SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v Sorrenson* [2019] QSC 203
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **SHANE LACHLAN SORRENSON** (respondent)
FILE NO/S:	No 2946 of 2019
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED ON:	16 August 2019
DELIVERED AT:	Brisbane
HEARING DATE:	5 August 2019
JUDGE:	Davis J
ORDER:	**The respondent be released on 25 August 2019, subject to the requirements set out in the Schedule to these reasons until 25 August 2024.**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the respondent was subject to examination by psychiatrists for the purposes of the application – where the applicant conceded that adequate protection of the community could be ensured by a supervision order under Division 3 of Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) (the DPSOA) – where the respondent conceded the need for a supervision order under Division 3 of Part 2 of the *DPSOA* – where the length of the order under Division 3 of Part 2 of the DPSOA was not contested – whether the applicant presents a serious danger to the community in the absence of a supervision order under Division 3 of Part 2 of the DPSOA STATUTES – ACTS OF PARLIAMENT – INTERPRETATION – PARTICULAR WORDS AND PHRASES – GENERALLY – whether "offence of a sexual nature" means the offence as defined in the Act constituting the offence – whether "offence" in s 2 of the Criminal Code defines "offence" for the DPSOA

Acts Interpretation Act 1954, s 20C, 45(1)
Corrective Services Act 2006, s 209(1)
Criminal Code, s 316, s 328A(4), s 354, s 354A, s 355
Criminal Assets Recovery Act 1990 (NSW)
Drugs Misuse Act 1986
Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 3, s 5, s 8, s 11, s 12, s 13, s 13A, s 16

Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenues (NT) (2009) 239 CLR 27, cited
Alford v Parliamentary Joint Commission on Corporations and Financial Services (2018) 361 ALR 410, cited
Al-Kateb v Godwin (2004) 219 CLR 562, cited
Attorney-General v Kanaveilomani [2015] 2 Qd R 509 cited
Attorney-General for the State of Queensland v KAH [2019] QSC 36, followed
Attorney-General for the State of Queensland v Kanaveilomani [2013] QSC 86, cited
Attorney-General for the State of Queensland v Newman [2018] QSC 156, cited
Attorney-General for the State of Queensland v PCO [2019] QSC 44, followed
Attorney-General for the State of Queensland v Phineasa [2013] 1 Qd R 305, cited
Attorney-General for the State of Queensland v Stanbrook [2013] QSC 029, cited
Attorney-General for the State of Queensland v Sutherland [2006] QSC 268, cited
Attorney-General for the State of Queensland v Tilbrook [2012] QCA 279, cited
Dodge v Attorney-General for the State of Queensland (2012) 226 A Crim R 31, cited
Hamilton v Oades (1989) 166 CLR 486, cited
Lacey v Attorney-General (Qld) (2011) 242 CLR 537, cited
Lee v New South Wales Crime Commission (2013) 251 CLR 196, followed
Plaintiff S157/2002 v Commonwealth (2003) 211 CLR 476, cited
Potter v Minahan (1908) 7 CLR 277, cited
Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355, cited
R v Barlow (1997) 188 CLR 1, followed
R v Dabelstein [1966] Qd R 411, cited
R v KAR [2018] QCA 211, cited
R v Kiely [1974] WAR 180, considered
R v Independent Broad-Based Anti-Corruption Commissioner (2016) 256 CLR 459, cited
SZTAL v Minister for Immigration and Border Protection (2017) 91 ALJR 936, followed
Unions NSW v New South Wales (2019) 93 ALJR 166, cited

X7 v Australian Crime Commission (2013) 248 CLR 92, followed

COUNSEL: J Tate for the applicant
P F Richards for the respondent

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

[1] The respondent is presently serving a term of imprisonment. His full time release date is 25 August 2019.

[2] The Attorney-General applied for orders under the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) (the DPSOA). Dr Karen Brown, consultant forensic psychiatrist, examined the respondent and prepared a risk assessment report.[1] On 9 April 2019, on a hearing pursuant to s 8 of the DPSOA, Martin J held that there were reasonable grounds for believing the respondent is a serious danger to the community in the absence of an order under Part 2 Division 3 of the DPSOA and:

(i) appointed consultant psychiatrists, Dr Michael Beech and Dr Josephine Sundin to prepare risk assessment reports;[2]

(ii) set the hearing date of the application for final orders as 5 August 2019.[3]

[3] The current application by the Attorney-General is for final orders under s 13 of the DPSOA.

