SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v Hynds* [2017] QSC 313
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **GREGORY ALAN HYNDS** (respondent)
FILE NO:	BS7584 of 2007
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland at Brisbane
DELIVERED ON:	15 December 2017
DELIVERED AT:	Brisbane
HEARING DATE:	3 October 2017
JUDGE:	Brown J
ORDER:	**The Court, being satisfied to the requisite standard that the respondent, Gregory Alan Hynds, has contravened requirements 17 and 19 of the supervision order made on 19 October 2015, orders that:** **1. The supervision order made on 19 October 2015 be rescinded.** **2. The respondent be detained in custody for an indefinite term for care, control or treatment.** **3. Pursuant to r 981(3) *Uniform Civil Procedure Rules* 1999 (Qld):** **(i) The affidavit of Ryan Robinson sworn 4 July 2017 and filed by leave on 3 October 2017;** **(ii) The affidavit of Alan Peters sworn 6 July 2017 and filed by leave on 3 October 2017;** **(iii) The affidavit of Andrew Wilson sworn 6 July 2017 and filed by leave on**

3 October 2017;

(iv) The second affidavit of Andrew Wilson sworn 3 October 2017 and filed by leave on 3 October 2017

be placed on the Court file in an envelope sealed and is not to be opened without an order of the Court.

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 relief pursuant to s 22 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) – where the applicant alleges multiple contraventions of the relevant supervision order by the respondent – where the respondent allegedly contravened the terms of the supervision order by failing to disclose associates and activities – whether the contraventions are made out on the evidence – whether the supervision order should be rescinded

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 13, s 22
Uniform Civil Procedure Rules 1999 (Qld) r 981(3)

Briginshaw v Briginshaw (1938) 60 CLR 336
Kynuna v Attorney-General for the State Queensland [2016] QCA 172

COUNSEL: J Rolls for the applicant
K M Hillard for the respondent

SOLICITORS: Crown Law for the applicant
Anderson Frederick Turner Lawyers for the respondent

[1] This is an application by the Attorney-General for the State of Queensland for relief pursuant to s 22 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) ("the Act") arising out of alleged contraventions of a supervision order made on 19 October 2012, namely paragraph 17 and 19 of the order.

[2] An order was made on 7 December 2007 declaring the respondent to be a serious danger to the community without a Division 3 order and a continuing detention order was made under s 13(5)(a) of the Act.

[3] On 19 October 2012, the continuing detention order was rescinded and the respondent was ordered to be released subject to a supervision order made under s 13(5)(b) of the Act.

[4] Paragraphs 17 and 19 of the supervision order provided that the respondent was required to:

> "17. Respond truthfully to enquiries by a Corrective Services officer about his activities, whereabouts and movements generally;
>
> …
>
> 19. Disclose to a Corrective Services officer upon request the name of each person with whom he associates and respond truthfully to requests for information from a Corrective Services officer about the nature of the association, address of the associate if known, the activities undertaken and whether the associate has knowledge of his prior offending behaviour;" (emphasis added)

[5] The order is broad in its terms. Paragraph 17 requires the respondent to respond to any enquiries about the matters identified. Paragraph 19 requires the respondent to respond to a request made by a corrective services officer for the name of particular persons and respond truthfully to requests for information of any of the types of information listed. On its proper construction, the second limb of paragraph 19 is not dependent on information being asked under the first limb.

[6] It is alleged that the respondent failed to comply with paragraphs 17 and 19 of the supervision order by not disclosing his ongoing relationship and contact with his female neighbour, Miss EY, when questioned by his case worker. It is alleged that, at several case management meetings between 22 April 2015 and 7 July 2015, he failed to respond truthfully and provide information requested.

[7] The respondent conceded that there was a contravention of paragraphs 17 and 19 on 3 June 2015. The respondent accepted that on 22 April 2015, a contravention of paragraph 17 is established on the evidence, unless the Court is satisfied that the respondent had a reasonable belief that the relevant information was on his phone and disclosed as an activity contact in the case conference. Similarly, on 5 May 2015, it is accepted on behalf of the respondent that, in not disclosing his dinner with EY as an activity, the Court is likely to be satisfied that there has been a contravention of paragraph 17, unless the Court is satisfied of the respondent's reasonable belief that the activity was disclosed when the phone was handed over with the calendar entry. The respondent otherwise contends that the contraventions of paragraphs 17 and 19 are not made out on the evidence.

[8] The respondent does not challenge that he should return to detention under a continuing detention order, nor the findings of the risk assessment provided by the various psychiatrists. He does not contend that he has discharged the onus upon him under s 22 of the Act to justify any other order. He has, to his credit, agreed to participate in a sexual offender's program.

[9] Thus the real issue for determination by the Court is whether there have been contraventions of the supervision order other than on 3 June 2015.

Legislative provisions

[10] Pursuant to s 22(1) of the Act, the Court must be satisfied on the balance of probabilities that the released prisoner has contravened a requirement of the supervision order.

[11] In assessing whether there is a contravention, the Court is to decide whether such a contravention is made out on the balance of probabilities but in accordance with the principles articulated in *Briginshaw v Briginshaw,*[1] to a high degree of satisfaction given the consequences of finding a contravention.[2]

[12] If the Court is so satisfied, then under s 22(2) of the Act, unless the released prisoner satisfies the Court, on the balance of probabilities, that the adequate protection of the community can, despite the contravention, be ensured by the existing order as amended under s 22(7), the Court must, if the existing order is a supervision order, rescind it and make a continuing detention order.

[13] In *Kynuna v Attorney-General for the State Queensland*,[3] the Court stated at [60]:

> "The reference to 'the adequate protection of the community' in s 22(2) and s 22(7) is clearly a reference to that term as explained in s 13, that is, adequate protection of the community from the unacceptable risk that the appellant will commit a serious sexual offence, namely one involving serious violence of the kind discussed in *Phineasa*, which caused or was likely to cause significant physical injury or significant psychological harm' …" (footnotes omitted)

[14] In making its assessment, the Court may act on evidence that was before the Court when the existing order was made.[4]

The alleged contraventions

Background

[15] The alleged contraventions are based on a series of contact, activities and messages that were exchanged between the respondent and a female person known as EY, who lived in the same block of units where the respondent was residing. The applicant presented evidence to support the alleged contraventions. Mr Robinson, the respondent's case management worker, provided an affidavit.

