

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Barlow*
[2019] QSC 121

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
PETER ANTHONY BARLOW
(respondent)

FILE NO: BS No 1508 of 2018

DIVISION: Trial Division

PROCEEDING: Application

DELIVERED ON: 13 May 2019

DELIVERED AT: Brisbane

HEARING DATE: 11 March and 13 May 2019

JUDGE: Bowskill J

ORDER: **1. The hearing of the application for an order pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* is adjourned to 2.30pm on 24 June 2019.**

2. Pursuant to s 9A(2)(b) of the Act, the respondent, Peter Anthony Barlow, be detained in custody until 4.00pm on 24 June 2019.

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY
Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)

COUNSEL: PM Clohessy for the applicant
KE McMahon for the respondent

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

- [1] Mr Barlow was sentenced in the District Court at Cairns on 23 February 2015 to four years' imprisonment, for an offence of taking a child for immoral purposes committed on 26 June 2014, with a concurrent term of 1 year 6 months imposed for an additional offence of indecent treatment of a child under 12 also committed on that date. He was convicted on his plea of guilty to those offences. He was in custody from the date of the offences. The full time discharge date on the sentence was 25 June 2018. He served the whole of that sentence. He was not given parole.
- [2] On 13 February 2018 the Attorney-General filed the present application, for an order under section 13(5)(a) of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 that Mr Barlow be detained in custody for an indefinite term for care, control or treatment.
- [3] An interim order was made on 20 June 2018 that Mr Barlow be detained in custody until the final decision of the court on this application. A further interim order was made by me on 11 March 2019 that Mr Barlow be detained in custody until today.
- [4] As a result of relatively recent recognition that Mr Barlow has an intellectual disability, the Public Guardian has been appointed as his guardian for decisions about personal matters relating to accommodation, provision of services (including in relation to the National Disability Insurance Scheme) and legal matters, not relating to his financial or property matters.¹ Mr Barlow's legal representatives receive their instructions from the Public Guardian. The Public Trustee of Queensland has been appointed as the administrator for Mr Barlow for all financial matters.
- [5] An order may only be made under section 13(5) of the Act if the court is satisfied the prisoner is a serious danger to the community in the absence of such an order. Under s 13(2), a prisoner is a serious danger to the community:
- “if there is an unacceptable risk that the prisoner will commit a serious sexual offence –
- (a) if the prisoner is released from custody; or
- (b) if the prisoner is released from custody without a supervision order being made.”

¹ See the affidavits of Ms Maruna, a delegate of the Public Guardian, filed 17 August 2018 and 28 September 2018. See also exhibit PC-1 to the affidavit of Ms Clifford, filed by leave on 11 March 2019.

- [6] As defined in the Act, a “serious sexual offence” includes an offence of a sexual nature involving violence or against a child.
- [7] I am satisfied to the requisite high degree of probability, based on the evidence which has been placed before the court, that Mr Barlow is a serious danger to the community, in the absence of a division 3 order, for the purposes of section 13(1). Mr Barlow does not contest such a finding.
- [8] As I will explain in more detail below, the real issue in this case is whether the court can appropriately order that Mr Barlow be released from custody subject to a supervision order, given the evidence as to the level of support and assistance that he will require in the community.
- [9] Mr Barlow is a 58 year old man of Torres Strait Islander (on his mother’s side) and Aboriginal (on his father’s side) heritage. He was born in August 1960 on Thursday Island. Although he is described as not a good historian,² as it appears in the material before the Court, he left Thursday Island with his family when aged 5, and spent the rest of his childhood in the Townsville, Innisfail and Tully areas. He told Dr McVie that when he was about 33, both of his parents passed away. On the other hand, he told Dr Sundin he was six when his mother died, and in his twenties when his father died. He told Dr McVie that his father did not drink alcohol, but his mother was a heavy user of alcohol. He had seven siblings, one of whom has passed away, and he told Dr McVie he was still in telephone contact with those few of his siblings who have telephones. In particular, he told Dr McVie that he speaks to one of his brothers regularly on the phone.
- [10] There is reference in the material to Mr Barlow being involved in a car accident when he was a young child, about age 5, and suffering a head injury.
- [11] He has had only limited education, possibly no more than year five or year seven (there are inconsistent accounts). During his early adolescence, he appears to have lived away from his family at times, in detention or “boys homes”. His criminal history commences from the age of about 12 or 13.
- [12] When not in custody, he has worked in jobs like fruit picking and labouring for a Council. In custody, he has worked the laundry.
- [13] Mr Barlow reported, to Dr McVie and Dr Harden, a history of drinking alcohol regularly by the age of 15. He also reported using cannabis, every day, from

² For example, by Dr Harden in his report of April 2018 at p 4.

about the age of 12. His report to Dr Sundin was different, that he started drinking alcohol at age 20, and had never used cannabis.

