech's opinion that the respondent has paedophilia, but it is not an exclusive type, as he has formed adult relationships, which appears to be his focus now.

[46] Like Dr Timmins, Dr Beech identifies the potential for unsupervised access to his second wife's young daughter as a potential risk, although notes the existence of his supports and informal monitoring through his employer and the church as well as the support of his ex-wife (p 19). In this regard, there is before the court an affidavit from the respondent's ex-wife, confirming that she is fully aware of his offending history, remains supportive of him, and that the respondent does not have contact with her young daughter and she will ensure this remains the case, as there is no need for them to have contact in the future.

[47] Dr Beech says he thinks the risk really is that the respondent will become complacent, with relaxed internal barriers – although, in contrast to the position in 2007 when he committed the further offences, Dr Beech says "[h]e has changed a lot since that time, has more supports, and he now has a lot to lose by further return to prison" (p 19).

[48] On the basis of the risk assessment instruments, Dr Beech says the respondent would be placed in the moderate risk group, with the risk of offending being at the same rate as the average sex offender. But he is of the opinion that this to some extent over-states the risk (p 19), because of the improvement in many of his previous risk factors.

[49] Dr Beech says that he thinks there will always be some risk with the respondent, a risk of complacency, adverse responses to adversity, and a return to pornography, and from there to offending. But he says "[t]his is a long arc for further offending" (p 20). As explained in his oral evidence, what he means by this is the respondent would not wake up one day and go out and reoffend; if it was going to happen, there would be a gradual descent, into a deteriorating mental state, deteriorating social circumstances, and from there perhaps dormant sexual fantasies would become enlivened (T 1-37 to 1-38).

[50] In his report, Dr Beech concludes by saying, at p 20:

> "I think though that this risk is **below '*moderate*', but in the low-moderate range.** Factors that would reduce the risk further would be ongoing counselling [or as he said in his oral evidence, ongoing *access* to

> counselling], ongoing social support, and continued stable employment and residence. The employment and residence appears stable enough. He has a number of supports that he can point to, and he is open to further counselling as needed. He is no longer sexually preoccupied, even when strained by his circumstances. For these personal dynamic reasons, I think that the risk has now gone below the moderate average category but it is unlikely to go into the low risk category for some time."[12]

[51] In response to a question from the applicant's solicitor in advance of this application being made, as to his opinion as to the duration of any extended period of supervision, should such an application be made, Dr Beech said he thought it would be for a period of two years, "during which the restrictions around association, contact and movement would be lifted".

Dr Scott Harden

[52] Dr Harden provided a report dated 20 November 2017, following an interview on 6 October 2017 (exhibit 1). Dr Harden has also seen the respondent on a number of previous occasions, and prepared reports in 2010, 2011 and 2015.

[53] Dr Harden records that, when interviewed in 2017, the respondent said the risks for him would be if he became complacent or if his mood was low. He said he planned to deal with this by talking with his support group as required. He said he was not ashamed to speak to people now whereas he had been previously. He said he would talk to his sister and he would also talk to Dr Madsen even if he was not on a supervision order (p 9).

[54] Dr Harden also considers the respondent meets a diagnosis of paedophilia (non-exclusive type). He expresses the following opinion about the risk posed by the respondent:

> "The actuarial and structured professional judgment measures I administered would suggest that **his future risk of sexual reoffence is now in the low to moderate range (that is, below average to average)**. My assessment of this risk is based on the combined clinical and actuarial assessment.
>
> He has now had a prolonged period of stability in the community with stable employment, community accommodation and prosocial relationships and support. He has done well in psychological therapy.
>
> When the supervision order expires on 17 December 2017 the level of risk of sexual recidivism without an order will be **low to moderate** (that is, below average to average). The level of risk on a supervision order would be **low** (below average).

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12 Bold emphasis added.

> If he were to reoffend it would be most likely to follow a period of high stress and highly negative emotional state with use of pornography moving on to voyeurism and then possibly grooming of children via their caregivers for a sexual relationship. Physical harm to the victims is unlikely. Psychological harm is likely.
>
> It is more likely that he will not reoffend and will continue his current stable community arrangements.
>
> **Recommendations**
>
> On balance I do not recommend a further supervision order. It is not clear that the order is any longer playing a major part in reducing his risk at the time of this opinion.
>
> I recommend that he have ongoing psychological support available to him in the form of Dr Madsen or a similar therapist." [13] (p 25)

Psychiatrists' opinions about a further supervision order

[55] Dr Harden said if a further supervision order was made it would reduce the risk to low because such orders, because of their intrusive and restrictive nature, make it more difficult to offend – so they have to produce some risk reduction. But Dr Harden's view was that any such further risk reduction was small, and said he did not believe the small risk reduction was worth the benefit in this situation, because the risk is static and is unlikely to decrease a great deal further, whereas the order imposes a significant restriction on the respondent reintegrating into the community more fully (T 1-53).