[16] The text messages and Viber messages were predominantly obtained from the phone of EY. Evidence was provided by Detective Senior Constable Peters as to the content of EY's and the respondent's phone. He was not cross-examined and I accept his evidence.

[17] The examination of EY's phone revealed that the respondent had sent her a photograph of when he was younger and that was an image that he was using for his Viber account. The contact was saved in EY's contact list under the name of "Gorebetey Xaeda".

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1 [1938] 60 CLR 336 at 361-2 per Dixon J.
2 A contravention of a supervision order without reasonable excuse constitutes a misdemeanour: s 43AA of the Act.
3 [2016] QCA 172.
4 Section 22(3) of the Act.

[18] There were a series of text messages between EY and the respondent which commenced from 22 April 2015, as well as a record of missed calls from the respondent between 16 May and 10 July 2015. The Viber messages commenced on 16 May 2015.[5] The evidence shows a multitude of messages sent by the respondent to EY at a level of intensity and of a nature which shows he was trying to build a relationship with her.

[19] Detective Senior Constable Peters also interviewed the respondent. The respondent told Detective Senior Constable Peters that he had not volunteered any information about EY unless he was directly asked by Corrective Services.[6] He contended that he was not asked specific questions about EY such that he was required to respond.

[20] Mr Robinson discovered the true nature of the respondent's contact with EY on 7 July 2015 when carrying out a review of the respondent's mobile phone he found that the respondent was having communications with a new contact identified as "EY", using the Viber application. A message was located dated 30 June 2015 from the respondent to EY, apologising for causing offence. Previously, on 3 June 2015 when Mr Robinson had seen a reference to EY on the respondent's phone he had been told she was a family friend, which was untrue.

[21] Mr Robinson was cross-examined by the respondent's counsel. Mr Robinson was the respondent's case manager from April to August 2015. He has worked for Corrective Services since 2011 but not as a case manager. The respondent was not his only client.

[22] Mr Robinson indicated that the process he adopted was that he would see the respondent, take notes, then go back to the office and record the relevant information in the Dynamic Supervision Instrument ("DSI") record which was relevant to risks. Mr Robinson gave evidence, and I accept, that the DSI record did not record questions asked or literally every word that was said, but only recorded the information that was given in answers that was disclosed during the interview relevant to the matters in the DSI record.

[23] Mr Robinson's evidence was that in each case meeting he would engage in discussions with the respondent regarding his interactions with members of the community. This was in order to determine if the respondent had identified anyone he could see himself being friends with and any females or males he found attractive and with whom he would like to pursue for a friendship or a relationship and to identify any possible issues or contact he had with his neighbours or other community members.[7]

[24] Mr Robinson further states that he was aware, from a review of the respondent's file, that the following were the respondent's identified risks: new relationships or new associations, in particular with females; use of time and movements in the community; deviant sexual preferences; social isolation; hostility towards women; sexual gratification as a means of coping; high sexual drive or sexual preoccupation; and his general resistance towards supervision and his noted hostility towards supervising officers as a means of manipulating the supervision process.[8]

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5 This material is annexed to the affidavit of Detective Senior Constable Peters.

6 Affidavit of A Peters at pp 171-173, which demonstrates the respondent's unwillingness to disclose his contact with EY.

7 Affidavit of R Robinson at [9].

8 Affidavit of R Robinson at [16].

[25] The respondent contended, *inter alia*, that:

(a) to the extent that Mr Robinson was asked "have you seen anyone new" he was not obliged to disclose EY's existence because Corrective Services knew about EY. The respondent asserts that Mr Robinson saw him talking to his neighbours, both male and female at the first meeting that occurred on 10 April 2015 and he had told Mr Robinson he had contact with his neighbours so EY was not "new";

(b) the respondent also contended that he handed over his phone at every case conference and there were entries on his phone recording activities including with EY and contacts for EY were discoverable. Evidence of deletion of messages only comes from a comparison of his phone with EY's phone;

(c) any refusal to provide information by him was recorded in the IOMS.

EY was not "new"

[26] It was put to Mr Robinson in cross-examination that he did not, on each occasion that he met with the respondent, ask the names of the persons with whom he had had contact or the activities in which he had engaged or the nature of the associations and addresses of the persons concerned. It was further put that the question he asked of the respondent was "have you met anyone new?" which he had referred to in his affidavit. Mr Robinson on a number of occasions stated that he would not have limited the question to just that statement and would have referred to the respondent's known contacts in the question.[9] He accepted that he may not have requested the address of any such person on every occasion. Mr Robinson stated that he did ask the respondent at every meeting what activities were undertaken and with whom he associated on every meeting.[10] I accept Mr Robinson's evidence.

[27] The evidence that EY was present on 10 April 2015 comes from a handwritten analysis of events prepared by the respondent,[11] which had been provided to the psychiatrists was put in evidence. That can be attributed little weight since the respondent did not provide an affidavit and he was not cross-examined in relation to that document. To the extent that it was suggested on the respondent's behalf that he did not have to disclose EY's existence because she was not "new", that was not a matter suggested to Detective Senior Constable Peters in his interview with the respondent,[12] and that is inconsistent with the evidence of Mr Robinson who rejected the suggestion in cross-examination. Given that Mr Robinson had reviewed the respondent's file and had identified the particular matters that could give rise to risks in terms of the respondent reoffending, which included contact with females, I do not accept that Mr Robinson knew of EY's existence after the meeting on 10 April 2015 or that the respondent held a reasonable belief that he did. Such a belief is inconsistent with his attempts to conceal who EY was, such as occurred on 3 June 2015.

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[9] Mr Robinson accepted that he may have simply said "Have you seen anyone new?" (T1-27/41-46), but said he would have elaborated on that to convey his meaning as, "other than your known contacts" (T1-28/5-10).

