SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v Tiers* [2018] QSC 130
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **ALGANA TIERS** (respondent)
FILE NO:	BS No 7580 of 2010
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED ON:	4 June 2018
DELIVERED AT:	Brisbane
HEARING DATE:	10 April and 29 May 2018
JUDGE:	Bowskill J
ORDER:	**The contravention hearing pursuant to s 22 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 be adjourned to 8 June 2018 at 9:00am for review before Bowskill J.**
CATCHWORDS:	
COUNSEL:	J Rolls for the Applicant A Loode for the Respondent
SOLICITORS:	Crown Law for the Applicant Legal Aid Queensland for the Respondent

[1] The Attorney-General applies for an order under s 22 of the *Dangerous Prisoners (Sexual Offenders) Act 2003*, rescinding the supervision order currently in place in relation to Mr Tiers, and making a continuing detention order.[1] The application has come on for hearing twice (on 10 April and 29 May 2018), and on both occasions been adjourned. On the occasion of this second adjournment, I indicated to the parties that I would publish detailed reasons, having regard to the material which is already before the court, in order to explain the basis for the adjournments, but also to facilitate the efficient determination of the matter once it is in a position to be fully heard.

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[1] Application filed 14 November 2017.

[2] Section 22 applies if the court is satisfied, on the balance of probabilities, that the released prisoner, relevantly, has contravened a requirement of an existing supervision order. Where that is the case, s 22(2)(a) provides that:

> "Unless the released prisoner satisfies the court, on the balance of probabilities, that the adequate protection of the community can, despite the contravention or likely contravention of the existing order, be ensured by the existing order as amended under subsection (7), the court must … rescind [the supervision order] and make a continuing detention order."

[3] For reasons I will explain, it is not in issue that the court may be satisfied that the respondent has contravened a requirement of his existing supervision order. The question is whether the respondent can satisfy the court on the balance of probabilities that the adequate protection of the community can, despite the contravention, be ensured by the existing order (including with amendments).

[4] The respondent is a young Indigenous man, presently 31 years of age (his date of birth being 19 November 1986).

[5] He has a serious and concerning criminal history, which started when he was about 14, and includes multiple entries for burglary offences. On 17 April 2003 he was convicted of very serious offences, committed in 2002, when he was 15. Those offences included robbery with actual violence (27 January 2002), burglary (23 February 2002), escape from lawful custody (1 September 2002) and then, also on 1 September 2002, burglary, and the brutal rape of a 4 year old girl, causing serious injuries to her which amounted to grievous bodily harm (as a result of the respondent's attack upon her, she suffered injuries both to her face and serious genital injuries). For the rape, he was sentenced to 8 and a half years' detention.

[6] The circumstances of the rape offence are outlined in the reasons of Boddice J given on 21 June 2017: *Attorney-General for Qld v Tiers* [2017] QSC 129 at [5], as follows:

> "At the time of the offence, the respondent had heavily abused alcohol and marijuana. He had also been sniffing paint. After being rejected by a female in whom he had shown some interest at a party, the respondent became angry and frustrated and entered the house in which the child was sleeping in her own bed. The respondent viciously assaulted the child before brutally raping her, causing serious injuries to her genital area. The child also suffered significant injuries to her face and other parts of her body."

[7] On 3 December 2010 Martin J made an order that the respondent be released from custody, subject to a supervision order under s 13(5)(b) of the Act, for a period of 5 years. At this time, the respondent would have been 24.

[8] The respondent has subsequently come back before this Court on six occasions for contravention of the supervision order, the sixth resulting in a rescission of the supervision order, and making of a continuing detention order. The relevant chronology is as follows.

[9] In February 2011 contravention proceedings were commenced. This arose in circumstances where Corrective Services were suspicious of contact the respondent was having with another person, believing that person was under 16, but they were not. Whilst there was no breach on that account, the respondent, fearing a breach, removed his electronic monitoring device and left the Precinct in breach of the curfew. That contravention – of the curfew/monitoring condition number 5 in the order – was dealt with by an order of Dalton J made on 6 September 2011 (releasing the respondent on the supervision order, with an amendment).

[10] In November 2011, the respondent was absent from the Townsville Precinct, again in breach of condition 5 of the supervision order; after 2 days, he surrendered himself to surveillance staff. That contravention was dealt with by Henry J, by order made on 17 April 2012, once again by an order for his release, on a supervision order, with further amendments.

[11] In June 2012, the respondent again failed to comply with the curfew, and removed his tracking device. When arrested (a day later), his breath smelled of alcohol and his speech was slurred; he was heard to say he had a couple of rums. He was found to have contravened the order by failing to comply with the curfew condition, with the condition prohibiting alcohol consumption and the prohibition on visiting licensed premises without permission. That contravention was dealt with by Philippides J (as her Honour then was) on 11 March 2013, again, with release on the supervision order, with further amendments.

