

# SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v AYL* [2019] QSC 140

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

FILE NO: 1382 of 2019

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: 3 June 2019

DELIVERED AT: Brisbane

HEARING DATE: 3 June 2019

JUDGE: Applegarth J

ORDER: **The respondent be subject to a supervision order until 14 June 2029**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT SEXUAL OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY — where the applicant seeks an order pursuant to s 13 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) – where the respondent concedes that on the evidence the Court would be satisfied to the requisite high degree that he is a serious danger to the community in the absence of a Part 2, Division 3 order – where the parties agree that the evidence supports the conclusion that a supervision order will provide adequate protection of the community – where the parties agree on proposed conditions – whether the proposed conditions are appropriate

*Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) s 13

*Attorney-General for the State of Queensland v Fardon* [2011] QCA 111, cited

*Attorney-General for the State of Queensland v Lawrence* [2010] 1 Qd R 505; [2009] QCA 136, cited

*Attorney-General for the State of Queensland v LKR* [2018]  
QSC 280, cited

COUNSEL: P M Clohessy for the applicant  
M F Bonasia for the respondent

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

The applicant seeks an order pursuant to s 13 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003. The applicant acknowledges that the evidence, particularly the psychiatric risk assessment evidence, indicates that the imposition of a supervision order of at least 10 years' duration can adequately contain the risk presented by the respondent.

The respondent accepts that a supervision order should be made with appropriate conditions. There is no contest that the proposed conditions are appropriate.

The respondent is a 66 year old man who is currently serving a three year sentence for three counts of indecent treatment of a child and a two year sentence for six counts of the same offence. He has a history of significant sexual offending, having been sentenced to serve terms of imprisonment for three separate episodes of sexual offending against multiple female child victims. Those episodes occurred first in the late 1970s and until 1987, secondly in 1993 to 1994 and thirdly between 2014 and 2016.

### **The index offences**

On 5 June 2018, the respondent was sentenced in relation to nine offences against five female child victims aged between six and ten years of age. The victims were related to friends of the respondent, as their children or otherwise, and the offending largely occurred in the context of him playing with the victims. The respondent was aged 61 to 63 throughout the course of offending and lived alone.

The conduct against all victims involved the respondent touching the children on or near their vaginal area both over and under clothing and on one occasion, on the breast area.

The sentence of three years' imprisonment was imposed by the District Court on 5 June 2018 upon his guilty plea to three counts of indecent treatment of a child under 16, under 12 years. He also received a sentence of two years' imprisonment in relation to six counts of the same offence. His custodial end date is 14 June 2019.

### **Statutory scheme**

The statutory scheme has been the subject of consideration in numerous authorities. There is no need to set out what many judges have said about it. The first inquiry is whether or not the respondent is a serious danger to the community in the absence of an order under s 13 of the Act. In deciding that question the Court must have regard to the matters which are set out in s 13(4). I have done so, and rely particularly upon the psychiatric reports produced pursuant to ss 8A and 11. The evidence, as the respondent correctly concedes, is such as to satisfy me to the high degree of probability required

that, if released without a Division 3 order, there is an unacceptable risk that the respondent will commit a “serious sexual offence”.

The second inquiry is as to the kind of s 13 order to be made. The essential issue is whether adequate protection of the community can be provided by a supervision order. A continuous detention order should only be made where the applicant proves that the community cannot be adequately protected by a supervision order. The applicant bears the onus of demonstrating that a supervision order will afford inadequate protection to the community.<sup>1</sup> Ultimately, before making a supervision order, rather than a continuing detention order, it must be open to conclude that a supervision order “would be efficacious in constraining the respondent’s behaviour by preventing the opportunity for the commission of sexual offences”.<sup>2</sup> I addressed the statutory scheme in more detail in *Attorney-General for the State of Queensland v LKR*,<sup>3</sup> and shall not repeat or reproduce what I said about it.