- [14] He has had one long term relationship, from which he has one daughter who is now an adult. His partner in that relationship passed away in 1991. To Dr Sundin, Mr Barlow described struggling with loneliness after the loss of his partner, and that he had used alcohol as a coping method.
- [15] The offence which has led to Mr Barlow coming within the purview of the *Dangerous Prisoners (Sexual Offenders) Act* was committed on 26 June 2014. The victim was an eight year old girl who lived in a “leisure park” with her family. Mr Barlow also had a cabin at this park. The following description of the offence comes from the sentencing remarks of Judge Morzone QC:

“On the way to see her grandmother, the child was approached by you. She told you that she was looking for a kitten that she had seen, and you told her that you would help her look for the kitten and to follow you. This was a pretence. Instead of looking for any kitten, you led her to your house and gestured her to come inside. That conduct constituted your offence in count 1. Once inside, you closed the door and despite the complainant asking if she could leave, you refused. She even tried to open the door, but you pulled her back onto the bed. Once at the bed, you told her to take off her pants. She refused and began to cry. You then kissed her on the hand. That conduct constituted count 2. It is perhaps fortunate, particularly for the complainant, but also for what I fear you could have done, that the grounds keeper happened to intervene. He could see through the door that the complainant was standing next to the bed against the wall. He could see that she was crying and he could see that you had your hands in front of her chest, but not touching her. He entered to remove the child and told you to stay where you were, and the police were subsequently contacted.”³

- [16] The sentencing judge also noted that Mr Barlow was said to have been “significantly intoxicated” at the time, having drunk about 16 litres of wine.
- [17] Prior to this offending, Mr Barlow had already accumulated a 10 page criminal history, dating back to 1973 (when he would have been 12 or 13), and including property and dishonesty offences, drug offences, public nuisance type offences associated with alcohol, as well as some offences involving violence. The

³ See the affidavit of Ms Franko, filed 13 February 2018, at p 12 of the exhibit.

history includes, in 1976, a conviction of aggravated assault of a sexual nature (in one report, said to involve an assault of a female adult teacher, by trying to pull her pants down⁴), for which he was imprisoned for 3 months; as well as another conviction for aggravated assault on a female (the facts of which are not referred to in the material). It also includes a conviction of wilful exposure in 1980 and an offence of behaving in an indecent manner in 1982 (which appears to have involved exposing himself in the course of public urination).⁵ Dr McVie notes that, in relation to a conviction of assault occasioning bodily harm in 1979, the court brief indicates this occurred in circumstances where the defendant assaulted a woman because of “sexual frustration to have sexual intercourse” with her.⁶

[18] Mr Barlow participated in the Getting Started: Preparatory Program between 1 September and 15 October 2015. The completion report states that he demonstrated limited insight into his sexual offending behaviour, although accepted full responsibility for it, and was able to demonstrate general empathy for others and his victim. The report stated that Mr Barlow “presented with distortions including deviant sexual interests, and emerging needs surrounding significant social influences, capacity for relationship stability, hostility towards women, impulsive acts and poor problem solving” and that “[i]t was considered the area of emotional identification with children required further exploration”. He was identified as having the following factors, common to general and sexual offending, “drug abuse, social isolation, poor relationship skills, violence and previous sexual offending”. He was also said to present with “learning responsivity factors”, which seems to be a reference to things that make learning more difficult for him, in particular, problems with his memory (which he attributed to suffering a head injury as a child) as well as reading and writing. These issues were not considered barriers to him participating in future programs.⁷

[19] In relation to his offending in 2014, the completion report records Mr Barlow saying that he saw the victim searching for her cat. He said he stopped to help her look, because he wanted to help her. After looking for a while, he turned to return to his accommodation and the victim followed him. He said when she

⁴ See Dr Harden’s report of April 2018 at p 4.