[12] The respondent was arrested on 23 April 2013, in circumstances where he tested positive to an illicit substance (synthetic cannabinoids), and after that test result, decamped from his accommodation in breach of the curfew. This contravention was dealt with by Douglas J on 17 November 2014, and he was again released, to continue to be subject to the supervision order. Whilst in custody he completed the Pathways Intensive Substance Abuse Program.

[13] In January 2015 he was arrested again, on the basis of breach of requirements 16 and 27 (ingesting synthetic cannabis) of the amended supervision order. This

contravention was dealt with by Jackson J on 22 June 2015, with the respondent being released, subject to the terms of an amended supervision order.

[14] The respondent spent about 24 days in custody in October 2015, after he was arrested on the basis he was *likely to* contravene the order, but that application was dismissed on 26 October 2015.

[15] In November 2015, the respondent contravened the supervision order by failing to comply with the curfew direction and the directions of his supervising officers. This contravention was dealt with by Holmes CJ on 11 April 2016, and resulted in the supervision order being rescinded, and an order being made for the respondent to be detained in custody for an indefinite term for control, care or treatment.

[16] Part of the reasons given by the Chief Justice are set out in the reasons of Boddice J at [2017] QSC 129 at [13], and include the following:

> "The cumulative effect of the many breach[es] over the five years for which the respondent was on the supervision order is to demonstrate the unlikelihood of his future compliance with it. What has changed the nature of the risk entailed, as compared with what … faced the Court on those earlier breaches, is the recent evidence of sexual preoccupation. As the psychiatrists have pointed out, if that were to combine with other forms of breaching – absconding and intoxication – there would be a real risk of sexual offending. In short, the respondent has demonstrated longstanding and apparently increasing disinclination to abide by the strictures of a supervision order. There is a significant risk, given what emerged in November as to his mindset then, of a sexual offence. It would be rash indeed to rely on the prospect that breach by way of that type of offending would be averted by dint of the respondent's having committed some preliminary breach such as misuse of his phone or disobedience of a curfew.
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> In those circumstances, one can have no confidence that a supervision order will prevent the respondent from committing a serious sexual offence. It may be that treatment can alter the respondent's attitudes, curb his impulsivity, and improve his capacity to cope, so that when this matter comes for review in a year's time he is a suitable candidate for re-release on a supervision order. For the present, however, he has failed to satisfy me that a supervision order can ensure adequate protection to the community. Accordingly, I will rescind the supervision order made on 3rd December 2010 and subsequently amended, and instead make an order for continuing detention."

[17] As contemplated under the Act, a little over a year later, on 9 May 2017 the applicant applied for review of the continuing detention order. That application was dealt with by Boddice J, with an order being made on 21 June 2017 that the continuing detention order be rescinded, and the respondent be released subject to a supervision order for a further 5 years. This order, as did the others, contained conditions requiring the respondent to abstain from the consumption of alcohol and illicit drugs for the duration of the order.

[18] It is recorded in Boddice J's reasons that, during his return to custody, the respondent had received ongoing treatment from a psychologist, Dr Theresa Wood, and that he was making good progress in addressing his difficulties. At [48] to [51] Boddice J said:

> "The respondent's poor performance on the previous supervision orders is of particular concern. Whilst his breaches never involved the commission of a sexual assault, the contraventions were consistent with a deteriorating attitude to compliance to the point of wilful insolence in the context of a developing and disturbing sexual preoccupation.
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> But for the positive indications identified by Dr Wood and confirmed by Dr Grant and Dr Beech, that history would support a conclusion that a supervision order would not provide an adequate protection for the public. However, the intensive therapy undertaken by Dr Wood has produced significant identifiable changes in the respondent's attitude to supervision. Those changes have been evident in his more positive approach to authority whilst in custody.
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> Those positive changes, in the context of demonstrated abstinence from substance use, satisfy me that a supervision order can reasonably and practically ensure the adequate protection of the community. The conditions of that supervision order will ensure the respondent's behaviour is appropriately constrained so as to protect the community from the commission of sexual offences in the future. Those constraints will include abstinence from illicit substances, a continuation of his individual psychological therapy and restrictions on his movements and use of the internet and social media.
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> It will be important for those supervising the respondent to pay close and careful attention to his compliance with the terms of the supervision order. It will also be important for those supervising the respondent to recognise the importance of employment and appropriate physical and leisure activities in addressing the risks presented by the respondent returning to an idle, restless lifestyle."

[19] The application now before me is on the basis of circumstances on 10 November 2017, less than 5 months after Boddice J ordered the release of the respondent on a

supervision order. The respondent is said to have contravened the order by drinking alcohol (which is prohibited by condition 28 of the order). The factual material is set out in the affidavit of Ms Cowie filed 14 November 2017. The respondent was subject of a random breath test on 10 November 2017, which indicated positive for alcohol. He disclosed that he had consumed straight rum earlier that day, and had used mouthwash prior to the first test in an effort to mask the alcohol on his breath.

[20] On this application, the respondent concedes that he has contravened requirement 28 of the supervision order, by his consumption of alcohol. Accordingly, the threshold requirement in s 22(1) is met. I am satisfied, on the balance of probabilities, that the respondent has contravened a requirement of the existing supervision order.