## Reports

### *Psychiatric risk assessment report of Dr Sundin dated 31 December 2018*

At interview on 25 October 2018, Dr Sundin noted the respondent’s interactions to be superficial in nature and demonstrating little emotional connection with either his offending behaviour or its impact on his victims. She considered his responses evidenced his longstanding avoidant coping pattern, feelings of personal inadequacy, low self-esteem and general apprehensiveness.

Dr Sundin observed the respondent struggled to demonstrate any insight into his offending pathway.

Dr Sundin considered the respondent meets the diagnostic criteria for **paedophilic disorder** (non-exclusive type, sexually attracted to females, not limited to incest) and **avoidant personality disorder**. She considered that the acting out of his deviant attraction to pre-pubescent females had been facilitated through his “avoidant coping style and permission statements”, and aggravated by his low intelligence and limited education. She found no evidence of a major mood disorder, psychotic disorder, other paraphilic disorder or alcohol or illicit substance use disorder.

As to his paedophilia, Dr Sundin described the common characteristics of the respondent’s offending as follows:

“... [The respondent] has a longstanding history of sexual attraction to pre-pubertal females with offences dating back to 1978. He has acted on these deviant sexual cognitions on multiple occasions in various sexual assaults upon girls under the age of 12 known to him through their parents. He has masturbated to fantasies of the sexual assaults and has fantasised about ‘full on intercourse’ with his victims. The offending against some victims has occurred over many years.

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<sup>1</sup> *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) s 13(7); *Attorney-General for the State of Queensland v Lawrence* [2010] 1 Qd R 505; [2009] QCA 136 at [28].

<sup>2</sup> *Attorney-General for the State of Queensland v Fardon* [2011] QCA 111 at [29].

<sup>3</sup> [2018] QSC 280.

Some offences have been opportunistic, and others have involved grooming. They have all involved exploitation of trust both of the victims and their families. None have involved violence, but some have been facilitated by gifts and psychological coercion.

The offences have persisted despite [the respondent] having participated in an intensive Sex Offenders Treatment Program previously.”

Despite his age and medical problems, Dr Sundin assessed the respondent as representing at least a moderate to possibly high risk of further sexual offending if unsupervised. If the respondent were to reoffend it would occur in a situation where he gained access to pre-pubescent female children by exploiting a position of trust and engaged in offending behaviour with a low risk of physical harm but high risk of psychological harm. His risk of reoffending would increase if he returned to employing avoidant coping strategies, including long work hours, or began to feel isolated and alienated.

Dr Sundin recommended that once the respondent is released into the community he should be subject to a supervision order for a period of ten years to enable close monitoring, ensure disclosure, restrict his access to children and compel participation in treatment. She also considered that the respondent should commence individual therapy with a forensic psychologist whilst in custody and continue that treatment upon his release, possibly supplemented by participation in a Medium Intensity Sexual Offenders Program or maintenance program in the community.

Although the respondent reported being keen to engage in treatment such as the High Intensity Sexual Offenders Program, Dr Sundin did not consider he needs to be detained for the purpose of engaging in further treatment programs in light of his approaching release date, the length of such programs, the utility of previous program participation after which he continued to sexually offend and the need to address his individual sexual deviance.

In summary, Dr Sundin considered the respondent’s risk of further sexual offending is **at least moderate to possibly high**. She considered the respondent displayed limited insight into his offending pathways and has failed to benefit from completing the SOTP and SOMP. She recommended that he should be subject to a supervision order upon his release into the community for a period of ten years. She considered participation in further treatment programs whilst in custody would be unlikely and in any event, unlikely to provide any benefit to the respondent. She recommended individual treatment be commenced whilst he remains in custody and to continue upon his release.

***Psychiatric risk assessment report of Dr Brown dated 21 May 2019***

Dr Brown considered the respondent meets the diagnostic criteria for **paedophilic disorder** (non-exclusive type, with a preference for female pre-pubescent children). She also considered there was some evidence of an **avoidant personality disturbance**, described as a “mixture of a number of different personality disorders with avoidant, narcissistic and antisocial traits evident along with considerable empathy deficits”.