⁵ See the criminal history annexed to Ms Heenan’s affidavit filed 13 February 2018; and the juvenile history annexed to Ms Thies’ affidavit filed 30 April 2018 and the further material annexed to the affidavit of Ms Murphy, filed 13 February 2018 at pp 4-5 of the exhibits; see also the summary of Mr Barlow’s criminal history at pp 4-5 of Dr McVie’s report dated 22 June 2017.

⁶ The notes referred to by Dr McVie are annexed to Ms Heenan’s affidavit, filed 13 February 2018.

⁷ Completion report dated November 2015, annexed to affidavit of Ms Foster, filed 13 February 2018.

began to follow him he had sexual thoughts about her, and thought “I have a chance”, “she’s good looking” and that he felt horny. He said upon arriving at their accommodation he tried to grab on to the victim, resulting in the offence. Although he did not specify the offence he had been charged with, he stated grabbing the victim had been non-consensual. He did not state the age of the victim. He said after the offence he felt weird and bad and thought “I shouldn’t do this”.

- [20] Between April and August 2017, Mr Barlow participated in the Sexual Offending Program for Indigenous Males. The completion report notes that during his participation in this program, the “learning and memory responsivity factors” previously observed were more significant than initially considered. He was referred to an external psychologist for an assessment, and it is recorded that psychologist considered there was evidence to support a diagnosis of moderate intellectual disability. Mr Barlow also reported that the group format was difficult for him. He was gradually removed from the program, and referred to individual work with a psychologist.⁸ It does not appear from the material that Mr Barlow has, since being removed from the program, worked with a psychologist on an individual basis.
- [21] In relation to the diagnosis referred to in the completion report, there is in evidence a report from Dr Jeff Nelson, clinical psychologist, dated 20 September 2017, expressing the opinion that the evidence supports a diagnosis of moderate intellectual disability for Mr Barlow. Dr Nelson determined his full scale IQ to be 45.⁹ Dr Nelson expressed the view that Mr Barlow would require substantial support when released into the community, with his transition to the community being significantly more difficult due to his limited cognitive proficiency and apparent executive dysfunction. He expressed the view that he was confident Mr Barlow would not do well when released into the community and would need support both at the level of finance and also with access to programs and helpful environments. He recommended an application for support from Disability Services be made on Mr Barlow’s behalf.
- [22] Mr Barlow was interviewed by Dr McVie, psychiatrist, on 7 April 2017, in anticipation of an application being made under the *Dangerous Prisoners (Sexual Offenders) Act*. Dr McVie produced a report dated 22 June 2017. On the various risk assessment tools, Mr Barlow scored low on the psychopathy checklist (that is, well below the cut off for psychopathy), but higher on the antisocial score. On the basis of static (historical) risk factors, Mr Barlow was

⁸ Completion report dated November 2017, annexed to the affidavit of Ms Foster, filed 13 February 2018.

⁹ The report is annexed to Ms Franko’s affidavit filed 13 February 2018.

within the group with high risk of recidivism for sexual violence. In relation to dynamic risk factors, he was shown to have high treatment needs, with particular problem areas including impulsivity and poor cognitive problem solving skills. In terms of the risk for sexual violence protocol, Dr McVie identifies a number of factors which contribute to the risk he poses, including: chronicity of sexual offending, although the pattern of his offending has changed over the years, and there has been a change in victim from adult females to a female child; he tends to minimise his behaviour; he has substance abuse issues relating to his offending; although he does not give a history of child abuse, and denies having been sexually abused himself as a child, he did spend some of his childhood in institutional care; he has antisocial traits, although no clear evidence of psychopathic personality disorder; he has avoided intimate relationships since his relationship with the mother of his daughter; he has an extremely poor history of employment, and appears to have led a semi itinerant lifestyle, focussed on drinking alcohol with lengthy periods of homelessness; he has a history of extensive non-sexual criminality and a history of some problems with supervision in the past.