[21] The material also indicates that, on 11 November and 22 December 2017, the respondent was convicted, on his own plea, of further contraventions of the supervision order, arising in circumstances where he was found to have accessed a pornography site on his mobile phone, and then deleted that from his history (in the former, on 10 November 2017 and, in the latter, on a date between 21 June and 19 September 2017). The relevant contravention was of a direction given by Corrective Services, firstly, prohibiting internet access to persons at the Wacol Precinct and, secondly, not to delete data stored on a device such as a phone without approval. On 11 November he was sentenced to 2 months imprisonment, with immediate parole. On 22 December, he was convicted but not further punished, taking into account the 11 November penalty.[2]

[22] There is also reference in the material to the respondent testing positive to a non-prescribed drug, Tramadol, on four occasions, on dates in July and August 2017. He was convicted of the offence, essentially, of unlawfully being in possession of a restricted drug (Tramadol) on 9 November 2017, and fined.

[23] Whilst in custody on this most recent occasion, he was subject of a search on 28 November 2017, during which a USB device was found (on his person). Two unknown white tablets were also found, in the cell that the respondent shared with someone else (and so it was not clear if possession of the tablets was attributed to him). The material indicates the USB device was found to be "biologically contaminated and only contains pornography".[3]

[24] The Attorney-General submits this material is also relevant, in considering whether the Court is satisfied adequate protection of the community can be ensured by a supervision order. I accept that.

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[2] See transcript of Magistrate's decision on 22 December 2017, annexed to affidavit of Simon Richards filed 15 March 2018, at pp 21-22 of the exhibits; and transcript of submissions at p 16 of the exhibits. See also the criminal history annexed to the affidavit of Kimberley Thies, filed 17 January 2018.

[3] See affidavit of Jolene Monson filed 5 April 2018 at pp 13 and 18 of the exhibits.

[25] The onus is on the respondent to satisfy the court, on the balance of probabilities, that the adequate protection of the community, from the unacceptable risk that he will commit a serious sexual offence (in this case, one involving violence and/or against a child) can, despite the contravention, be ensured by the existing order (or the existing order as amended under s 22(7)).

[26] As to whether the adequate protection of the community can be ensured by a supervision order, it has previously been held that it must be open to conclude that "the supervision order will be efficacious in constraining the respondent's behaviour by preventing the opportunity for the commission of sexual offences": *Attorney-General v Fardon* [2011] QCA 111 at [29].

[27] More specifically, in the context of an application such as the present, where the Attorney-General was seeking a continuing detention order in the face of repeated contraventions of a prohibition in a supervision order, in that case, against using illicit drugs, in circumstances where there was a link between drug use and the commission of the violent sexual offence which led to the making of the order, Byrne SJA in *Attorney-General v Francis* [2012] QSC 275 said:

> "[63] The highly likely prospect of further drug use – a contravention of a requirement that is important to reducing the risk of serious sexual violence – is said for the Attorney-General to require continuing detention.
>
> [64] But where contravention of a supervision order is proved, the *Act* does not require continuing detention unless the prisoner can show that the supervision order would in future be complied with. Rather, continuing detention is the consequence unless 'adequate protection of the community' can be ensured by 'a' supervision order.
>
> [65] The **inquiry focuses on whether a supervision order would be efficacious in preventing the commission of a violent sexual offence**.
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> [66] If, therefore, the likely future drug use would not jeopardise the 'adequate protection of the community…', continuing detention is not mandated.
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> [67] The slim chance of abstention from drugs during supervision is an important consideration in deciding whether Mr Francis has discharged the s 22(7) burden. But it does not matter for its own sake. It is important because that prospect bears on the risk of sexual violence. It is that potential which is critical: not illicit drug use as such."[4]

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[4] Emphasis added, references omitted.

[28] In *Francis*, the Court was satisfied that adequate protection of the community could be ensured by a further lengthy period of supervision (extending the order, which was due to expire, by a further five years). The factors noted by Byrne SJA as supporting that conclusion were that Mr Francis had not committed a serious sexual offence in the almost three years that he had been at large since he last offended in a sexually violent way (supporting the submission that supervision had worked to date, and could be expected to continue to be effective in preventing a violent sexual offence); that drug use would be quickly detected, almost certainly leading to prompt return to custody; that the major risk factor in that case – forming an intimate relationship – would be very likely to be discovered in time to ensure the woman understands and is acquainted with strategies to cope with the danger that Mr Francis poses.

[29] To similar effect is the observation by Jackson J in *Attorney-General v Robinson* [2017] QSC 332 at [62] that:

> "… it is important to keep in view that the only relevant question is the risk of the respondent committing a serious sexual offence. If the respondent's contrariness causes him to contravene conditions of his supervision order, and that leads to both proceedings against him for an offence of contravening the order and tighter surveillance and more trouble for QCS officers, those are prices to be paid for being subject to and costs of administering the DPSOA system but, in my view, that does not necessarily reflect an increased risk of the respondent committing a serious sexual offence."