Statutory scheme

[4] Section 3 of the DPSOA identifies the objects of the legislation as follows:

> "**3 Objects of this Act**
>
> The objects of this Act are—
>
> (a) to provide for the continued detention in custody or supervised release of a particular class of prisoner to ensure adequate protection of the community; and
>
> (b) to provide continuing control, care or treatment of a particular class of prisoner to facilitate their rehabilitation."

[5] The objects are achieved by a scheme providing for the detention of prisoners beyond the expiry of their sentences, or alternatively their release upon supervision.

[6] By s 5, the Attorney-General may apply for both an order under s 8 of the DPSOA and also an order under Division 3 of Part 2.[4] Division 3 of Part 2 provides for the making of final orders. Applications can only be brought under s 5 against a "prisoner".

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1 Dated 4 June 2018.
2 *Dangerous Prisoners (Sexual Offenders) Act* 2003, ss 8, 11 and 12.
3 Section 8.
4 In which s 13 is located.

[7] Section 5, which authorises the application for orders and which contains the definition of "prisoner", is as follows:

> "**5 Attorney-General may apply for orders**
>
> (1) The Attorney-General may apply to the court for an order or orders under section 8 and a division 3 order in relation to a prisoner.
>
> (2) The application must—
>
> (a) state the orders sought; and
>
> (b) be accompanied by any affidavits to be relied on by the Attorney-General for the purpose of seeking an order or orders under section 8; and
>
> (c) be made during the last 6 months of the prisoner's period of imprisonment.
>
> (3) On the filing of the application, the registrar must record a return date for the matter to come before the court for a hearing (preliminary hearing) to decide whether the court is satisfied that there are reasonable grounds for believing the prisoner is a serious danger to the community in the absence of a division 3 order.
>
> (4) The return date for the preliminary hearing must be within 28 business days after the filing.
>
> (5) A copy of the application and any affidavit to be relied on by the Attorney-General must be given to the prisoner within 2 business days after the filing.
>
> (6) In this section—
>
> ***prisoner*** means a prisoner detained in custody who is serving a period of imprisonment for a serious sexual offence, or serving a period of imprisonment that includes a term of imprisonment for a serous sexual offence, whether the person was sentenced to the term or period of imprisonment before or after the commencement of this section."

[8] The definition of "prisoner" in s 5(6) introduces the concept of "a serious sexual offence". That term is defined as follows:

> "***serious sexual offence*** means an offence of a sexual nature, whether committed in Queensland or outside Queensland—
>
> (a) involving violence; or
>
> (b) against a child; or
>
> (c) against a person, including a fictitious person represented to the prisoner as a real person, whom the prisoner believed to be a child under the age of 16 years."

[9] Section 8 provides for a preliminary hearing. It is in terms:

"**8 Preliminary hearing**

(1) If the court is satisfied there are reasonable grounds for believing the prisoner is a serious danger to the community in the absence of a division 3 order, the court must set a date for the hearing of the application for a division 3 order.

(2) If the court is satisfied as required under subsection (1), it may make—

(a) an order that the prisoner undergo examinations by 2 psychiatrists named by the court who are to prepare independent reports; and

(b) if the court is satisfied the application may not be finally decided until after the prisoner's release day –

(i) an order that the prisoner's release from custody be supervised; or

(ii) an order that the prisoner be detained in custody for the period stated in the order."

[10] The term "prisoner", as used in s 8 is defined differently to the definition in s 5(6).[5] In s 8, the term "prisoner" has the same meaning as that defined for the purposes of the *Corrective Services Act* 2006.[6] I return to this issue later.[7]

[11] Section 8 introduces the notion of "serious danger to the community". This term is defined in s 13 which is the pivotal section in Division 3 of Part 2. Section 13 is in these terms:

"**13 Division 3 orders**

(1) This section applies if, on the hearing of an application for a division 3 order, the court is satisfied the prisoner is a serious danger to the community in the absence of a division 3 order (a ***serious danger to the community***).

(2) A prisoner is a serious danger to the community as mentioned in subsection (1) 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.

(3) On hearing the application, the court may decide that it is satisfied as required under subsection (1) only if it is satisfied—

(a) by acceptable, cogent evidence; and

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5 *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) s 2 and the dictionary which is the Schedule to the Act.

6 See *Attorney-General for the State of Queensland v Newman* [2018] QSC 156.

7 Paragraphs [78] – [80].

(b) to a high degree of probability;

that the evidence is of sufficient weight to justify the decision.