[56] I have referred at paragraph [43] above to the comments made by Dr Timmins about the benefits of a further supervision order, with a reduced level of supervision. In this regard, when the applicant's proposed draft order was provided to Dr Timmins in re-examination she initially confirmed that was the sort of order she contemplated, and said she had no concerns with it. That was a somewhat surprising response, because the applicant's proposed draft is an order which includes 44 clauses, and incorporates a number of requirements to seek permission. When pressed about that, and given time to consider the document more carefully, Dr Timmins made only a few changes (exhibit 3), the result of which, in my view, was not to reduce the supervisory regime otherwise proposed to any real extent.

[57] In his oral evidence Dr Beech said that if the court was minded to make a further supervision order, this would reduce the risk to low, saying:

> "And, perhaps, it would provide comfort to me to know that on a much greater access or liberty the – any decompensations or deteriorations that had occurred over that period had been met by the strategies that had been put in

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13 Underlining added.

> place. So I think it would reduce it down to low. The reason I can't[14] say it's low now is I think despite all the progress [the respondent] has made, it has been done under a very strict supervision order, and I think, as Dr Madsen, I think, used the word, complacency is the biggest risk: that he will become complacent off the supervision order, much in the way, perhaps, he became complacent while on parole." (T 1-37).

[58] Although Dr Beech to some extent expressed a similar view to Dr Timmins, about the desirability of a period of lesser supervision, he identified only a few provisions that he would consider appropriate, if a further supervision order was made, including notifying Corrective Services of his employment; responding truthfully to inquiries about his activities, whereabouts and movements; disclosing the names of persons he is associating with; notifying the details of any car he owns or drives regularly; a provision for him to access treatment if required; a requirement to advise Corrective Services of any repeated contact with a parent of a child under 16; a prohibition on accessing pornographic images of children; and a requirement to notify Corrective Services of details of internet capable devices and telephones.

[59] Pragmatically, Dr Harden observed that although Dr Timmins', and to an extent Dr Beech's, idea of a gradual reduction in supervision was a good idea from a clinical perspective, he did not think it was achievable, because it would be asking Corrective Services to remove most of their monitoring processes, whilst still accepting responsibility for the risk.

[60] It is also appears, from s 16 of the DPSOA, which sets out a number of mandatory requirements of any supervision order, that an order of the kind contemplated, particularly by Dr Beech, would not be one which could be made under the DPSOA.

[61] Dr Beech was referred, by counsel for the respondent, to the general requirements of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act* 2004, which would apply to the respondent once he is no longer subject of an order under the DPSOA, and asked if the operation of that regime would cause him to change his view (about the benefits of a reduced supervision order). Dr Beech said that would change his view because that regime, as it was briefly outlined to him, encompasses just about every condition that he had identified as appropriate (apart from the treatment if required). Dr Harden observed that those reporting obligations "probably would go some way to reminding [the respondent] not to be complacent about this".

[62] In addition, Dr Beech could identify downsides to the making of a further supervision order, namely the potential for conflict and stress for the respondent as a result of "reasonable directions" that may be made by Corrective Services, that it might impede his ability to become fully integrated back into the community, limiting his ability to

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[14] The transcript says "can", but in context, and based on my recollection of Dr Beech's evidence, the word was "can't", or "cannot".

associate generally with people, and might intrude in future relationships that he might have. Dr Harden identified similar downsides.