- [23] Dr McVie considered Mr Barlow would benefit from further assessment in relation to his sexual offending and in relation to his cognitive functioning. Her risk assessment indicated Mr Barlow is at high risk of reoffending with sexual violence, and has significant treatment needs. Dr McVie considered his risk of reoffending would be reduced by a supervision order that required him to remain abstinent from alcohol and other substances.
- [24] After being provided with Dr Nelson's report, Dr McVie advised (by email dated 7 February 2018) that she now doubted Mr Barlow's ability to manage in the precinct, and suggested he needed NDIS (National Disability Insurance Scheme) supports to maintain him in the community and would probably benefit from supervised accommodation, at least to start with.¹⁰ She reiterated this opinion, in an email of 14 June 2018, after being provided with a case note from Mr Barlow's offender case file from May 2018.¹¹
- [25] Following a preliminary hearing under s 8 of the Act, the court was satisfied there were reasonable grounds for believing the respondent is a serious danger to the community in the absence of a division 3 order, and the application was set down for hearing. An order was made for Mr Barlow to be assessed by two further psychiatrists, Dr Harden and Dr Sundin.

¹⁰ See Ms Franko's affidavit, filed 13 February 2018, at p 13 of the exhibits.

¹¹ See Ms Dalley's affidavit, filed 15 June 2018, at p 5 of the exhibits.

- [26] Dr Harden interviewed Mr Barlow on 12 March 2018, and prepared a report dated 27 April 2018. Dr Harden considers Mr Barlow would meet the criteria for antisocial personality disorder, polysubstance abuse (alcohol and cannabis) in remission because of incarceration and moderate intellectual disability (with a full scale IQ of 45). Dr Harden notes that Mr Barlow's "sexual offending has not been particularly prominent as a part of his overall voluminous criminal history and 22 admissions to custody". Apart from observing some similarity between the 1976 offence (of trying to remove the adult female teacher's pants) and the 2014 offence (asking the child to take her pants off), Dr Harden observes that there does not appear to otherwise be a significant pattern of sexual preoccupation or evidence of deviant sexual arousal or interest. He notes Mr Barlow's very long history of criminal and antisocial behaviour associated with prominent social instability, homelessness, alcoholism and intellectual impairment. Dr Harden notes that Mr Barlow's level of function in the community has been poor without significant levels of support, and that whilst he has been able to cooperate with community orders at times, if left to his own devices he seems to rapidly return to alcohol abuse and various kinds of offending.
- [27] Dr Harden considers Mr Barlow's ongoing unmodified risk of sexual re-offence in the community is in the high range. His greatest risk factors are his alcohol abuse and his significant intellectual disability. Dr Harden considers if he were placed on a supervision order, his risk would be reduced to low to moderate. Dr Harden (and Dr McVie and Dr Sundin) was subsequently provided with some additional information, in a case note from Mr Barlow's "offender case file" from May 2018, describing difficulties Mr Barlow experienced in remembering his work duties, and what to do at lunchtime, as well as urinating on the floor in his residential unit. His difficulties were attributed to not remembering what he had previously been told to do. Dr Harden responded that it seemed likely Mr Barlow would require accommodation "that entails a degree of support", and suggested an occupational therapy report would be of assistance.¹²
- [28] Dr Sundin interviewed Mr Barlow on 23 March 2018, and prepared a report dated 1 May 2018. Dr Sundin considered Mr Barlow had evidence of intellectual impairment. She formed the impression that his insight into the extent and nature of his alcohol abuse and past pattern of sexual offending was extremely limited. She expresses a similar view to Dr Harden in terms of diagnoses, albeit referring only to alcohol use disorder (in sustained remission whilst incarcerated), not cannabis; and describing the intellectual disability as of mild severity, not moderate.

¹² See Ms Dalley's affidavit filed 15 June 2018, at p 7 of the exhibits.