(4) In deciding whether a prisoner is a serious danger to the community as mentioned in subsection (1), the court must have regard to the following—

(aa) any report produced under section 8A;

(a) the reports prepared by the psychiatrists under section 11 and the extent to which the prisoner cooperated in the examinations by the psychiatrists;

(b) any other medical, psychiatric, psychological or other assessment relating to the prisoner;

(c) information indicating whether or not there is a propensity on the part of the prisoner to commit serious sexual offences in the future;

(d) whether or not there is any pattern of offending behaviour on the part of the prisoner;

(e) efforts by the prisoner to address the cause or causes of the prisoner's offending behaviour, including whether the prisoner participated in rehabilitation programs;

(f) whether or not the prisoner's participation in rehabilitation programs has had a positive effect on the prisoner;

(g) the prisoner's antecedents and criminal history;

(h) the risk that the prisoner will commit another serious sexual offence if released into the community;

(i) the need to protect members of the community from that risk;

(j) any other relevant matter.

(5) If the court is satisfied as required under subsection (1), the court may order—

(a) that the prisoner be detained in custody for an indefinite term for control, care or treatment (***continuing detention order***); or

(b) that the prisoner be released from custody subject to the requirements it considers appropriate that are stated in the order (***supervision order***).

(6) In deciding whether to make an order under subsection (5)(a) or (b)—

(a) the paramount consideration is to be the need to ensure adequate protection of the community; and

(b) the court must consider whether –

(i) adequate protection of the community can be reasonably and practicably managed by a supervision order; and

(ii) requirements under section 16 can be reasonably and practicably managed by Corrective Services officers.

(7) The Attorney-General has the onus of proving that a prisoner is a serious danger to the community as mentioned in subsection (1)."

[12] Orders which can be made under s 8 include orders that a prisoner undergo psychiatric examination. The evidence so obtained is then relied upon by the Attorney-General on the application brought for orders under s 13. Relevant to examinations ordered under s 8, are ss 11 and 12 which are in these terms:

"**11 Preparation of psychiatric report**

(1) Each psychiatrist examining the prisoner must prepare a report under this section.

(2) The report must indicate—

(a) the psychiatrist's assessment of the level of risk that the prisoner will commit another serious sexual offence—

(i) if released from custody; or

(ii) if released from custody without a supervision order being made; and

(b) the reasons for the psychiatrist's assessment.

(3) For the purposes of preparing the report, the chief executive must give each psychiatrist any medical, psychiatric, prison or other relevant report or information in relation to the prisoner in the chief executive's possession or to which the chief executive has, or may be given, access.

(4) A person in possession of a report or information mentioned in subsection (3) must give a copy of the report or the information to the chief executive if asked by the chief executive.

(5) Subsection (4) authorises and requires the person to give the report or information despite any other law to the contrary or any duty of confidentiality attaching to the report.

(6) If a person required to give a report or information under subsection (4) refuses to give the report or information, the chief executive may apply to the court for an order requiring the person to give the report or information to the chief executive.

(7) A person giving a report or information under subsection (4) or (6) is not liable, civilly, criminally or under an administrative process, for giving the report or information.

(8) Each psychiatrist must have regard to each report or the information given to the psychiatrists under subsection (3).

(9) Each psychiatrist must prepare a report even if the prisoner does not cooperate; or does not cooperate fully, in the examination.

12 Psychiatric reports to be given to the Attorney-General and the prisoner

(1) Each psychiatrist must give a copy of the psychiatrist's report to the Attorney-General within 7 days after finalising the report.

(2) The Attorney-General must give a copy of each report to the prisoner on the next business day after the Attorney-General receives the report."

[13] Section 16 deals with the content of supervision orders:

"**16 Requirements for orders**

(1) If the court or a relevant appeal court orders that a prisoner's release from custody be supervised under a supervision order or interim supervision order, the order must contain requirements that the prisoner—

(a) report to a Corrective Services officer at the place, and within the time, stated in the order and advise the officer of the prisoner's current name and address; and

(b) report to, and receive visits from, a Corrective Services officer as directed by the court or a relevant appeal court; and

(c) notify a Corrective Services officer of every change of the prisoner's name, place of residence or employment at least 2 business days before the change happens; and

(d) be under the supervision of a Corrective Services officer; and

(da) comply with a curfew direction or monitoring direction; and

(daa) comply with any reasonable direction under section 16B given to the prisoner; and

(db) comply with every reasonable direction of a Corrective Services officer that is not directly inconsistent with a requirement of the order; and

Example: If the only requirement under subsection (2) contained in a particular order is that the released prisoner must live at least 1km from any school—

1 A proposed direction to the prisoner would be directly inconsistent if it requires the released prisoner to live at least 2km from any school.