[63] On balance, having read and carefully considered the reports, together with the oral evidence of each of Dr Timmins, Dr Beech and Dr Harden, I prefer the evidence of Dr Beech and Dr Harden, supported as that is by the evidence of Dr Madsen, to the evidence of Dr Timmins, where there is a difference of opinion. Dr Timmins has not had the benefit of assessing the respondent over a number of years, which Dr Beech and Dr Harden both have. The weight attributed by Dr Timmins to factors such as a recent increase in work hours, and what appears to be her mistaken understanding about the recent loss of part of the respondent's support network, is not supported by the evidence otherwise before the court, and the analysis of the other doctors. I was unpersuaded by Dr Timmins' opinion as to what could appropriately form part of a reduced supervisory regime under the DPSOA, given the apparent inconsistency between what she said about this, and then her response to what is a very comprehensive proposed draft order. In fairness to Dr Timmins, I note she was not asked about the *Child Protection (Offender Reporting and Offender Prohibition Order) Act* 2004, and so I do not have the benefit of her evidence as to whether that would change her view (although, I infer from the evidence that she did give, and exhibit 3, that it probably would not change her opinion to any great extent).

***Child Protection (Offender Reporting and Offender Prohibition Order) Act* 2004**

[64] The parties helpfully provided, after the hearing, an agreed summary of the relevant provisions of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act* 2004 (Qld), which it is appropriate to refer to here, given the questions put to Dr Beech. The long title describes this as an "Act to require particular offenders who commit sexual, or particular other serious, offences against children to keep police informed of their whereabouts and other personal details for a period of time, to reduce the likelihood that they will re-offend, and to facilitate the investigation and prosecution of any future offences that they may commit, and for related purposes". In its current form, the Act incorporates amendments introduced by the *Child Protection (Offender Reporting) and Other Legislation Amendment Act* 2017, assented to on 19 May 2017, which include provisions enabling the police commissioner to apply to a court for a "prohibition order" if a relevant sexual offender has "engaged in concerning conduct".

[65] The purposes of the Act are set out in s 3(1A) and include "to provide for the protection of the lives of children and their sexual safety" and requiring reportable offenders to keep police informed of their whereabouts and other personal details, after their release into the community, "to reduce the likelihood that the offender will re-offend" and "to facilitate the investigation and prosecution of any future offences that the offender may commit".

[66] So it is apparent that the Act is intended to have a protective function, as well as facilitating investigation and prosecution in the event of further offending.

[67] The respondent is a reportable offender for the purposes of the Act. His reporting obligations under the Act were suspended whilst he has been subject to a supervision order

under the DPSOA (s 4), but will come into effect once that order ceases, requiring an initial report to police within seven days of the expiration of the supervision order (s 14). He will be a reportable offender for life, as a consequence of having committed and found guilty of further reportable offences (the 2007 offences) after the original convictions from 2003 (s 36(1)(c)).[15]

[68] Once he becomes subject to the reporting obligations under the Act, the respondent will be required to report, among other things, "reportable contact" with a child, which excludes incidental contact (for example, buying a newspaper from a shop where the shop attendant is a child) but includes physical contact, oral communication in person, by telephone or over the internet, and written communication, including electronic communication (s 9A).

[69] After his initial report, the respondent is required to report his personal details to the police periodically (s 18), in each "reporting month", defined as February, May, August and November – so four times a year – unless the police commissioner is reasonably satisfied more frequent reporting is required (s 19). Personal details for a reportable offender are set out in schedule 2 to the Act and include (among other details) details of the place he generally resides, or localities where he can generally be found; extensive details for any child with whom he has reportable contact; details of his employment (including name of employer and address or locality of the usual place(s) of employment); details of any club or organisation that he is a part of; any car he owns, or has driven for at least 7 days; details of telephone carriage service provider, and telephone number(s) used or intended to be used; details of internet carriage service provider, and connection details; details of any social networking sites he uses in any way, including passwords; details of any email address(es) and internet user name(s) he uses or intends to use, including passwords; details of any passports he holds; and details of travel plans (as to which see also s 20). In addition to the quarterly reporting, the respondent must report changes in any of his personal details, in some cases within 24 hours of the change (where it concerns reportable contact with a child) and in others within 7 days (s 19A).