[10] T1-14/1-5.

[11] Affidavit of A Peters at Exhibit AP-1, p 1-4.

[12] Affidavit of A Peters at pp 169-172.

[28] I do not accept the submission of the applicant that asking if the respondent had seen anyone "new" was alone necessarily sufficient to require the respondent to disclose EY's name, even if it accords with the "spirit" of the order. That is not the proper basis to determine whether a contravention has occurred. I find, however, that the question asked by Mr Robinson was generally framed in the context of new associations apart from those associations that the respondent had previously identified.

An association is an activity

[29] The applicant does not accept the respondent's argument as to the operation of paragraphs 17 and 19 of the supervision order. On behalf of the applicant, it is submitted that an association with a person is an activity. Therefore, if the respondent associates with a person that is a disclosable activity under paragraph 17 of the order, as well as an association that must be disclosed under paragraph 19 to disclose the contact. It is submitted that while paragraphs 17 and 19 have independent functions, it is also the case that they sometimes have an overlapping operation.

[30] The Macquarie dictionary[13] defines "activity" as, *inter alia*, the state of action and "a specific deed or action; sphere of action." The Oxford Dictionary of English[14] defines "activity" to be a thing that a person or group does or has done, *inter alia*, "a thing that a person or group does or has done."

[31] While the act of associating with a person would constitute an activity which would include the sending of messages and exchanging of messages, an association with a person is not of itself an activity.

Handing over a phone is not disclosure

[32] The respondent contended that handing over his phone which contained information relevant to paragraphs 17 and 19 of the order was constructive disclosure and thus that he complied with the order. It was contended that he did that at every meeting. That was not put to Mr Robinson and I do not accept that it occurred at every meeting. There is evidence that it did occur on a number of occasions.

[33] The applicant contends that the obligation of the respondent to respond to the request for information made of him is not discharged by constructive disclosure which is suggested by the respondent's further submission. Thus, handing over a phone which may or may not contain information about activities does not disclose information about that activity or conduct especially if the relevant program is not accessed. I accept that the applicant's contention is correct.

[34] Paragraph 17 refers to "respond truthfully to inquiries …" while paragraph 19 refers to "disclose to a corrective services officer upon request…", or responding truthfully to "requests for information…". Any of those requirements require the respondent to respond directly. Constructive disclosure by handing over a phone by which the Corrective Services may or may not find the information does not satisfy the obligations imposed by those requirements.

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[13] Macmillian Publishers Australia, 2017.

[14] Oxford University Press, 2017.

[35] The evidence of Mr Robinson was that the first occasion that EY appeared in the Viber contacts of the respondent was 3 June 2015, at which time he was asked about it by Mr Robinson. That evidence was not contradicted. This was despite his evidence he had reviewed the phone on a number of occasions before 3 June 2015 but found no evidence of contact with EY. It is contended on behalf of the respondent by reference to the information on EY's phone that the existence of EY could have been located in Viber contacts and been able to be seen before 3 June 2015. The information on EY's phone shows that messages were sent from the respondent's number. There is no suggestion that the respondent did not have his phone in his possession throughout this period. I find on the balance of probabilities that, to the extent that Viber messages and text messages were located on EY's phone, they were not on the respondent's phone at the relevant time when it was reviewed by Mr Robinson prior to 3 June 2015 and had been deleted from the respondent's phone. That is consistent with the fact that the respondent told Mr Robinson that he deleted messages from his mother and brother. In any event, even if the information was on his phone, it does not exonerate the respondent from having to directly respond to the questions asked by Mr Robinson. Unless the respondent purported to show the case management worker the relevant information requested when providing his phone, it was not sufficient to constitute proper disclosure by the respondent. Similarly, to the extent that the calendar entries on the respondent's phone may, if examined, have revealed the existence of EY, who was referred to as "Princess" in the calendar entries, that did not comply with the terms of paragraphs 17 and 19.

[36] The contention of the respondent that he held a reasonable belief that he had complied with the order because he had handed over his phone was not suggested to Detective Senior Constable Peters in his interview with the respondent. It is also inconsistent with his reaction to Mr Robinson requesting his phone on 3 June 2015 that "you are not going to wreck this for me". I do not find that the respondent had a reasonable belief that he had complied with the order by providing his phone to Mr Robinson on the occasions when he did.

Are the contraventions established?

22 April 2015

[37] It is alleged that both paragraphs 17 and 19 of the order were contravened. The applicant submits that the respondent had had dinner with EY on 21 April 2015 and that dinner was an activity and a contact, which was not disclosed at the meeting on 22 April 2015. There is no evidence that his phone was examined on that day. It was submitted by the applicant that the contravention in respect of the requirements of paragraph 17 and 19 is established.

[38] The respondent submits that it is likely that the contravention is established on the evidence because the Court can be satisfied that he did not disclose the activity, namely the dinner, unless the respondent had a reasonable belief that it was on his phone and disclosed as an activity contact in the case conference.

[39] There is no evidence that Mr Robinson examined the respondent's phone or was specifically given the respondent's phone in response to his questioning about activities and associations that had occurred. In those circumstances, I am not satisfied that the respondent held a reasonable belief that disclosure had been made.

[40] I am satisfied[15] that the respondent was asked about his activities, whereabouts and movements in the period leading up to that meeting and that the respondent did not answer truthfully by informing Mr Robinson that he had had dinner with EY the day before. I am therefore satisfied to the requisite standard that the contravention of paragraph 17 is established.

[41] I am further satisfied that on 22 April 2015, the respondent, in the course of discussions, was asked who he had had contact with and about whether he had associated with anyone beyond his brother, son or mother, which is supported by the information entered in the DSI report, and that he did not disclose that he had associated with EY.[16] I find on the balance of probabilities that a contravention of paragraph 19 is established.

28 April 2015

[42] The applicant submits that the contravention of paragraphs 17 and 19 was established by the fact that the respondent reported "no new supports or contacts", did not disclose the 17 text messages he had sent to EY during the period between 22 April 2015 and 28 April 2015 and did not disclose that he had made dinner for EY on 24 April 2015.