2 A proposed direction to the prisoner would not be directly inconsistent if it requires the released prisoner to live at least a stated distance from something else, including, for example, children's playgrounds, public parks, education and care service premises or QEC service premises.

3 A proposed direction to the prisoner would not be directly inconsistent if it requires the released prisoner not to live anywhere unless that place has been approved by a Corrective Services officer.

(e) not leave or stay out of Queensland without the permission of a Corrective Services officer; and

(f) not commit an offence of a sexual nature during the period of the order.

(2) The order may contain any other requirement the court or a relevant appeal court considers appropriate—

(a) to ensure adequate protection of the community; or

Example:

- a requirement that the prisoner must not knowingly reside with a convicted sexual offender
- a requirement that the prisoner must not, without reasonable excuse, be within 200m of a school
- a requirement that the prisoner must wear a device for monitoring the prisoner's location

(b) for the prisoner's rehabilitation or care or treatment."

[14] Section 13A deals with fixing the term of the supervision order. Section 13A provides:

"**13A Fixing of period of supervision order**

(1) If the court makes a supervision order, the order must state the period for which it is to have effect.

(2) In fixing the period, the court must not have regard to whether or not the prisoner may become the subject of—

(a) an application for a further supervision order; or

(b) a further supervision order.

(3) The period cannot end before 5 years after the making of the order or the end of the prisoner's period of imprisonment, whichever is the later."

Criminal history

[15] The respondent was born on 24 February 1971. He is 48 years of age. The respondent's criminal history begins with convictions in the Beenleigh Magistrate's Court on 26 July 1991 when he was 20 years of age. Those convictions were for offences against the *Drugs Misuse Act* 1986. Between 1991 and 2008 the respondent appeared fairly regularly in the Beenleigh Magistrates Court facing charges relating to drugs and dishonesty.

[16] On 11 July 2000 the respondent was sentenced in the Beenleigh District Court to a term of imprisonment of 12 months suspended after serving three months for an offence of dangerous operation of a vehicle causing death or grievous bodily harm.[8] That offence occurred on 22 September 1998.

[17] On 11 June 2010 the respondent was convicted in the Beenleigh District Court of burglary[9], rape[10], deprivation of liberty[11] and stealing[12]. These offences occurred on 6 January 2008. I will refer to these offences as "the 2008 offences".

[18] On the 2008 offences the respondent was sentenced to various terms of imprisonment with an effective head sentence of nine years' imprisonment with a declaration that 355 days had been spent in pre-sentence custody.

[19] On 21 July 2017 the respondent was convicted of an offence of deprivation of liberty.[13] That offence occurred on 19 August 2015. I will refer to that as "the 2015 offence".

[20] In relation to the 2015 offence the respondent was sentenced to a term of imprisonment of 14 months to be served cumulatively on the sentences imposed on the 2008 offences. The Attorney-General submits that both the 2008 offences and the 2015 offence are "serious sexual offences"[14] and therefore enliven the discretion under s 13 to make orders. I will therefore refer to the 2008 offences and the 2015 offence collectively as "the index offences" although for reasons which later appear it is contended by the respondent that the 2015 offence is not a "serious sexual offence".

[21] The respondent's parole history is of some significance. When serving the sentences for the 2008 offences, the respondent was granted parole on 7 July 2014. He was returned to custody on 5 May 2015 as he breached parole conditions by consuming alcohol and being present at licensed premises. On 8 July 2015 he was again released on parole but was charged with the 2015 offence and two counts of rape against the same complainant as the 2015 offence. He was returned to custody on 20 August 2015 and his parole was automatically cancelled by force of s 209(1) of the *Corrective Services Act* 2006 upon being sentenced to a term of imprisonment for the 2015 offence.

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8 *Criminal Code*, s 328A(4).
9 *Criminal Code*, s 419.
10 *Criminal Code*, s 349.
11 *Criminal Code*, s 355.
12 *Criminal Code*, s 398.
13 *Criminal Code*, s 355.
14 *Dangerous Prisoners (Sexual Offenders) Act* 2003, s 5(6) and definition of "serious sexual offence".

The index offences

The 2008 offences

[22] The complainant, a 77 year old woman, was in her home unit in which she lived when the respondent broke in. He threatened her and tied her wrists together with string. He threatened and sexually assaulted her including forcing his penis into her mouth. While in the unit he rummaged through the complainant's belongings and stole some things.