[70] As noted above, following recent amendments in May 2017, the Act now includes provisions dealing with "offender prohibition orders" (part 3A). The police commissioner may apply for such an order if the commissioner believes, on reasonable grounds, that a relevant sexual offender, which includes a reportable offender, "has engaged in concerning conduct" (s 13A(1)). Concerning conduct means an act or omission, or a course of conduct, the nature or pattern of which poses a risk to the lives or sexual safety or 1 or more children, or of children generally, and may include conduct that constitutes an offence, or conduct that is a single act or omission (for example loitering near a park, living near a school, living in a household with children under 16 years) (s 13A(3)). The court (Magistrates Court in the case of an adult respondent) may make a prohibition order if satisfied, on the balance of probabilities, after considering the matters in s 13D, that the respondent poses an unacceptable risk to the lives or sexual safety of a child or children and the making of the order will reduce the risk (s 13C(1)). A prohibition order may prohibit, either absolutely or on conditions, the respondent from engaging in stated conduct, including associating with or

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[15] See exhibit 5 (Notice of Reportable Offender's Reporting Obligations issued to the respondent and signed by him in October 2014), provided by the parties after the hearing, which states the obligation to comply with reporting obligations under Part 4 of the Act for life.

contacting stated persons, being in stated locations, or kinds of locations, residing at a particular place or kind of place, engaging in stated behaviour, being in stated employment or kinds of employment (s 13F). The order would remain in place for 5 years (s 13G).

[71] The availability of an application for a prohibition order was not a matter addressed when the reporting obligations under this Act were raised with Dr Beech at the hearing.

[72] Failure to comply with the reporting obligations, without reasonable excuse, is an offence carrying a maximum penalty of 5 years imprisonment (s 50(1)). Providing false or misleading information is also an offence, carrying the same maximum penalty (s 51(1)).

The respondent's evidence

[73] The respondent provided evidence, in the form of an affidavit, and also gave oral evidence. He expresses his gratitude for having been placed with Dr Madsen by Corrective Services, and outlines the strategies he has learned through his treatment with Dr Madsen. He acknowledges that he can never think of himself as "cured" because that would cause him to become complacent which is risky. He says he knows there is always a risk that he might offend, and knows that he has to work at stopping any thoughts or urges he may have. He refers to the support he receives from his job, which he enjoys, and the great support network of friends from his church, who know about his offences. He identifies a significant number of people as "major supports", each of whom knows his offence history or knows he is "on an order". The church that he is part of is a very significant part of his support network. As described in the evidence the church has a proactive structure to assist in welcoming people with criminal histories into the church, including by the appointment of people within the church as "oversights" to people like the respondent, to support them. The respondent refers to having booked further appointments with Dr Madsen which he will pay for himself, even though Dr Madsen does not think he needs further treatment. He says he has set himself a "life rule", not to have unsupervised contact with children. At the end of his affidavit the respondent says:

> "I am determined to keep the life I have already.
>
> I hope to make it a better life once I am no longer on a supervision order. I do not want to be a person who harms children. I do not want to let down the people who have stuck their neck out for me. I do not want to feel ashamed of myself. I do not want to return to prison. I do not want the restrictions of a supervision order.
>
> I consider that the supervision order, however difficult it has been for me, has given me the benefit of excellent treatment. Through my church, I have found friends and supports. My work keeps me busy and I am proud of the job I do. I have good friends at work. I have every reason not to reoffend. I know my risks and my risky thought patterns. I know the

> importance of seeking support. I am determined to stay strong and vigilant."

Other evidence

[74] The respondent relied upon affidavits from a number of other people, who know about his offending history, and the supervision order he has been subject to, and who express their support for him, including: his employer for the past seven years; a person he has worked with since his release from custody, who says he considers himself a father figure to the respondent; the respondent's second wife, and her mother (the respondent's mother-in-law); the principal pastor at his church, and three other people that he is friends with through his church. Although not required for cross-examination, two of those people attended the hearing in support of the respondent.

[75] As Dr Beech observed, what can be taken from these affidavits is that there are people willing to sign an affidavit saying that they support him, which is very encouraging. Dr Beech also made the point that what is important is that there is actually a *system* of support around his employment and his church – individual people might come and go, "but there's a dynamic there which continues to provide support". Dr Beech did not have the same concerns as Dr Timmins expressed, about some friends moving away, and the impact that might have on the respondent's stability.

[76] I would add that it is significant that these people all know about the respondent's offending history – so that includes people at his work, his ex-wife and her mother, and people within his church, with whom he also socialises – which is also an important protective factor, given the role that secrecy and shame played at an earlier stage in the respondent's history.

Is there an unacceptable risk, such that a further supervision order ought to be made?

[77] The question is whether the court is satisfied, by acceptable, cogent evidence, to a high degree of probability, that the respondent is a serious danger to the community in the absence of a further supervision order – that is, whether the court is satisfied, to the requisite high degree of probability, that there is an unacceptable risk that the respondent will commit a serious sexual offence if a further supervision order is not made.