[43] On behalf of the respondent, it is submitted that it is unclear whether EY attended dinner on the basis of the entry. I accept that to be the case. The entry is equivocal.

[44] I am satisfied that the respondent was asked whether he had any new supports or contacts other than his previously identified network of his mother, son and brother. That required the respondent to disclose his association with EY to Mr Robinson in accordance with paragraph 19 of the Order. The material annexed to the affidavit of Detective Senior Constable Peters, shows that there was texting between the respondent and EY almost on a daily basis, including on 27 April 2015 – "You promised me you would call me every night this week when you got home. The deal is if you don't then I get three kisses for each night you does [sic] not ring". While I accept that the respondent was not asked for the name of any new associates, he was asked to identify whether there were any such associates in addition to people previously identified and for information about the nature of any such association and any activities undertaken within the terms of paragraph 19 of the supervision order.

[45] I consider his activities in sending text messages to, and receiving them from, EY over that period should have been disclosed pursuant to paragraph 17, and am satisfied that a contravention of paragraph 17 is established.

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[15] The reference to "satisfied" on "balance of probabilities" in relation to each contravention is to the Court being satisfied on the balance of probabilities to a high degree of satisfaction as set out in *Briginshaw v Briginshaw* (1938) 60 CLR 336.

[16] There is information supported by the fact that was provided as to his desires for relationships, his activities with his mother and his potential social interaction in respect of Anzac Day.

5 May 2015

[46] Between the last case management meeting and the meeting on 5 May 2015, the evidence shows that the respondent had sent some 30 text messages to EY and had had dinner with her on 1 May 2015.

[47] The respondent accepts that there was no disclosure by the respondent of the dinner recorded to have occurred on 1 May 2015, and that a contravention could be found, unless the Court is satisfied that the respondent had a reasonable belief that the activity was disclosed when his phone was handed over with the calendar entries.

[48] I am satisfied that the respondent was asked about the activities that he had been engaging in, including his current social network, which is evidenced by the information recorded on the DSI report as provided by the respondent to Mr Robinson in reference to contact with his son on Viber, and to him maintaining regular contact with his mother, brother and son. I find that he did not disclose that a dinner had occurred with EY on 1 May 2015, nor that he had been texting EY. Given the respondent did not disclose the dinner that had occurred and the text messages with EY, I consider that the contravention of paragraph 17 is established. As paragraph 19 required the disclosure of any information requested about persons with whom he was associating, I find that he was asked about his current social network and that he should have disclosed that he was associating with EY and in not doing so contravened paragraph 19.

[49] I am not satisfied that the respondent had a reasonable belief that the activity was disclosed when the phone was handed over with the calendar entry. I find that he did not disclose to Mr Robinson that there was relevant information on the phone when providing his phone responding to the questions asked. There was not disclosure by the respondent within the meaning of paragraphs 17 and 19. I accept that Mr Robinson did not find any text messages or images which alerted him to EY's existence.

12 May 2015

[50] The evidence from the calendar entry on the respondent's phone shows that he made dinner for EY and left it for her on 8 May 2015, which I accept was the case. Some 22 text messages were sent by the respondent to EY between his last case management and the one on 12 May 2015.

[51] The respondent submits that the Court cannot be satisfied that names were asked for or that he did not disclose the activities, as on the material, none occurred during the relevant period.

[52] The applicant, however, submits that the respondent, when asked, had not indicated any new activities or associations which would generate concern and had indicated that he enjoyed spending time with his mother, had contact with his brother and his other contacts were mostly with persons near whom he resided. When asked whether they would be social supports or possible friends, however, he said that he considered them to be superficial contacts, not supports or possibly friends.[17]

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[17] Affidavit of R Robinson, exhibit RR-6, p 20.

[53] I am satisfied that he did not disclose making dinner or that he and EY were texting and that the contravention of paragraph 17 is established. Insofar as it is evident that he was asked about the nature of his association with his neighbours, the respondent did not make disclosure as required by paragraph 19, in not disclosing that he had developed a friendship with EY, which is plain from his texts.

[54] There were contraventions of both paragraph 17 and 19 of the supervision order.

19 May 2015

[55] The respondent submits that a breach of paragraphs 17 and 19 is not established on the evidence.

[56] According to the respondent, there is a reference to contact with female neighbours but no names were recorded as being asked by Mr Robinson. There were SMS exchanges with EY about meeting at a train but no evidence that it happened. There is a Viber message by the respondent thanking EY for her company, but it does not say when, and there is a lack of messages from her, which is said to be suggestive of no contact. The respondent told Mr Robinson about the Viber application on his phone, and handed it over at the case conference on that date, showing that he had contact with his son on Viber at that time.

[57] There were 14 text messages between the previous case management meeting and the meeting of 19 May 2015. There were some 40 Viber messages that were exchanged.

[58] On 14 May 2015, the respondent offered to walk EY from the railway station of Yeronga.[18] I find that EY accepted this invitation as the electronic monitoring on 14 May 2015 showed the respondent walked to Yeronga Station and back on that date.[19] It is also plain from the message of 16 May 2015 that the respondent had had social contact with EY, as evidenced by his message "Thank you for inviting me to your house and thank you for being wonderful company again. I love the time we spend together and the conversations we have. …"

[59] I accept the evidence of Mr Robinson that he did ask the respondent on that date about whether he had had any contact with females other than his mother and that the respondent only reported being in contact with his mother and also with his brother. I also find that he was asked for information about his association with females and it was not provided by the respondent insofar as his friendship and contact with EY was not disclosed. In cross-examination, it was put to Mr Robinson that he had not asked about the names of people to whom the respondent had referred and particularly the female who had been away who was being visited by her brother. Mr Robinson's evidence was that he would have asked the names as he understood the respondent's risk was related to females. I accept his evidence in that regard. The information was requested in accordance with paragraph 19 of the supervision order. I find that in not disclosing EY's name and his association with her over that period, the respondent did not provide information that was required by paragraph 19 of the order.