As with each of the other psychiatrists, Dr Brown applied a number of instruments in assessing the respondent’s risk. They included the Risk for Sexual Violence Protocol

(RSVP). In applying that protocol, Dr Brown noted that the respondent has a pattern of offending over a 35 year period. The offences committed during this time were diverse, escalated in seriousness and involved elements of grooming and abuse of a position of trust. The respondent's attitude to his latter offending reveals a pattern of minimisation or denial. He appears to have problems with self-awareness and has employed maladaptive coping methods. There is no presence of psychopathy, major mental illness, substance use or current suicidal or violent ideation. The respondent has difficulties establishing relationships, leading to social isolation. There are protective factors, such as the absence of a significant history of non-sexual criminality and his willingness to engage in further psychological intervention and find meaningful activity on release.

On the issue of risk, Dr Brown reported:

“Overall there are a number of risk factors that elevate [the respondent's] unmodified risk of recidivism to high. These include his chronicity of offending, the presence of sexual deviancy (which at times he feels unable to control), poor self-awareness, disordered personality (including empathy deficits) and failure to substantially benefit from sex offender treatment in the longer term so as to prevent reoffending. He minimises or denies his most recent offending which was somewhat more reckless when compared to his previous behaviours. He is now of retirement age, has no personal supports, has no release plans and is institutionalised. He will therefore require significant professional support upon release.

Scenarios that would increase the risk of offending would include interpersonal stress, social isolation, social or romantic rejection and the opportunity to have contact with a child, such as through a female partner or friends with children, neighbours with children, or as a facilitator of a children's group or club. Given his ability to engage and manipulate children and his history of offering monetary reward, there is also a risk that he could befriend a child or children at a local playground or other public area where children congregate.”

Dr Brown recommended as follows:

“It is my view that should [the respondent] be returned to the community without supervision [the] risk of sexual recidivism, especially in the longer term would be high. There are a number of modifiable risk factors that can be addressed to reduce this risk.

A return to the community with restrictions, appropriate monitoring and offender treatment would reduce [the respondent's] risk to a moderate and manageable level.

...

I have considered the option of continued detainment in prison so as to allow [the respondent] to establish a therapeutic relationship with both a psychiatrist and a psychologist. This would allow for further cognitive and personality assessments to be completed and commencement of any

medications that are considered necessary. Whilst this would be desirable, it is not, in my opinion essential and on balance I would cautiously support a release to community supervision with close monitoring.

Given [the respondent's] chronic history of offending and the presence of sexual deviancy, I recommend that, if the Court orders release to supervision, this should be for a ten year period.”

Dr Brown made specific recommendations about conditions to include in any supervision order:

- “1. He should not, under any circumstances, have unsupervised contact with a child.
2. He should not enter premises where children reside or frequent areas where children gather such as parks, playgrounds or similar.
3. He should engage in treatment with a suitably qualified forensic psychologist for more detailed personality testing, neurocognitive assessment ... to address sexual deviancy, personality dysfunction and empathy deficits.
4. He should discuss all social and romantic relationships with his case manager and psychologist and disclose his history of offending to potential romantic or sexual partners.
5. He should be supported to develop a stable routine and to find housing as appropriate.
6. He should be referred to a psychiatrist for consideration of SSRI medication.”

Dr Brown identified several risk factors that may elevate the respondent's unmodified risk of recidivism to high, in particular:

- “a. His chronicity of offending;
- b. The presence of sexual deviancy;
- c. Poor self awareness;
- d. Disordered personality; and
- e. Failure to substantially benefit from sex offender treatment in the longer term.”