[30] The Attorney-General submits that where the conduct which might be engaged in is the ingestion of intoxicants which may cause an escalation in risk, if there is evidence that the supervision order will, nevertheless, operate to effectively prevent that escalation in risk, before reaching a critical point such that the commission of a serious sexual offence becomes likely, then a supervision order is capable of being made, but emphasises that each matter is to be dealt with on its own facts, referring in this regard to *Attorney-General v WW* [2007] QCA 334 and *Attorney-General v Ellis* [2012] QCA 182.

[31] This application first came on for hearing on 10 April 2018. At that time, the evidence before the court included opinion evidence from psychiatrists, Dr Beech and Dr Grant, as well as from the respondent's treating psychologist in recent times, prior to his most recent return to custody, Dr Madsen.

[32] **Dr Madsen** saw the respondent on about five occasions following his previous release from custody, in July 2017. He says he saw the respondent initially on 28 July 2017 at the Precinct, and has since met with him on five occasions. In his report of 9 October 2017, Dr Madsen describes the respondent as having "engaged well" with the sessions and that he seemed motivated to engage in the psychological therapy. The

respondent reported to Dr Madsen that during his most recent custodial episode he had engaged in substance misuse on an almost daily basis, using whatever he could get his hands on. Urges to use when back out in the community led him to use Tramadol at the Precinct. Dr Madsen says the triggers to use drugs appear to be feelings of anxiousness, discomfort within his body, insomnia and boredom. Although the respondent did describe a motivation to manage his substance use, he reported that when he feels distressed, and there is an opportunity, he struggles to desist. Dr Madsen noted that the respondent has struggled with impulsivity, recognising in himself a tendency to react impulsively during times of high stress, emotional upset, frustration and also boredom, leading him to react automatically, with later regret for his actions.

[33] Dr Madsen notes the respondent has spent most of his adult life in custody, and has struggled to comply with the supervision order since it was made in 2010. He notes that the respondent has not re-offended sexually during this time, but refers to the many contraventions. He notes the respondent verbalises a recognition of the need to change and appears to have some insight into the challenges he experiences. He notes that the respondent presents with many of the typical characteristics of individuals with antisocial personality disorder, including impulsivity, a tendency to be defiant, a sense of entitlement, a resistance to rules and substance misuse. This suggests he will be pre-disposed to struggle with compliance and have a tendency to be self-sabotaging. On the positive side is that he is getting older, with research showing that antisocial offenders like the respondent desist by their late 20s as being antisocial is exhausting and maturation sets in.

[34] Dr Madsen considered that a likely "maintaining factor" for his problematic behaviour is contextual – for example, he participates in very few structured activities, spends most of his time associating with other offenders or watching TV by himself. Because of his circumstances, he experiences boredom which he struggles to tolerate, a psychological state that then leads to an increased risk of engaging in impulsive behaviours (such as contacting females on the phone or substance misuse).

[35] Dr Madsen's recommendations included psychological intervention focussing on the issues of impulsivity, problem solving and distress tolerance, with weekly sessions to occur; encouraging the respondent to see a psychiatrist to consider medication for managing anxiety and sleeplessness; that structured activities away from the Precinct be identified; and that an "overly punitive approach to his management" be avoided.

[36] **Dr Beech** prepared a report dated 26 February 2018, without seeing the respondent again, but having interviewed him on a number of occasions previously for the purposes of earlier reports. Dr Beech records that, following the respondent's release in October 2015 (after a return to custody in relation to contraventions) there had been indications of sexual preoccupation that included illicit access to internet sites to

download pornography and excessive attempts to contact people via Facebook. He expressed the view it was likely the respondent was using sex as a coping mechanism. There was again an attitude of non-compliance and curfew violations; he had illicitly accessed the internet and investigations revealed a number of sexually abusive text messages. Of course, that conduct resulted in the rescission of the supervision order, and the making of a continuing detention order.

[37] Dr Beech refers to the current contravening conduct, and Dr Madsen's report. He also refers to the respondent's case file notes, since his release from custody in June 2017, which include, among other things, reports that there was evidence of some sexual preoccupation after the respondent had contacted a former girlfriend; evidence later, in July that he had become sexually preoccupied, having regard to explicit text messages to the former girlfriend, and explicit photographs to her, downloaded pornography, including videos on his phone. There was then reference to his illicit use of Tramadol. There is also reference to him participating in the Suboxone program, but ceasing as it made him feel unwell. In August 2017, there is reference again to downloading pornography from the internet. In September 2017 he indicated that at the Precinct he was regularly offered drugs and there was peer pressure to take them. In September 2017, and consistent with Dr Madsen's recommendation, permission was given for him to attend football training sessions at Musgrave Park, and to attend the Men's Group there. Unfortunately, though, surveillance revealed that he did not attend the training, instead spending time with another supervisee and that man's girlfriend. During September and October he was making arrangements to meet H, a woman he had met "probably online, or through a friend, who lived in Western Australia". There were concerns about her, both in terms of her mental health state and substance abuse. He again tested positive to Tramadol in October – and went to court for this in November. The respondent's use of controlled substances, like Tramadol, was noted to be a new thing, as he had not used substances on earlier releases, and that he might be using it to cope with boredom.