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[18] Affidavit of A Peters, Exhibit AP-3, p 10 (dated 14 May 2015 at 12:50.09).
[19] Affidavit of A Wilson, IOMS entry, p 104 of 736.

[60] I find that the respondent was in breach of paragraph 19 of the order.

[61] I am satisfied that it has been established on the evidence that the respondent did contravene paragraph 17 of the supervision order, given the text messages that were being exchanged, that the respondent was having contact with EY on almost a daily basis, and that I find that he did arrange and pick her up from the railway station on 14 May 2015 and had social contact with her on 16 May 2015. This information should have been disclosed, on the basis that I accept that the respondent was asked by Mr Robinson about his activities in the relevant period. The activities should have been disclosed under paragraph 17. I am satisfied that a contravention of paragraph 17 has been established.

26 May 2015

[62] The respondent submits that there is an entry for 26 and 27 May 2015 for DSI reviews and that the breach should refer to 27 May 2015. That is refuted by the applicant. The relevant meeting is 26 May 2015 for the purposes of considering the contravention.

[63] The evidence of Mr Robinson is that he asked the respondent if he had met any new persons which I accept was framed in a way to make it clear that Mr Robinson was referring to "new" people from those previously disclosed by, and discussed with, the respondent. The respondent identified that he had gone for a drive with two church representatives, but did not disclose the contact he had been having with EY. The Viber messages extracted from EY's phone make it clear that the respondent and EY had been having almost daily contact. A diary entry of 22 May 2015 indicated that the respondent was to have dinner with EY and contained a note that the other person could not come.[20] I accept that the dinner did occur. While there is a reference to the respondent seeking to meet EY at the station, there is no evidence that that actually occurred and I am not satisfied that it did.

[64] The respondent submitted that EY was not "new", as the respondent had known her for some time. However, given the respondent had not previously identified EY to Mr Robinson, she was a "new person" who should have been identified in accordance with paragraph 19, and this was made clear by the question asked by Mr Robinson. I accept that the respondent was asked about any new associations and his activities with them. I find that in not disclosing his association with EY, he contravened paragraph 19 of the order. I find that in not disclosing his activities by way of texting EY and having dinner on 22 May 2015, he failed to comply with paragraph 17 of the order.

[65] On behalf of the respondent it was also submitted that the Court cannot be satisfied that there has been a breach of paragraph 17 or 19, as it cannot be satisfied that the respondent did not have a reasonable belief that the activities were in effect disclosed by him handing over the phone at the case conference. I have addressed that above. As I have found above, handing over a phone without specifically directing the case manager to relevant information in response to a question asked is not sufficient to comply with paragraphs 17 or 19 of the order if asked for that information. It should also be said that the information which is being sought to be relied on as being contained on the phone that was handed over to Mr Robinson has been derived from that which was extracted from

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[20] Affidavit of A Peters, Exhibit AP-5, p 91.

EY's phone, not the respondent's phone. I am satisfied that the respondent did not have a reasonable belief that the activities were in effect disclosed by him handing over the phone for the reasons already discussed above.

3 June 2015

[66] Mr Robinson found for the first time a reference to EY on the respondent's phone. The respondent told him she was a "family friend". That was not a truthful response.

[67] I find that the evidence establishes that the respondent had been to church with EY and Gedha and that he had made dinner for EY on 29 May 2015. The respondent reported that the names of the two church people were unknown to him, however when pressed, provided the name of the male but advised the female had an unusual name which he did not bother to remember.

[68] The respondent accepts that he was not truthful when he said that EY was a family friend, and that that was a breach of paragraph 19.

[69] I find that the respondent was asked about his activities and movements by Mr Robinson and that the respondent was evasive in his responses and did not disclose that he had made dinner and had seen EY on 29 and 30 May 2015. That information should have been disclosed to Mr Robinson in accordance with paragraph 17.

[70] I accept that the respondent, when asked for his phone said to Mr Robinson, stated that "You are not going to wreck this for me". That supports the fact that the respondent was cognisant of the fact that he had not disclosed the existence of EY on previous occasions and was seeking to continue to avoid the disclosure of his ongoing contact with her. That is borne out by the fact that he had referred to her as a family friend. I find that there is also a contravention of paragraph 17.[21]

9 June 2015

[71] I find that the respondent was asked about whether he had any new supports and that he denied that he had any relationships. Given that the respondent had developed an ongoing friendship with EY who was not a "family friend" as previously disclosed, I do find that the respondent was in contravention of paragraph 19 in not disclosing the nature of his association with her at this time.

[72] I accept that Mr Robinson, on 9 June 2015, asked the respondent about his supports and activities with them. I find that the respondent did not disclose the contacts he had been having with EY on Viber and by telephone on 4 June 2015 and 5 June 2015 respectively. I therefore find a contravention of paragraph 17 in that regard.

16 June 2015

[73] The respondent submits that there was no contravention of paragraphs 17 or 19 as there is no evidence of contact other than by messages.

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[21] See affidavit of A Peters, Exhibit AP-5, p 91.

[74] The applicant submits there were approximately 57 Viber messages recorded on EY's phone between 9 June and 16 June 2015, which included missed calls and sent photographs.[22] I accept that that is correct on the evidence.

[75] According to the evidence of Mr Robinson, which I accept, he asked the respondent about his relationships and feelings towards other residents within the unit complex and was told that the respondent was keeping to himself and not engaging with some of his neighbours who were causing problems and drinking. Mr Robinson asked about whether he had any new supports beyond his mother, brother and son, which he denied. This is supported by the entries on the DSI report and I accept it is the case.

[76] I am satisfied that Mr Robinson did ask for information about the respondent's associations[23] and the nature of those associations and that the respondent did not disclose information as required by paragraph 19 of the order, given the ongoing contact he had with EY. I find that there was a contravention of paragraph 19 of the order.

[77] I find that the exchanging of messages on Viber constituted an activity and that the respondent was asked about his activities. I am satisfied that in not disclosing that information the respondent contravened paragraph 17 of the order.

23 June 2015

[78] There is a reference to the respondent on 20 June 2015 having had dinner at EY's house with Gedha.[24] That was not disclosed to Mr Robinson. I find that was a contravention of paragraph 17 of the supervision order.