[23] There can be no doubt that the offence of rape was a "serious sexual offence" being "an offence of a sexual nature involving violence".[15]

The 2015 offence

[24] The complainant was known to the respondent. She had engaged in consensual intercourse with the respondent previously to the occasion of the offending.

[25] When arraigned before Judge Chowdhury in the District Court at Beenleigh on one count of deprivation of liberty and two counts of rape, the respondent pleaded guilty to the count of deprivation of liberty and not guilty to the two counts of rape. He was then tried on those two charges and acquitted.

[26] A transcript of the trial is not before me. The complainant in her police statement spoke of accompanying the respondent to a bushy area near Jacobs Well. She then spoke of the offending:

> "38. He said: 'I gotta tie you up for a minute'
>
> 39. I said: 'What are you doing?'
>
> 40. He said, 'I gotta tie you up cause I gotta do something.'
>
> 41. I was crying at that time.
>
> 42. Shane then put the dog collar around both my wrists.
>
> 43. He then went outside and I could hear that he was stuffing around outside the tent. I think that he was tying more wire up at this time because I could hear him stuffing around with the tent and the tree that was near the tent.
>
> 44. While I was inside the tent and Shane was outside I managed to get the dog collar off my wrists. It wasn't that tight and I managed to use my hands to undo it.
>
> 45. I remember that Shane came back in the tent and said: 'How the fuck did you get out of that - where have you put that'?
>
> 46. I threw the dog collar back at him.
>
> 47. He stripped his clothes off. I still had my clothes on.
>
> 48. Shane said: 'take your clothes off.'

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[15] *Attorney-General for the State of Queensland v Phineasa* [2013] 1 Qd R 305 and *Attorney-General for the State of Queensland v Tilbrook* [2012] QCA 279.

49. I said: ‘No, I’m not taking my clothes off’.

50. He said: ‘If you don’t take your clothes off I’ll stick my dick up your arse.’

51. I’ve taken my clothes off because I thought I had no choice. I was terrified at that point.

52. Shane then said: ‘Suck my dick or I’m going to choke ya and make ya do it’.

53. Shane was lying down naked. He was pushing my head to his penis and his penis went inside my mouth. It was probably about five minutes that Shane was forcing me to suck his penis. He was pushing my head to do it to start with but then I started doing it myself because I was scared of what Shane was going to do.

54. After about 5 minutes of this Shane told me to get on top of him. I did this because I was scared that Shane would hurt me. I hoped on top of Shane and he put his penis inside my vagina. He had sex with me for about 10 minutes and then ejaculated inside me. During this time Shane wasn’t saying anything.

55. After this Shane got up and put his clothes on. Shane was wearing jeans with board shorts under his jeans. He was wearing a t-shirt. He had a light blue hoodie style jumper, I think it was a surfy brand. He had Puma brand green and black joggers on.

56. I put my clothes back on as well. I wasn’t able to get fully dressed. By that I mean that I didn’t get a chance to zip my jeans up before Shane tied me up.

57. After he put his clothes on he said: ‘I’m going to tie you up and I’ll be back later.’

58. Shane then put the dog collar back on my hands.

59. I asked if I could go and he said: ‘Nah - your getting tied up and I’m going to see my brother.’

60. Shane then grabbed my hands and started to put the dog collar back around my wrists.

61. At this time I was crying and saying: ‘What have I done wrong, why are you doing this to me?’

62. Shane didn’t say anything.

63. Shane then started to thread some wire through the holes in the dog collar. The wire was green and it was about the thickness of a computer mouse cable.

64. I was lying down at this point with my head on a pillow. My head was towards the bush and my feet were pointing in the direction of Loves Road. Another way I would describe this is that my feet were towards the opening of the tent. My hands were up in the air. He tied the wire

to the tree at the back of the tent so it was lifting my hands up above my head.

65. Shane then put sticky tape around my mouth and the back of my head. There was about 3 layers of tape around my face. At the start it was hard to breathe but it loosened up a bit after I moved my head around and I could breathe a bit better.

66. He then thread this wire through the zip of the tent. He tied another dog collar and wire to my feet. The dog collar he tied my feet together with was blue. The wire on my feet was tied to the front of the tent.

67. After he had tied me up Shane said: 'I'll be outside watching to make sure you can't get out.' Shane then left. It was still daylight when Shane left. I would estimate that the time would have been about 4:30 pm.