[38] Dr Beech expresses the opinion that little had changed since his earlier report dated 18 November 2015. He says, at p 6 of his report:

> "In the community he appears to be idle but to struggle with boredom. He misuses substances to deal with this, and probably with other aversive affective symptoms. He seems unable to organise and plan his life and he struggles with the day to day demands of community living such as budgeting. He also seems to be easily swayed by his peers, which is of concern because he is accommodated at the Wacol precinct. He continues to seek sexual liaisons and relationships, and there is evidence that he is sexually preoccupied in the community as he resorts to pornography, sexting, and attempts to find liaisons on line, to the detriment of his overall adjustment.

> In my earlier report I noted a concern that in the community his negative emotional experiences and frustrations might be a prelude to the state of mind that led to the sexual offending earlier. It is difficult to see that Mr Tiers learns much from his returns to custody.
>
> These static and dynamic factors in my opinion indicate that the risk has not changed much since 2010. At that time, he had a STATIC-99 score of 6, which places him in the high risk category group. The dynamic factors of difficulties with stress or coping, problems with substance use, problems with relationships, and problems with planning and supervision have continued.
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> That being said, he has only one offence of sexual offending, and that occurred in 2002. On the other hand, he has not lasted very long in the community despite stringent supervision. I think that a supervision order acts to reduce the risk of re-offending and to below moderate albeit because breaches are detected quickly and he is returned to custody, which leaves him little time in the community.
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> It might now though, in the context of these repeated breaches, be time to review his childhood history and to undertake psychological testing to see if this is a form of foetal alcohol syndrome with attendant disturbances of executive functioning that might now necessitate **a more formal community support program, a more detailed plan for logistic support in the community, and a more detailed plan that looks at vocational supports, appropriate peer and mentorship programs, and placement in supportive accommodation away from anti-social peers**.
>
> Failing that it is difficult to see that he will survive very long on a supervision order."[5]

[39] **Dr Grant** prepared a report dated 27 February 2018, also without a further interview, but against the background of many interviews and reports prepared previously.

[40] Dr Grant notes that, despite the fact that the respondent's victim was only 4 years old, there is insufficient evidence to believe he suffers from paedophilia or any other sexual paraphilia. He says the offence seems to represent a random choice of victim whilst heavily intoxicated and emotionally distressed but not motivated by specific attraction to an underage female. Dr Grant also refers to the respondent's background history of behavioural problems, describing them as arising against the background of neglect and violent abuse from an alcoholic mother, parental separation, geographical instability, the absence of any good role models, poor engagement at school with resultant educational difficulties and engagement with antisocial peer groups.

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[5] Emphasis added.

[41] Dr Grant notes, by reference to his previous report of 7 March 2017, that, in response to therapy whilst in custody (when a continuing detention order was previously made) with Teresa Wood, the respondent seemed to make some positive change to be more insightful and more positively motivated to work within the order to achieve a better life for himself. It was on that basis, he said, he had expressed the opinion that it was more likely that a supervision order could be effective over a longer period of time in reducing the risk of future sexual offending. However, the success of that would depend upon the respondent's ability to maintain his improved attitudes and behaviours after he was once again transferred into the community (at p 7).

[42] In the "risk assessment" part of his report, Dr Grant notes that in the respondent's previous recent episodes in the community he has demonstrated significant preoccupation with sexual matters and in his last period in the community showed inappropriate behaviours towards women. Most recently, Dr Grant says he has again been actively pursuing contacts with females and demonstrating difficulties in establishing trusting and appropriate relationships. In addition to the respondent's behavioural and interpersonal difficulties under supervision, Dr Grant notes he has demonstrated a major problem with maintaining any degree of abstinence from illicit or unprescribed substances or alcohol.

[43] In that regard, Dr Grant records a major discrepancy in the history given by the respondent to him, in the preparation of his previous report, where he had told Dr Grant he had maintained abstinence from substances when in custody and was pleased with his ability to do so – whereas he told Dr Madsen he was using illicit substances on an almost daily basis whilst in custody. Dr Grant says "it is clear therefore that substance abuse remains a very prominent risk factor".[6]

[44] Dr Grant concludes, at pp 10-12 of his report:

> "The significance of substance abuse relates to the fact that his serious index offence occurred when he was severely intoxicated, had been inhaling paint and was feeling angry and frustrated with women. That led to a very serious acting out of his sexual frustrations and anger against an innocent four-year-old girl unknown to him. Therefore attention to maintaining sobriety from alcohol and substances must be seen as a very important risk factor if one is to prevent a future similar sexual offence.
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> Mr Tiers appeared to show improvement in his understanding, insight and attitudes during psychological therapy, both with Teresa Wood and subsequently with Lars Madsen. He appears to show some intellectual ability to achieve a degree of insight but his behavioural controls obviously

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[6] See also *Attorney-General v Tiers* [2017] QSC 129 at [50], it is clear that what was thought to be a "demonstrated abstinence from substance use" was one of the relevant considerations in the decision to make a further supervision order.

remain deficient and the apparent improvements in motivation and strategies to control behaviour have not translated from the controlled environment of custody through to the community. Even in the community his reports in therapy are more positive than the indications from his behaviour.