- [29] Dr Sundin said she found no evidence Mr Barlow suffers from a paraphilia, and specifically no evidence of paedophilia. She said he does have problems with impulsivity, poor problem-solving skills and a dislocated lifestyle. She considers the index offence to have been opportunistic, and occurring in the context of a high level of intoxication, which appears to have had a disinhibiting effect, at which time Mr Barlow acted on sexual ideation.
- [30] Dr Sundin says “the problem with Mr Barlow is that he now appears to have an established diagnosis of Intellectual Disability and is an individual who is unlikely to be able to manage on his own within the community. If he were released unsupervised into the community, he is likely to rapidly return to an itinerant lifestyle and revert to the abuse of intoxicants. Use of intoxicants will increase his risk of sexual re-offending”. Dr Sundin considers his risk of sexual offending is moderate, a risk which is aggravated by the presence of any intoxicants.
- [31] Dr Sundin says the challenge is to find suitable accommodation for Mr Barlow, as the primary need for Mr Barlow into the future is supervised accommodation, assistance with budgeting and general activities of daily living. Dr Sundin agreed with Dr Nelson’s recommendation for an application to be made for Mr Barlow to be assisted by Disability Services. She also recommended he be considered for guardianship legal and financial decision-making; which has since occurred.
- [32] Dr Sundin also says “from a community perspective, any return to unsupervised placement in the community does constitute an unacceptable risk for future sexual offending given the likely relapse into homelessness and abuse of intoxicants.” She says he will need a high level of supervision, involving curfews and exclusion areas through GPS monitoring, and abstinence from substances, particularly alcohol. She does not see a point in psychological treatment, but says occupational therapy could be helpful to find suitable supervised activities in the community. She also considers he is likely to gain little from a substance use prevention program, as he is unlikely to comprehend or be able to implement the strategies from such a program.
- [33] Dr Sundin’s views in this regard were reiterated, in an email of 14 June 2018, after being provided with the case note from the offender case file. She confirmed an earlier indication that an assessment from an occupational therapist should be obtained.¹³

¹³ See Ms Dalley’s affidavit, filed 15 June 2018, at p 2 of the exhibits.

- [34] That occurred, and Mr Barlow was referred for a functional cognitive assessment by Dr Kieran Broome, occupational therapist, which took place on 15 June 2018. Dr Broome prepared a report dated 19 June 2018. In short, Dr Broome expressed the opinion that Mr Barlow is a person who requires supported structured accommodation, as he is not capable of living safely independently and does not have family supports to assist him in the community. He recommended Mr Barlow be referred for an assistance package under the NDIS.¹⁴
- [35] This accorded with the opinion of Dr Sundin in her report. In a further letter dated 20 June 2018, after reading Dr Broome's report, Dr Sundin expressed the opinion that the precinct would not be adequate for Mr Barlow's needs or adequate protection for the community, as he would be at risk of wandering off, resuming use of intoxicants and thus at increased risk of sexual offending. Dr Sundin said she did not consider Mr Barlow has the capacity to understand the nature of a supervision order and comply with it.¹⁵
- [36] Dr Harden also provided a supplementary report, after considering Dr Broome's report. He said it is clear Mr Barlow's intellectual disability results in his needing a higher level of support in the community than he had previously anticipated.¹⁶
- [37] Dr McVie said, in a further report dated 5 July 2018, that based on the additional material from the occupational therapist, she considers Mr Barlow will require a funded support package, most likely NDIS; that he will require supported accommodation; and a guardian should be appointed for financial, accommodation, health and disability support decisions. She also said that Mr Barlow would have limited capacity to understand the conditions of a supervision order and would need regular reminders of the requirements of his order, for him to have any capacity to comply with these requirements; but that with reinforcement, in the context of the supports she recommends, he should be able to be managed on a supervision order in the community.¹⁷
- [38] At the hearing of this application on 11 March 2019 each of Dr Broome, the occupational therapist, and Drs Sundin, Harden and McVie, the psychiatrists, gave further evidence.

¹⁴ See the affidavit of Dr Broome, filed on 5 July 2018.

¹⁵ See the affidavit of Mr McCabe, filed 8 August 2018, at pp 1-2 of the exhibits.

¹⁶ See Mr McCabe's affidavit, filed 8 August 2018, at p 5 of the exhibits.

¹⁷ See Mr McCabe's affidavit, at p 8 of the exhibits.