In summary, Dr Brown considered his unmodified risk of further sexual offending is **high**. She considered his risk would be reduced to a **moderate and manageable level** with restrictions, appropriate monitoring and offender treatment. Dr Brown “cautiously” recommended the respondent should be released into the community subject to a supervision order for a period of ten years. She made specific recommendations as to future management under a supervision order including with

regard to restricting contact with children, reporting obligations, and the need to engage in treatment with a suitably qualified forensic psychologist.

***Psychiatric risk assessment report of Dr Scott Harden dated 22 May 2019***

Dr Harden considered the respondent meets the diagnostic criteria for **paedophilia** (non-exclusive, predominantly attracted to females) and **avoidant personality traits or disorder**.

Dr Harden applied a number of instruments in assessing the respondent's risk. These included:

- The respondent received a score of 14 out of 24, placing him in the high needs group in terms of sexual offenders' dynamic risk.

I should add that each of the psychiatrists noted that the Static 99-R probably underestimates the risk of recidivism due to the respondent's age.

On the issue of risk, Dr Harden considered:

“The actuarial and structured professional judgement measures I administered would suggest that his future risk of sexual re-offence is moderate (average). Clinically the risk of re-offence seems likely to be higher than this given the previous pattern of reoffending following treatment failure. **In my view the risk of sexual re-offence is in the moderate to high range.** Any reoffending would be similar to previous offending and would be aimed at pre-pubertal girls. The risk of physical harm is low. The risk of psychological harm is significant. Reoffending would require the time and opportunity to groom girls and their families to participate.

My assessment of this risk is based on the combined clinical and actuarial assessment.

The critical risk issue for this man is his paedophilic attraction to pre-pubertal girls.

**Supervision and intervention consistent with a supervision order in my opinion will reduce the risk to low.**

Given his long-standing paedophilic attraction the supervision order should be in place for at least ten years.”

Dr Harden recommended that the following factors be considered in formulating the terms of any supervision order:

“There is no requirement for conditions regarding use of alcohol in the supervision order.

I would recommend that if he were released from custody that he be placed on a supervision order in the community for a minimum period of 10 years.

Clearly he should have no contact of any kind with girls under 16 years of age.

Ideally he should undertake a group treatment program either the high-intensity sexual offending program in custody or the medium intensity sexual offending program in the community.

He should also undertake psychological treatment with an appropriately trained practitioner.

Given his reports of some memory difficulties in more recent years he should have further investigation of this including old-age psychiatrist opinion, neuroimaging and possibly neuropsychological testing. If there is any suggestion of difficulty with activities of daily living having developed he should have an occupational therapy assessment and report.”

In summary, Dr Harden considered the respondent’s risk of further sexual offending is in the **moderate to high range**. Dr Harden considered his risk would be reduced to **low** with supervision and intervention provided through a supervision order. Dr Harden considered the duration of such a supervision order should be for a period of at least ten years. He made specific recommendations as to future management under a supervision order including the need to restrict contact with female children under 16 years of age, engagement in individual psychological treatment and participation in a group sexual offending treatment program. Dr Harden recommends that the respondent be released from custody and be placed on a supervision order for a minimum period of 10 years. A condition regarding the use of alcohol is not required as part of the supervision order.

#### **Other matters addressed in s 13(4)**

The respondent’s pattern of offending is linked to his paedophilic attraction to prepubescent girls.

Save for a few convictions for failing to report, the respondent’s criminal history consists only of sexual offences. The respondent’s behaviour in prison has been generally good. The respondent participated in rehabilitation programs over the years. However, he has not recently undertaken a sexual offender treatment program in custody. This is due to his poor physical health and a significant period of remand at the Arthur Gorrie Correctional Centre. As a result, the respondent has not been able to complete any sexual offending or other courses during the current period of imprisonment. During a case conference in August 2018, it was recommended that the respondent be placed in a specialised sexual offending program but, due to bed capacity, was unable to be placed at Wolston Correctional Centre to undertake a course.