During this last period in the community Mr Tiers has continued to be very difficult as a supervisee. He has not responded to suggestions and encouragement to access appropriate medical advice and attention or to become involved in positive structured activities, apart from some sport. He has continued to struggle with the limitations of his Supervision Order and to be fairly defiant and devious in his approach to the restrictions. In some respects his attitude to supervisors may be less overtly rebellious and deviant than in the past but he continues to demonstrate little ability to work productively to assist supervisors in helping him with rehabilitation goals.

Mr Tiers' supervisors appear to have tried not to be too punitive in the last period in the community, in that despite repeated violations in terms of his use of non-prescription medications he was not returned to custody until a recent breach using alcohol.

My previous reports have indicated that static measures of risk for future sexual re-offending indicate a high risk. That static risk has been to some extent moderated by the long period of time since Mr Tiers' sexual offence, which occurred when he was very young, with no evidence of any more sexual offending, albeit with attitudes and behaviours towards women that have caused concern to supervisors from time to time.

At present I maintain my opinion that the risk for future sexual re-offending remains at moderate to high level (above average risk) but that a future sexual offence could possibly occur in a situation where Mr Tiers becomes frustrated, angry, sexually preoccupied, sexually aroused, feeling lonely, rejected and socially unstable. If under those kind of personal and social circumstances he turned to alcohol and drug abuse and once again became intoxicated then a violent sexual offence may result. It is significant that Mr Tiers does tend to deal with negative affects by consuming substances and that just aggravates the risk. Mr Tiers, if he offended, could do so against any woman known or unknown to him and the age could be anything from a young child to an adult.

Given the continued breaches by Mr Tiers of his Supervision Order, especially in relation to recurrent illicit drug use, I think it is difficult to see how he can be effectively, productively and safely managed in the community on a Supervision Order. He has shown very little ability to restrain from substance abuse and has also continued to be resistive and disorganised in his approach to supervision. The combination of his

> personality factors and his tendency to turn to substances creates the most risk. There is some suggestion of some degree of gradual maturation in his personality characteristics but those improvements are as yet mild and tend to be most evident in the controlled environment of custody, whereas in the community he once again demonstrates impulsiveness, emotional instability and resistance to authority.
>
> In the face of Mr Tiers' recurrent uses of substances whilst on his Supervision Order and his apparent inability to change to a significant extent, I am of the opinion that a Supervision Order will not be able to sufficiently moderate Mr Tiers' risk at this stage to recommend that he be released once again into the community under supervision. I would recommend that he have individual psychological therapy on a continuing basis in custody in the hope that with further maturation of his personality and further therapeutic gains he will once again become more amenable to undergoing appropriate rehabilitation outside custody. I would also recommend that he undergo very regular testing for illicit substance abuse whilst in custody. I consider that he should be required to demonstrate a prolonged period in custody of good productive behaviour, cooperative efforts in achieving rehabilitation and the ability to maintain sobriety from illicit substances, in order to demonstrate that he has sufficient control to once again attempt safe and productive management under a Supervision Order in the community in the future.
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> If the Court determines that Mr Tiers should be released once again into the community I would recommend that he continue in individual psychological therapy and that he be provided with structured activities and rehabilitation goals. In my opinion the Supervision Order would need to continue at least until the current period expires in 2022."

[45] On 10 April 2018, the Attorney-General applied to adjourn the hearing, in order for an assessment of the respondent to be undertaken following up on Dr Beech's suggestion that it may be time to review Mr Tiers' childhood history and undertake psychological testing to see if he suffers a form of foetal alcohol syndrome. Counsel for the respondent agreed, and I accepted that was a sensible and appropriate course to take, given Mr Tiers' history, including his difficulties in complying with the supervision order.

[46] Accordingly, in April 2018 Dr Michele Andrews carried out a neuropsychological assessment of Mr Tiers, and produced a report dated 30 April 2018.[7] For present purposes, I will not attempt to summarise the outcomes of the various instruments and tests administered by Dr Andrews. Her report is comprehensive and detailed.

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[7] Exhibit SDR-1 to the affidavit of Simon Richards, filed 24 May 2018.