- [39] In his oral evidence Dr Broome explained that for “basic activities” Mr Barlow is independent within the prison setting, and he expects he would continue to be independent in things like showering, dressing and eating, in the community as well. Meal planning may be something that he needs support with, particularly as he suffers from diabetes, which requires careful management. In addition, Dr Broome considered that Mr Barlow would require support to be able to navigate new environments, for example to go shopping, and to go to appointments and have an understanding of what is said in a health appointment, as well as to comply with reporting requirements. In addition, Dr Broome identifies a need for support to protect Mr Barlow from risk of exploitation, due to his vulnerabilities.
- [40] In his written report, Dr Broome described an ideal level of direct support (close supervision) for Mr Barlow of 8.5 hours a day, with a carer to client ration of 3 to 1.¹⁸ When asked about this in oral evidence, he confirmed that was the ideal, reflecting what would typically be received in support from a combination of family, friends and formal supports in the community, where that combination is available. But in terms of what would be adequate for Mr Barlow, Dr Broome considered that something like three to four hours a day, for three to four days per week, as the minimum (depending on the circumstances in any particular week) would be sufficient. Dr Broome also expressed the opinion that Mr Barlow would be able to function if he lived in the QCS contingency accommodation, with a support worker providing that kind of support to him in that context. Dr Broome said “in many ways that sort of accommodation would be highly appropriate, given its structured and we wouldn’t have the risk of homelessness, which is one of the concerns if people can’t plan and schedule for the future”. Dr Broome said Mr Barlow would also do well in a hostel environment. This is not a case in which the evidence indicates that a secure facility is required.
- [41] Having heard Dr Broome’s oral evidence, the psychiatrists then gave the following evidence. Dr McVie said she considered that if it is possible to give the level of support identified by Dr Broome (three to four hours a day, three to four days a week) to Mr Barlow while he is residing in the QCS contingency accommodation, that would be sufficient for him to manage on a supervision order, until better accommodation could be found within the community. She considered that would adequately manage the risk posed by Mr Barlow. Dr Harden agreed. He said the major risk issues for Mr Barlow are tied up in his potential for disorganisation in the community, and potential alcohol abuse. He considered release on a supervision order to the precinct accommodation at

¹⁸ Affidavit of Dr Broome, at p 6 of the exhibits.

Wacol would be appropriate, rather than Townsville or Rockhampton, on the basis that Wacol is a more structured environment and less remotely located. Dr Sundin also agreed, including with the endorsement of the Wacol precinct as more suitable.

- [42] In light of that evidence, the parties suggested that the further hearing of the application be adjourned. I considered that was appropriate, as the oral evidence of Dr Broome, and the psychiatrists, at the hearing on 11 March 2019 painted a different picture from that presented in the written evidence, in terms of the options that might be considered suitable for Mr Barlow, and suggested another option for the purposes for an NDIS funding plan for Mr Barlow.
- [43] At the hearing of this matter on 11 March 2019, an affidavit of Ms Clifford, the Principal Guardian of the Office of Public Guardian, was relied upon. That affidavit demonstrated that there has been an NDIS plan approved for Mr Barlow (see pp 1-2). Initially it was only for a five month period, from 28 September 2018 to 27 February 2019. It provided for an amount of 30 hours of “specialist support coordination” (p 19). Exactly what that means is not clear from the document, although what is clear is that the approved funding is not for the provision of actual supports for Mr Barlow; but rather for the work involved in trying to source suitable supports. Counterintuitively, the document also appears to state the funding is only able to be used when Mr Barlow has a confirmed release from prison date (p 31). But he needs the “support coordination” before he can be released – either to approve funding for and assist him to find suitable supported accommodation, or to approve funding for and source appropriate support services which may enable him to live at the precinct.
- [44] In relation to that issue, there is further evidence before the court today, from Ms Clifford, that she understands QCS is working with the NDIS [I interpolate that she means the NDIA, that is, the Agency] to “address and streamline this process in a less restrictive manner, so that clients like Mr Barlow can have a NDIS Plan for community support and service provision completed while incarcerated to be enacted immediately when released”.¹⁹ That is to be actively encouraged.
- [45] In March 2019, Mr Barlow’s current NDIS plan (dealing only with the provision of “specialist support coordination” services) was approved for a further six months.²⁰

¹⁹ Affidavit of Ms Clifford, filed by leave today, at [21].
²⁰ See Ms Clifford’s affidavit, at pp 76-85.