[79] The respondent concedes that dinner with EY on 20 June 2015 may have been disclosable as an activity. He submits, however, that it was discoverable when the phone was handed over by reference to the calendar on the phone. As stated above, I do not consider that the fact that the activity was discoverable on the respondent's phone is sufficient to constitute compliance with paragraphs 17 or 19 of the supervision order.

[80] According to the relevant DSI entry, the respondent told Mr Robinson that he was still talking to his neighbours and that there had been no progress further than a mutual friendship and that he was not interested in supporting those relationships. Mr Robinson's further evidence was that he had incorrectly described what had been told to him by the respondent and that he distinctly remembered the way the respondent spoke of the neighbours was not in terms of friendship. That is consistent with the fact that he recorded that the respondent stated that he was not interested in furthering those relationships. I accept the evidence of Mr Robinson in that regard. I accept Mr Robinson's evidence that he had asked the respondent about his relationships and activities with his neighbours. I accept Mr Robinson's evidence that he asked whether they were developing into friendships, which the respondent denied. At that time, in relation to EY, that was untrue. I find that Mr Robinson did ask for information about his association with his neighbours and his activities and am satisfied that the respondent contravened paragraph 17 and paragraph 19 of the supervision order.

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[22] Affidavit of A Peters, Exhibit AP-4, pp 57-81.
[23] Affidavit of R Robinson, paras 61 and 62 and RR-12, p 42.
[24] Affidavit of A Peters, Exhibit AP-5, p 91.

30 June 2015

[81] I am satisfied that Mr Robinson, on the basis of his affidavit evidence, asked the respondent about his activities leading up to 30 June 2015. I find that there had been an exchange of messages with EY by phone during that period, although not of the level that it had been at previously. The activity of exchanging messages should have been disclosed. I find that those exchanges should have been disclosed as activities that had occurred and that there is a contravention of paragraph 17 of the supervision order.[25]

[82] There is insufficient evidence to satisfy me that the respondent was asked a specific question which required information to be provided under paragraph 19 of the supervision order and I do not find a contravention in that regard is made out.

7 July 2015

[83] The respondent submits that no breach of paragraphs 17 or 19 occurred. It was submitted by the respondent that while dinner was a possible disclosable activity, the respondent did disclose that EY was a neighbour and that he visited her regularly and that he had offended her by asking her about arranged marriage, when explaining the message of 30 June 2015. He was not asked about when he saw her but disclosed that he saw her regularly. It is also said that dinner was discoverable on the phone calendar contact.

[84] I accept that the respondent disclosed to Mr Robinson, after he had found the message of 30 June on Viber with a reference to EY, the matters referred to in paragraphs 77 to 79 of Mr Robinson's affidavit. However, the respondent's disclosure about the nature of their association understated the friendship the respondent had been trying to develop with EY and was not truthful within the terms of the requirements of paragraph 19.

[85] On 1 July 2015, his calendar evidences the fact that the respondent attended dinner at EY's house.[26]

[86] I consider that Mr Robinson did ask about the respondent's activities over the preceding period and that the respondent should have disclosed that he had dinner with EY on 1 July 2015. The fact that there was a reference in the calendar in his phone to the dinner does not constitute compliance with paragraph 17 and accordingly I do find a contravention of paragraph 17.

Future orders

[87] It is evident from the above analysis that any future supervision order in respect of the respondent needs to be considered carefully, as the respondent is a person who does not wish to disclose any information which he does not consider he is required to disclose. While some of his conduct might be said to be contrary to the spirit of the supervision order, that is not the question to be considered for the purposes of determining whether an order has been contravened. Consideration should be given in any future supervision order to placing the onus on the respondent to disclose information to Corrective Services about the associations that he has with anyone on a weekly basis and all activities in

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[25] See affidavit of A Peters, Exhibit AP-4, p 80.
[26] Affidavit of A Peters, Exhibit AP-5, p 91.

which he engages in on a weekly basis, rather than putting the onus on Corrective Services to ask the right question to elicit the information from the respondent. It is evident from the respondent's interaction with Detective Senior Constable Peters, Dr Aboud and Dr Beech, that the respondent is an intelligent man who wishes to control situations and control the disclosure of information and to direct conversations and meetings in the way in which he wants them to run or to divert the conversation or meeting from topics he does not wish to discuss. As such, that may be a matter that needs to be considered at a future time in relation to any future supervision order.

[88] I am satisfied pursuant to s 22 of the Act that contraventions of paragraphs 17 and 19 of the supervision order have occurred as outlined above.

Other evidence relevant to risk

[89] Evidence relevant to risk was provided to the Court by the applicant but no evidence was presented by the respondent in that regard.

[90] The respondent has attended counselling sessions with a psychologist, Dr Susan Boyce.[27] Dr Boyce's affidavit exhibits a report dated 24 August 2015[28] which details 11 treatment sessions, mostly on a fortnightly basis, occurring since 20 February 2015. Perusal of this document, which was prepared after the respondent's return to custody, does not record any disclosure that the respondent made to Dr Boyce about the contact with EY.

[91] Dr Boyce has noted the respondent's co-operation in and motivation towards treatment. The treatment has been focussed on the respondent's mistrust issues and anger management. She noted a possible lapse of judgment by the respondent in his ongoing contact with his female neighbour, stating that he generally demonstrated sound judgment by seeking out advice and support from his mother, brother, case worker or other professionals.

[92] The respondent was arrested and taken into custody on 16 July 2015. Information was received on 28 July 2015 by Andrew Wilson, an employee of Queensland Corrective Services,[29] who has given evidence as to a telephone conversation between the respondent and his mother.

[93] As a result, Mr Wilson attended the respondent's room at the precinct. He removed the bottom draw and, in a small cavity where a draw would have been, he observed a black Toshiba laptop computer. Mr Wilson took possession of this item. He contacted Detective Senior Constable Peters.[30] This computer was given to Detective Senior Constable Peters.