However, I note the following matters, which appear in the "summary and opinion" section of the report (at pp 19-20):

> "By way of history Mr Tiers has had a disrupted and prejudicial childhood, marked by parental neglect, accommodation instability, limited educational opportunities, exposure to domestic violence and a lack of any positive role model or attachment figure during his formative years. He reported a chronic sense of abandonment and rejection by his mother.
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> …
>
> On formal assessment of his cognitive functioning Mr Tiers' results indicated borderline (7th percentile) general intellectual ability (GIA) (consistent with previous reports). He demonstrated strengths on visual reasoning tasks. He demonstrated impairments across tasks of verbal acquired/school-based learning including word knowledge, arithmetic and general knowledge congruent with his history of limited schooling. Given his cultural background and limited schooling this is likely to be an underestimate of his actual level of functioning.
>
> Mr Tiers was noted to demonstrate most impairment across memory, and subtle impairments across higher order executive functions. …"

[47] Dr Andrews says, at pages 22-24 of her report:

> "Based upon his history and presentation it appears likely that Mr Tiers may suffer from a form of Foetal Alcohol Spectrum Disorder. However, at present his mother's alcohol use remains unconfirmed, and he requires assessment of facial features. In line with the diagnostic criteria Mr Tiers demonstrates impairment in at least three areas of neurodevelopment-behavioural regulation, affect regulation, memory, cognition and activities of daily living. He also presents with behavioural disturbances and an impaired ability to learn from consequences. **Whilst it is a possibility that Mr Tiers suffers from FASD, it should also be considered that he has a complex history including a history of abuse, neglect, less than optimal home environment, limited education, chronic and ongoing substance abuse and extensive institutionalisation. All of these factors are also known to be related to reduced cognitive and neuropsychological functioning, and contribute to poor behavioural outcomes**. As such whilst Foetal Alcohol Spectrum Disorder is a viable hypothesis given his history, any one of the other factors listed could also in part, or cumulatively, account for his behavioural and cognitive impairments. It is most likely that his deficits are a result of a **combination of these factors** in addition to potential prenatal alcohol exposure.

It should also be considered that Mr Tiers has had a significant period of incarceration since 16 years old, with minimal time spent in the community. His extended incarceration has precluded him from opportunities to develop everyday living skills/adaptive functioning skills, and has impacted upon his general social, cognitive, emotional and interpersonal development. From collateral reports he has consistently demonstrated that he struggles to organise himself in the community, is impulsive, engages in inappropriate behaviours and rapidly returns to substance abuse. His presentation very much reflects a highly institutionalised young man who will struggle to cope in the community. Despite ongoing psychotherapy he reported having difficulties with anxiety, managing negative emotions, a lack of tolerance for crowds, difficulties socialising, inability to manage money and difficulties initiating or maintaining functional/pro-social relationships. Additionally he has an antisocial personality structure which has been dominated by defiance, boundary pushing and repeated rule breaking. Finally and of most relevance he struggles to maintain abstinence from substances, and uses substances as a way to cope with interpersonal stressors, boredom, and negative emotions (ie feelings of abandonment, rejection, guilt). In my opinion the extent of this man's institutionalisation and personality features form a core reason for his continued failures upon release.

Summary and Recommendations

As discussed it would be reasonable to hypothesise that Mr Tiers was exposed to alcohol in the prenatal period. He demonstrates borderline general intellectual/reasoning ability and associated difficulties in verbal cognitive skills and deficits in memory and aspects of executive functions, which is congruent with a cognitive profiles seen in FASD. He presents with a myriad of behavioural, emotional and self-regulation difficulties, which appear to have been exacerbated and reinforced by ongoing substance abuse, personality vulnerabilities and extended incarceration. Based upon his history he fails to learn from experience and has repeatedly engaged in similar behaviours despite psychological intervention. On a positive note Mr Tiers does present with a level of preserved cognitive functions, and he appears motivated to want to return to the community given his engagement in a new relationship.

In my opinion based upon his history and cognitive assessment results this man will continue to struggle if released to the community (ie precinct) in the same manner as previous occasions. If this man was to be re-released to a supervision order **I would strongly recommend that he be engaged with a support organisation** (ie NGO) and **if possible be placed in a supported living environment**. Whilst the precinct is supervised it is not inherently structured and this man benefits from and requires structure.

When released previously Mr Tiers has had access to a high amount of unstructured time, yet he lacks the capacity to organise his time adequately. This results in him associating with other offenders, becoming bored and remaining idle. **Supported accommodation or support from a non-government organisation would assist Mr Tiers to engage in pro-social activities, to avoid boredom and idleness, and assist him to develop everyday living skills to cope with the demands of community living** (ie use of public transport, budgeting, shopping). This would be particularly important in assisting Mr Tiers to manage boredom and negative emotions in the early stage of release, when he is on stage 1 curfew. Mr Tiers would benefit from being involved in an organised activity or work involving manual skills. **This is a man who needs to be scaffolded in almost every respect and it would require an integrated effort between an NGO, Corrective Services and his treating psychologist**.

If Mr Tiers was to be detained for a further period I would recommend that he recommence psychological intervention. This therapy should focus on managing his antisocial personality and treatment for his substance abuse. Additionally, therapy should focus in repetition of information and skills provided. Given his memory deficits, Mr Tiers appears to have a good ability to parrot back information without assimilating the information. As such it may appear that he is able to take in information and progress in therapy, yet his ability to actually assimilate and apply knowledge is limited. Additionally, therapy should also focus on how to transfer skills from the controlled environment of custody to a less structured and controlled environment. Ideally this man needs a graded transition whereby intensive supports are required initially to allow stabilisation in the community and skill development with a reduction in supports as he demonstrates an increased ability to cope.