[78] I have considered the matters referred to in s 13(4), relevantly including:

(a) the reports of Dr Timmins and Dr Harden, prepared under s 11 of the DPSOA;

(b) the report of Dr Beech and also Dr Madsen;

(c) that the material, and indeed the respondent himself, does recognise there is a risk the respondent could commit another serious sexual offence, being a sexual offence against a child, in the future, because of his paraphilia – with this risk being regarded by Mr Madsen, the person who has been responsible for the treatment of the respondent since 2011, as low; by Drs Harden and Beech as low

to below moderate (for the reasons expressed above, I prefer the evidence of Drs Beech and Harden, as well as Dr Madsen, to that of Dr Timmins, in this regard);

(d) there is to some extent a pattern to the respondent's prior offending, in that the most serious offences were intra-familial, whereas the later (2007) offences were non-contact, and did not involve children known to the respondent;

(e) the respondent has made very considerable efforts to address the cause of his offending behaviour, including participation in rehabilitation programs whilst in custody and following his release and, since his release in 2011, individual treatment with Dr Madsen;

(f) the treatment which the respondent has engaged in, particularly with Dr Madsen, can be said, on the basis of the material before the court, to have had a positive effect on the respondent;

(g) I have referred above to the respondent's antecedents and criminal history;

(h) there is, as noted, *a* risk of the respondent committing another serious sexual offence – relevantly:

(i) it is a risk which the psychiatric evidence agrees would have a "long arc", meaning that there would be observable signs and signals of deterioration in the respondent's circumstances well before a descent into behaviour that could lead to further offending;

(ii) that is significant in this case, given the insight demonstrated by the respondent into his own condition and potential weaknesses, his genuine willingness to continue to engage with Dr Madsen, and the absence of secrecy about his prior offending with the people he works with, socialises with, and spends time at church with, as well as his ex-wife – all of which suggests that if weaknesses started to appear, either the respondent would himself take steps to do something about it, or people around him would;

(iii) added to this is the protection available under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act* 2004, for example, for an application for a prohibition order to be made, should the respondent be considered to have engaged in "concerning conduct", at a point on this "long arc";

(iv) the degree of likelihood of the risk eventuating is in the range of low to below moderate;

(v) as against that, it must be recognised that the nature of the risk is serious – involving sexual offending against a young child – and the consequences of the risk eventuating are very serious, involving psychological harm, but not physical harm;

(i) in so far as the need to protect the community from that risk is concerned, the following matters are noted:

(i) the respondent has now been subject of a supervision order under the DPSOA for seven years since his release from custody (following upon serving a lengthy period of time in custody) – both of which can be expected to have had a significant deterrent effect on the respondent;

(ii) he has not reoffended;

(iii) he has not contravened the supervision order (apart from minor administrative issues);

(iv) he has demonstrated insight into the risk of his reoffending;

(v) he has a substantial support network of people who know about his offending;[16]

(vi) in so far as the daughter of his ex-wife is said to pose a potential risk, the ex-wife is fully aware of the respondent's offending history, and has deposed in her affidavit to the fact that the respondent will have no contact with the child;

(vii) he has stable employment, which he has been in for the last seven years, with his employer fully aware of his offending history;

(viii) he has a positive and strong rapport with the psychologist, Dr Madsen, who has treated him for the last seven years, and whom the respondent has said he wishes to keep seeing. I could see no reason not to accept the respondent's statements of his intentions in this regard as anything other than genuine;

(ix) he will be subject to the *Child Protection (Offender Reporting and Offender Prohibition Order) Act* 2004 which, as outlined above, imposes quite onerous obligations on him, for the rest of his life, which ought to serve to protect against any complacency that may develop, and ensure the respondent remains vigilant.

[79] Balancing all of these considerations, I am not satisfied the respondent is a serious danger to the community because I am not satisfied, to the requisite high degree of probability, that there is an unacceptable risk that he will commit a serious sexual offence, in the absence of a further supervision order. The adequate protection of the

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16 Cf *Attorney-General (Qld) v Loudon* [2017] QSC 146 at [42], where the respondent was said to have remained isolated, with few friends and relatively withdrawn from ordinary social supports.

community is ensured, in the circumstances outlined in paragraph [78](i) above. Accordingly, the application for a further supervision order is dismissed.