- [46] On 11 March 2019 orders were made adjourning the further hearing of the application to 13 May 2019, and for Mr Barlow to continue to be detained in custody until 4pm on 13 May 2019.
- [47] The purpose of adjourning the hearing was to enable further inquiries to be undertaken, as to the level of NDIS funding support which might be available to Mr Barlow to provide him with the support that he needs, as identified by Dr Broome, to enable him to live in a place such as the Wacol precinct, or otherwise in supported accommodation, with a view to, hopefully, being able to finally deal with the application on 13 May 2019.
- [48] That has not occurred. At the hearing today, the court received further evidence from Ms Jolene Monson, the Acting Manager of the High Risk Offender Management Unit of QCS, both in an affidavit made on 9 May 2019, and in brief oral evidence. According to Ms Monson, QCS has been advised that Mr Barlow's NDIS plan still has not been reviewed, and accordingly his level of funding remains unknown, and no indication can be given as to the level of support he may be able to access in the community, post-release. Ms Monson said she understood there was a meeting taking place today, between representatives from QCS and the NDIA "at the highest level", at which these issues were being discussed.
- [49] Separately, QCS has continued to make enquiries to try to find suitable accommodation for Mr Barlow. Ms Monson says in her most recent affidavit that enquiries have been made with approximately 19 accommodation providers, but no suitable vacancy has been identified yet.
- [50] QCS did identify an indigenous aged care facility in the Townsville area with a vacancy, but an Aged Care Assessment was required before Mr Barlow would be able to take up that place. The psychiatrists have been asked for their opinion as to the suitability of this Townsville aged care facility for Mr Barlow. Each of Dr Harden, Dr Sundin and Dr McVie have expressed the view that accommodation of this, or a similar, type would be suitable (indeed Dr Harden says it likely exceeds Mr Barlow's care needs as described by Dr Broome in his evidence). Dr Broome also says the Townsville accommodation appears to be an appropriate option for Mr Barlow, suited to his functional abilities (subject to the limitation that Dr Broome has not personally visited the facility).²¹
- [51] Ms Monson says that QCS are also currently investigating the suitability of a vacancy at a south east Queensland assisted living facility that may be suitable,

²¹ Correspondence annexed to the affidavit of Ms Dalley, filed by leave today.

and that QCS will continue to actively search for alternative suitable accommodation options for Mr Barlow.

- [52] In a further affidavit filed today, Ms Clifford confirms that the Public Guardian is pursuing a variety of options for Mr Barlow, including aged care facilities, now that this has been identified as a potential option. The Aged Care Assessment process is separate from the NDIS process. Ms Clifford confirms that she has taken the steps to arrange an Aged Care Assessment for Mr Barlow. The assessment is currently arranged to take place on 21 May 2019. It was scheduled for earlier dates, but was cancelled once by the assessing body and cancelled a second time, due to industrial action at the correctional centre where Mr Barlow is held. Ms Clifford says, in her experience, there is a turnaround time of about four weeks, following the assessment.
- [53] On the basis of the material before the court today, I am satisfied it is appropriate to further adjourn the hearing of this application. Having regard to the timeframes just referred to, the hearing will be adjourned to 24 June 2019 at 2.30pm. I will make a further interim order, for Mr Barlow to be detained until 4.00pm on 24 June 2019.
- [54] I acknowledge the continued efforts that are, on the evidence before the court, being made by QCS and also by the Public Guardian, to try to find appropriate supported accommodation to which Mr Barlow may be released, subject to a supervision order. It is apparent, from the material before the court, that there has been a degree of difficulty involved in the efforts that have been made to advance the review of Mr Barlow's NDIS funding. I am unable to make any orders requiring a representative of the National Disability Insurance Agency to provide an update to the court, or do anything else for that matter, as it is not a party to this proceeding. However, I have made it clear to the legal representative for the Attorney-General that it is my expectation that, when this matter comes back on for hearing on 24 June 2019, in the event the matter is not then able to be finalised, there will be evidence available from a representative of the NDIA to explain in clear terms what is happening in relation to Mr Barlow's NDIS funding review and providing a clear explanation for the process being undertaken, and the reasons for the delay in making a determination.
- [55] This is yet another case in which a profoundly disadvantaged person who has served their sentence, remains in prison due to the unavailability of appropriate support and accommodation for them in the community. I reiterate the comments I made in a decision concerning another profoundly disadvantaged Aboriginal man, in *Attorney-General v Tiers (No 2)* [2018] QSC 229 at [9].

- [56] I accept that whilst the NDIS is a potential source of funding and assistance for this task, it is not an answer in itself to the lack of available accommodation facilities, which is a separate matter requiring urgent attention. Nevertheless, in circumstances where a person such as Mr Barlow remains in prison, now almost a year since his sentence was completed, further delay and prevarication in the making of decisions, such as in relation to what funding he is able to access under the NDIS, which may facilitate his supported release from prison, subject to supervision under the *Dangerous Prisoners (Sexual Offenders) Act*, is not satisfactory.
- [57] For the reasons set out above, there will be orders that, firstly, the hearing be further adjourned to 24 June 2019 and, secondly, that Mr Barlow continue to be detained in custody until 4.00pm on that date.