Finally Mr Tiers would benefit from psychiatric review with respect to medication to assist him to manage generalised stress and anxiety. Given Mr Tiers' history and extended incarceration it is likely that he will have a more sensitive stress arousal response, and thus is more likely to feel emotionally distressed or dysregulated in response to stressors. Mr Tiers reports suffering from feeling stressed and anxious when in [the] community and struggles to manage negative emotions effectively. He also uses substances or non-described medications to down regulate his emotions. Mr Tiers has been prescribed psychiatric medication in the past (and presumably currently) which he reported gaining some benefit, however, he has not maintained compliance on a consistent basis. I wonder whether if he was commenced on a psychiatric medication that would down regulate his arousal response, and if his compliance was monitored whether he may manage his mood difficulties better. Compliance with medication should be made a condition of any potential release, as this may in part

> reduce his drive to access non-prescribed medications. Finally Mr Tiers reported ongoing difficulties with addiction to opiates or synthetic opiates. If he is to be considered for release to the community in the future, I would recommend review to determine if an Opiate Replacement Program may be of benefit."[8]

[48] Each of Dr Grant and Dr Beech have prepared brief supplementary reports, having regard to Dr Andrews' report.

[49] Dr Grant, in a brief report dated 11 May 2018, says that the assessment does not materially change the conclusions in his previous reports, specifically the opinions and recommendations in his report of 27 February 2018. He also records that:

> "It is clear that a range of supports and structure of meaningful activities are important in order for Mr Tiers to survive in the community for long enough to be rehabilitated. Supportive housing is an important goal, but not easy to find for a DPSOA person who has a history of serious sexual offending. A suitable NGO would also be important, if one can be found which is willing to accept this challenge. A period of further abstinence and acceptable behaviour in custody, coupled with on-going psychological therapy, may assist in gaining some confidence of success in community placement. Mr Tiers could once again be offered medication to assist with anxiety and reduced emotionality, but past compliance issues may again interfere with the benefits of such treatment."

[50] Dr Beech, in a further report dated 16 May 2018, says:

> "Mr Tiers presents a conundrum.
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> …
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> I had previously seen much of his behaviour to be related to impulsivity, but I think these formal tests indicate that impulsivity does not loom as the most significant factor in his contraventions, and **rather it is his poor use of his unstructured time, his oppositional and anti-authoritarian nature, his inability to develop and use appropriate strategies, his poor judgement, and his inability to learn from his experiences**.
>
> The difficulty with that assessment is that it is, in my opinion, unlikely that Mr Tiers will have learned from his most recent contravention and return to custody.
>
> Whereas generally his risk of further sexual offending should have significantly reduced with the passage of time, treatment, and supervision it is my opinion that **it remains elevated because of his difficulty learning**

[8] Emphasis added.

> **from therapy and experience, his continuing sexual preoccupation, his emotional difficulties, and his continued resort to substances**.
>
> In general, the risk should be reduced with supervision but it is now I believe clear that Mr Tiers does not cooperate with supervision and instead acts deliberately and in a considered manner to breach conditions around release, movement, telephone use, contacts, and substance use. He remains at risk of further contraventions, and he has a history of absconding and GPS monitor removal, which militates against the effectiveness of monitoring in reducing his risk.
>
> To that end, I think that the recommendations of Dr Andrews are very pertinent. Mr Tiers would benefit from further therapy in custody, and if he is released into the community, plans should be made for some form of supported living."[9]

[51] When the matter came back on for hearing on 29 May 2018, the respondent sought a further adjournment, relying upon an affidavit of his solicitor, Ms Marinov, outlining investigations that are being undertaken, but have not yet been completed or successful, into the availability of appropriate supported accommodation for Mr Tiers. The adjournment was not opposed by the Attorney-General. I was satisfied it was appropriate to further adjourn the hearing, having regard to the evidence contained in Dr Andrews' report, and the opinions of Dr Beech and Grant.

[52] Given the circumstances of this case, and the medical evidence that is before the Court which has been summarised above, the respondent faces considerable difficulty in discharging the onus placed on him by s 22(2)(a), of establishing that adequate protection of the community can be ensured by the existing supervision order (or with amendments), despite his contravention.

[53] It is appropriate that every effort be made to see if there is a suitable form of supported accommodation that could be made available to Mr Tiers; and, if there is, for Corrective Services to have the opportunity to consider the suitability of any such accommodation, and for Dr Grant and Dr Beech to be invited to comment further on that, should they wish to do so. It is therefore appropriate to adjourn the hearing of this application, until the outcome of those enquiries is known.

[54] I reiterate that the purpose of publishing these reasons is to explain, in detail, the basis for the adjournment of the hearing of the application on two occasions, and to facilitate the determination of the application when it is ready to be fully heard. Whilst the written submissions of each of the Attorney-General and the respondent have been considered, neither party has had an opportunity to make oral submissions,

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[9] Emphasis added.

including in relation to the more recent material provided since 10 April 2018. There will be a full opportunity to do so when the matter resumes after the current adjournment.