The absence of a place for the respondent on courses over the last few years is unfortunate, to say the least. However, for the reasons explained in the reports, it is not necessary for the respondent to be detained for the purpose of engaging in further treatment programs in custody, given his approaching release date, the length of such programs, the utility of previous programs and the need for him to engage with individualised counselling in the community pursuant to a supervision order. He should be required to undertake a sexual offenders’ program in the community.

As Dr Brown notes, the respondent is now of retirement age, has no personal supports, has no release plans and is institutionalised. He will require significant professional support upon release.

Dr Brown also noted the absence of any psychopathy and substance abuse and the respondent's likely ability to engage well with and take direction from corrections staff.

### **Conclusion**

A supervision order will constrain the respondent's opportunity for the commission of sexual offences, particularly by limiting his contact with children. The respondent does not have an elevated score for psychopathy. He was rated 14, 12 and 9 respectively by Dr Sundin, Dr Brown and Dr Harden on the HARE psychopathy checklist, which is well below the score required for a diagnosis of psychopathy.

I accept the applicant's submission that the identified risks can be reduced to an acceptable level by a supervision order which includes non-contact with children and the other conditions contained in the proposed supervision order.

### **The duration of the supervision order**

Setting a period of supervision involves a present assessment of the respondent's state and a prediction of when he will be an acceptable risk in the community without a supervision order.<sup>4</sup>

Based on the material before me, including the opinions of the psychiatrists, an appropriate period for the supervision order is 10 years.

Therefore, I will order that the respondent be released subject to a supervision order for a period of 10 years. The conditions of the order are annexed to these reasons.

### **Other matters**

Dr Harden's concern about the respondent's possible memory difficulties, as quoted in [27] above, should be investigated by those with responsibility for his supervision. As Dr Brown notes:

“He may struggle to understand the complexity of his order or simply forget to adhere to particular terms as he has in the past. He will therefore need support in this regard.”

The greatest risk is posed if the respondent is unable to establish positive relationships with adults in the community, and becomes isolated. Therefore, those with responsibility for the respondent's supervision should develop with the respondent a plan for him to undertake meaningful paid or volunteer work with adults and other plans which, consistent with the stringent requirements of the order against contact with

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<sup>4</sup> *Attorney-General for the State of Queensland v KAH* [2019] QSC 36 at [68]. It would be an error if the Court considered that the respondent would only cease to be an unacceptable risk in the community after ten years on supervision, but set the duration of the order at five years on the basis that the order could later be extended under s 19B of the Act: *ibid* at [70].

children, will enable him to use his vocational and other skills to his own and the community's advantage.

## SUPERVISION ORDER

THE ORDER OF THE COURT IS THAT:

1. The Court is satisfied to the requisite standard that the respondent is a serious danger to the community in the absence of an order pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003*.
2. The respondent be subject to the following requirements until 14 June 2029.

The respondent must:

### General terms

1. report to a corrective services officer at the Queensland Corrective Services Probation and Parole Office closest to his place of residence between 9am and 4pm on the day of release from custody and at that time advise the officer of his current name and address;
2. report to, and receive visits from, a corrective services officer at such times and at such frequency as determined by Queensland Corrective Services;
3. notify a corrective services officer of every change of his name, place of residence or employment at least two business days before the change happens;
4. be under the supervision of a corrective services officer for the duration of his order;
5. comply with a curfew direction or monitoring direction;
6. comply with any reasonable direction under section 16B of the Act given to him;
7. comply with every reasonable direction of a corrective services officer that is not directly inconsistent with a requirement of this order;
8. not leave or stay out of Queensland without the permission of a corrective services officer;
9. not commit an offence of a sexual nature during the period of this order;

### Employment

10. seek permission and obtain approval from a corrective services officer prior to entering into an employment agreement or engaging in volunteer work or paid or unpaid employment;
11. notify a corrective services officer of the nature of his employment, or offers of employment, the hours of work each day, the name of his employer and the address of the premises where he is or will be employed at least two days prior to commencement or any change;