[94] On 17 September 2015, the respondent was issued with a direction pursuant to the requirements of paragraph 38 and 39 of his supervision order,[31] to provide user

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[27] See Affidavit of Dr Boyce (CFI 109).
[28] See Affidavit of Dr Boyce at Exhibit SB-10.
[29] Affidavit A Wilson sworn 06.07.17 at [5] and [7].
[30] Affidavit A Wilson sworn 06.07.17 at [11].
[31] These are as follows:
"38. Obtain and provide to a Corrective Services officer all permissions and authorities needed for that officer or a computer expert authorised by the officer to examine any computer used by him,

identification and passwords for the laptop. The respondent initially denied knowledge of the laptop but later stated that he regularly used the laptop a couple of years ago and that it belonged to an associate, *"Greg Cook"* and/or *"Cookie"*.[32] He stated that when he was at the Yeronga address to collect some personal property he saw Cookie's laptop on his coffee table, which he took.

[95] The respondent provided the password. The computer was inspected.

[96] On 17 September 2015, the Detective Senior Constable attempted to examine the laptop. A folder of the user, *"Greg Hynds"* was observed. On inspection, it was seen to contain images of EY. A search warrant was obtained and executed. The police officer returned to the Wacol Contingency Accommodation and took possession of the laptop computer.

[97] On 5 November 2015, a forensic examination of the laptop was undertaken. The following google searches were conducted:[33]

- Eritrea;
- what happens if I take 20 milligrams Rohypnol;
- position of main body organs;
- buy 20 milligrams of Rohypnol;
- protocol in marrying an Eritrean woman;
- learn about Eritrean culture;
- how do I get close to an Eritrean woman;
- searches related to pc cleaner;
- searches relating to pornography, including child exploitation material and bestiality;
- 30 images of EY were also located;
- 29 child exploitation images, including those depicting bondage, rape and inflicting injury;
- 9 pornographic images were depicted, including involving sexual activity involving nuns;

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including permission to enter upon the premises where the computer is and to copy any data, metadata or log relating to him;
39. Provide to a Corrective Services officer all authorisations, passwords and usernames used by him on a computer or needed to access any data, metadata or log created or deleted by or relating to him on the computer;"

32 See Affidavit A Wilson sworn 06.07.17 at [14]-[15].

33 See Affidavit of A Peters at Exhibit AP-9, p 176.

- 12 pornographic images depicting African women engaged in sexual activity with Caucasian males;
- 5 images depicting rape, sexual bondage and strangulation of women by men;
- 3 images on a pornographic website entitled, *"cruel family, fathers fuck daughters"* and *"grandpas fuck teens"*;
- 18 images depicting major body organs or their positions in the body;
- 242 images of prescription drugs, the majority being sedatives or have [sic] a sedative like function.

[98] The respondent indicated that the computer was owned by a person described as *"Cookie"*. The respondent had used this name to describe himself in text messages to EY.[34]

[99] The respondent has denied that he carried out all of the above searches, although agreed that he had carried out the searches of Eritrea.

[100] Two psychiatrists provided risk assessments to the Court pursuant to the Act, Dr Beech and Dr Aboud.

[101] Dr Beech saw the respondent on 7 July 2017 and 18 August 2017. He had previously assessed the respondent in 2007.

[102] In relation to the offences, Dr Beech considered that, despite the passage of time, "… little is really known about his thoughts, urges, feelings or motivations of the offending."[35]

[103] The respondent has previously refused to undertake a sex offender treatment program which could aid gaining insight into the nature of the respondent's offending and the risk factors that may trigger such offending.

[104] Dr Beech noted that this is a difficult matter in which to quantify the risk. He suggested, *"two narratives"*[36] in relation to the respondent's behaviour in relation to EY, one of which indicates an escalating risk of reoffending. Dr Beech indicated that, in all likelihood, the truth lies in between the two narratives. Dr Beech states that it emphasises that little is known about the respondent, his offending and his motivation for his earlier offending, particularly in the absence of the respondent being prepared to undertake any sexual offending program. The respondent has changed his attitude in that regard and indicated that he wishes to undertake such a program. Dr Beech regards that as a positive step.

[105] Dr Beech considered that the respondent's accounts to him, in relation to the current alleged matters, are, *"disingenuous"*.[37] His account that he was being friendly and

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[34] See Affidavit of A Peters at Exhibit AP-3, pp 16, 17, 19 and 20.
[35] Dr Beech report 19 September 2017, p 19; see also Affidavit of A Peters at p 20.
[36] See report of Dr M Beech, 19 September 2017, at p 19.
[37] See report of Dr Beech, 19 September 2017, at p 20.

solicitous to EY is not consistent with the handwritten notes that Dr Beech has seen and what he regards as the, *"nagging SMS or Viber communications"*.

[106] Dr Beech said that the respondent is, at least moderately, and probably at high risk of offending. This is despite his mature age.

[107] Dr Beech concluded:

> "Under those circumstances, given what has been noted by others to be Mr Hynds' intelligence, manipulation, and ability to organise and plan ahead, it is difficult to know how a supervision order could substantially reduce the risk in the community."[38]

[108] Dr Aboud had not reviewed the respondent before. He saw the respondent on two occasions in July 2017.

[109] Dr Aboud found that the respondent's primary psychiatric diagnosis is one of personality disorder. He did not make a diagnosis of a paraphilia but could not exclude it, due to the fact that the respondent keeps information to himself.

[110] Dr Aboud, considering all the material, expresses the view that the respondent's unmodified risk of sexual reoffending would currently be regarded as being between moderate and high. While the static risk is only moderate, the current dynamic risk is high, given the circumstances of the information related to the contravention.

[111] According to Dr Aboud, the respondent has a history of carefully planning and callously engaging in predatory sexual attacks upon adult women. These were, in all likelihood, anger motivated. They were likely also motivated by sexual need. It is Dr Aboud's concern that in 2015, the respondent may have been escalating towards another such attack, this time on EY.