**Residence**

12. reside at a place within the State of Queensland as approved by a corrective services officer by way of a suitability assessment and obtain written approval prior to any change of residence;
13. if this accommodation is of a temporary or contingency nature, comply with any regulations or rules in place at the accommodation and demonstrate reasonable efforts to secure alternative, viable long term accommodation to be assessed for suitability by Queensland Corrective Services;
14. not reside at a place by way of short term accommodation including overnight stays without the permission of a corrective services officer;

**Contact with victims**

15. not have any direct or indirect contact with a victim of his sexual offences;

**Requests for information**

16. respond truthfully to enquiries by a corrective services officer about his activities, whereabouts and movements generally;

**Disclosure of plans and associates**

17. disclose to a corrective services officer 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;
18. submit to and discuss with a corrective services officer a schedule of his planned and proposed activities on a weekly basis or as otherwise directed;
19. if directed by a corrective services officer, make complete disclosure of the terms of this order and the nature of his past offences to any person as nominated by the corrective services officer, who may contact such persons to verify that full disclosure has occurred;

**Motor vehicles**

20. notify a corrective services officer of the make, model, colour and registration number of any vehicle owned by or generally driven by him, whether hired or otherwise obtained for his use;

**Treatment and counselling**

21. attend upon and submit to assessment, treatment, and/or medical testing by a psychiatrist, psychologist, social worker, counsellor or other mental health professional as directed by a corrective services officer at a frequency and duration which shall be recommended by the treating intervention specialist;

22. permit any medical, psychiatrist, psychologist, social worker, counsellor or other mental health professional to disclose details of treatment, intervention and opinions relating to level of risk of re-offending and compliance with this order to Queensland Corrective Services if such a request is made for the purposes of updating or amending this order and/or ensuring compliance with this order;
23. attend any program, course, psychologist, social worker or counsellor, in a group or individual capacity, as directed by a corrective services officer in consultation with treating medical, psychiatric, psychological or other mental health practitioners where appropriate;

### **Contact with children**

24. not establish or maintain any supervised or unsupervised contact including undertaking any care of children under 16 years of age except with prior written approval of a corrective services officer. The respondent is required to fully disclose the terms of this order and nature of his past offences to the guardians and caregivers of the children before any such contact can take place;
25. advise a corrective services officer of any repeated contact with a parent of a child under the age of 16;
26. not be, without reasonable excuse, within 100 metres of schools or child care centres without the prior written approval of a corrective services officer;
27. not visit or attend on the premises of any establishment where there is a dedicated children's play area or child minding area without the prior written approval of a corrective services officer;
28. not visit public parks without the prior written approval of a corrective services officer;
29. obtain the prior approval of a corrective services officer before attending the premises of any shopping centre;
30. not join, affiliate with, attend on the premises of or attend at the activities carried on by any club or organisation in respect of which there are reasonable grounds for believing there are children who are members or children who are participants without the prior written approval of a corrective services officer;

### **Technology, telephones and other devices**

31. notify a corrective services officer of any computer or other device connected to the internet that he regularly uses or has used;
32. supply to a corrective services officer any password or other access code known to him to permit access to such computer or other device or content accessible through such computer or other device and allow any device where the internet is accessible to be randomly examined using a data exploitation tool to extract digital information or any other recognised forensic examination process;

33. supply to a corrective services officer the details of any email address, instant messaging service, chat rooms, or social networking sites including user names and passwords;
34. notify a corrective services officer before possessing any equipment that enables him to take photographs or record moving images;
35. allow any other device including a telephone or camera to be randomly examined. If applicable, account details and/or phone bills are to be provided upon request of a corrective services officer;
36. advise a corrective services officer of the make, model and phone number of any mobile phone owned, possessed or regularly utilised by him within 24 hours of connection or commencement of use and includes reporting any changes to mobile phone details;
37. not own, possess or regularly utilise more than one mobile phone without the prior written approval of a corrective services officer.

Signed:

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Registrar of the Supreme Court of Queensland