[112] Dr Aboud concluded:

> "In my view, however, there is much that we don't know about Mr Hynds. His proclivity to sexually offend is actually unclear. It is my recommendation that he would benefit from participating in a sexual offenders' program <u>in custody</u>. Engagement in such a program it [sic] would provide an avenue to further assess his psychosexual history, and allow for more useful information to be gained such that he might be considered manageable in the community. Without undertaking such a program, I am concerned that there are worrying gaps to understanding the sexual risk, and also gaps in his own understanding of himself in this regard." (emphasis added)

[113] Dr Aboud concluded by noting that successful participation in such a program would reduce the respondent's risk to below moderate, in the context of a supervision order.

[114] I accept their evidence, which was not the subject of challenge.

Should the supervision order be rescinded?

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[38] See report of Dr Beech, 19 September 2017, at p 21.

[115] Given that the Attorney-General has satisfied me that contraventions have occurred, it is for the respondent to discharge the onus upon him and demonstrate that the adequate protection of the community is able to be ensured by his release on a supervision order, otherwise the Act provides for the supervision order to be rescinded and a continuing detention order to be made.

[116] The respondent concedes that he has not discharged that onus and cannot demonstrate that the adequate protection of the community is able to be ensure by his release on supervision.

[117] The respondent's concession is in my view well made. There is substantial evidence demonstrating that the respondent presently poses an unacceptable risk of re-offending within the terms of the Act and that the adequate protection of the community cannot be ensured by his release on supervision. The respondent indicates that he wishes to go to Wolston Correctional Centre and undertake the High Intensity Sexual Offending Program, which Dr Aboud considered was a significant step for the respondent, as he had eschewed undertaking such a course in the past.

[118] Both Dr Aboud and Dr Beech consider that the respondent should undertake a High Intensity Sexual Offenders Program in custody before consideration is given to his further release under a supervision order, as that will provide considerable information as to the nature of the risk of the respondent's reoffending by committing a serious sexual offence and the triggers to his behaviour which will feed into the appropriate terms of any supervision order and assist those supervising him to manage his supervision.

[119] Notably, both Dr Aboud and Dr Beech in their oral evidence stated their respective opinions would not change, even if the Court only found that there was one contravention on 3 June 2015 (as had been submitted by the respondent) or whether multiple contraventions were found, as contended for by the applicant. Dr Beech stated that it was the conduct that underlay the contraventions that was the basis of the opinion given and that the conduct in relation to EY demonstrated that the supervision order was not effective to control the risk of the respondent reoffending, given the stage that his engagement with EY had reached before it was discovered.[39] Both Dr Beech and Dr Aboud considered that, from their observations, the respondent is not forthcoming and seeks to control discussions and the information he discloses, making it difficult to manage him under a supervision order.

[120] The material found on the computer raises considerable questions that need to be considered and explored with the respondent. Given that the respondent referred to himself in some of his messages to EY as "Cookie" his statements to the psychiatrists that he did not undertake all the searches on the computer which was found in the respondent's possession and which he took active steps to conceal is questionable. In any event, its discovery supports the opinions of Dr Beech and Dr Aboud, that the materials searched require explanation in order to understand the respondent's psycho-sexual behaviour, even accepting that it was limited to the searches which the respondent indicated to Dr Aboud and Dr Beech he had had his friend "Cookie" carry out.

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[39] T1-51/4-5.

[121] One of the particular matters to which the psychiatrists referred is the unknown nature of the factors which led the respondent to previously offend and which prevents any diagnosis being made or any exclusion being able to be made in relation to any paraphilia. His contact with EY demonstrates that the triggers to his previous offending are of importance in determining how to ensure the adequate protection of the community against the risk of the respondent re-offending. In particular, the psychiatrists were unable to reach a concluded view as to the respondent's intent in relation to EY, but both could not exclude that he may have been acting in an organised and planned way, seeking information about sedatives and other matters and becoming sexually preoccupied with EY, heightening the risk of his reoffending. That risk, as I stated, is further heightened by the searches carried out on the laptop which was found in the respondent's possession, even if all of the searches were not of his own doing. I make no finding against the respondent in relation to the searches that were carried out as it is not relevant for the purposes of this application for me to do so.

[122] I find that the respondent has not discharged the onus to satisfy the Court that adequate protection of the community can be ensured by a supervision order and that accordingly the supervision order is to be rescinded. Given the respondent's willingness to participate in the HISOP program, which Dr Aboud considered was a significant step for the respondent, Corrective Services should facilitate the respondent engaging in such a course as soon as possible, particularly given that this matter has taken considerable time to come before the Court.

[123] A request was made for the affidavits of Mr Wilson, Mr Peters and Mr Robinson to be placed on the Court file in an envelope, sealed and not opened without an order of the Court. That was on the basis that those documents revealed personal information about EY, who was the beneficiary of an order pursuant to s 395F of the *Criminal Code Act* 1899 (Qld). The respondent accepted that the material may identify EY by address and by her picture and did not oppose an order being made. I am satisfied that upon a review of those documents and the personal and private nature of some of the information contained therein, it is not appropriate that that information be available to be searched by the public. Accordingly I am prepared to make an order in this regard.

Orders

[124] The orders I make are therefore as follows: That the Court, upon being satisfied to the requisite standard that the respondent, Gregory Alan Hynds, has contravened paragraph 17 and 19 of the supervision order made on 19 October 2015 pursuant to s 22(2)(a) of the *Dangerous Prisoners (Sexual Offenders) Act* 2003, orders that:

1. The supervision order made on 19 October 2015 be rescinded.

2. The respondent be detained in custody for an indefinite term for care, control or treatment.

3. Pursuant to r 981(3) *Uniform Civil Procedure Rules* 1999 (Qld):

   (i) The affidavit of Ryan Robinson sworn 4 July 2017 and filed by leave on 3 October 2017;

(ii) The affidavit of Alan Peters sworn 6 July 2017 and filed by leave on 3 October 2017;

(iii) The affidavit of Andrew Wilson sworn 6 July 2017 and filed by leave on 3 October 2017;

(iv) The second affidavit of Andrew Wilson sworn 3 October 2017 and filed by leave on 3 October 2017.

be placed on the Court file in an envelope sealed and is not to be opened without an order of the Court.