68. I waited for 10 to 15 minutes to make sure he was gone."[16]

[27] In her statement the complainant then explained how she escaped.

[28] There was other evidence upon which the jury may have easily concluded that the complainant and the respondent had intercourse on the occasion of the 2015 offence. Presumably the acquittal on the counts of rape is explained by the jury having a reasonable doubt as to the complainant's evidence of an absence of consent, or perhaps the jury could not exclude the operation of s 24 of the *Code*.[17]

[29] There was, before me, a transcript of the remarks of Judge Chowdhury when sentencing the respondent for the 2015 offence. His Honour said this:

> "You have pleaded guilty at the beginning of the trial to an offence of deprivation of liberty. The circumstances of that offence are both bizarre and alarming. It is quite clear that you went to a unusually remote location in thick mangrove scrub and set up a tent, and clearly you have been acquitted of the charges of rape, but there was obviously some sexual activity and then something led you to tie the complainant up in the manner that has been set out in the evidence with dog collars being placed around her wrists and also legs and wires being then run from that and tied her, in effect, to trees.
>
> It was a particularly cruel thing to do, and what makes it even worse is you just left her there in the afternoon with no means of escape. You had the car, and you left in the car. And it is fortunate for her she was able to remove herself from her shackles, and one can only wonder what might have happened if she could not and whether you actually would return or not, and she would have been at the mercy of the elements. The motivation is unclear. It was certainly put to her in her evidence that it was to stop her from going and getting drugs, but there are easier ways of doing that, and one was simply to keep her with you.
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> Obviously, you did not want to do that because you wanted to go off and see the other woman you were seeing. What makes this particularly serious is

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[16] Affidavit of Todd Arnold Fuller QC, exhibits p 135-139.
[17] Mistake of fact.

> that this offence was committed whilst you were on parole for most serious offences of burglary and rape and deprivation of liberty where there are quite similar features of tying up, in that case an elderly woman who was subjected to really quite savage indignities, and I do not need to add anything to what Her Honour Judge McGinness said on that occasion. But it does give the Court concern for the protection of the community and that your prospects of rehabilitation may be less than might otherwise be the case if you did not have that significant history."[18]

Is the offence of deprivation of liberty capable of being a "serious sexual offence"

[30] Various offences have some sexual act, or some sexual character as a legal element to their definition. Examples can be seen in Chapters 22 and 23 of the *Code*. Rape[19] involves penetration. Sexual assault[20] requires proof of an element of indecency. These and numerous other offences are "offences of a sexual nature" by legal definition in the sense that the Crown cannot succeed in a prosecution without proof of a sexual element.

[31] Deprivation of liberty is an offence created by s 355 of the *Code*. It appears in Chapter 33 styled "Offences against liberty" which is a chapter that includes offences such as kidnapping[21] and kidnapping for ransom.[22]

[32] Section 355 provides as follows:

> "**355 Deprivation of liberty**
>
> Any person who unlawfully confines or detains another in any place against the other person's will, or otherwise unlawfully deprives another of the other person's personal liberty, is guilty of a misdemeanour, and is liable to imprisonment for 3 years."

[33] Section 355 is not comprised of any element which would make it, by its legal definition, "an offence of a sexual nature". Many cases of deprivation of liberty arise in circumstances where there is no sexual connotation whatsoever. For example, customers of a shop who are threatened and detained during the course of a robbery have had their liberty deprived and the offenders have offended against s 355, but such an offence is not one "of a sexual nature".

[34] The Attorney-General submits that here there was a sexual motivation to the deprivation of liberty of the complainant, and intercourse occurred on the occasion the offence was committed so that the 2015 offence is "one of a sexual nature" and is one "involving violence".

[35] Therefore, a question of law arises as to whether an offence which is not one "of a sexual nature" as statutorily defined can be an offence "of a sexual nature" if there is some sexual aspect to the manner in which the offence was committed. Ultimately, for reasons which become apparent later, the issue does not affect the result of the application.

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[18] Transcript of proceedings, *R v Sorrenson* (QDC, Chowdhury J, 21 July 2017): Affidavit of Renee Berry sworn 5 March 2019, exhibit RB-5, 39.
[19] Section 349.
[20] Section 352.
[21] Section 354.
[22] Section 354A.

[36] I have been unable to locate any case where this issue has been decided. The parties were also unable to find any direct authority.

[37] The terms "serious sexual offence" and "offence of a sexual nature" and "involving violence" as they appear in the DPSOA have been considered.[23] What was in contention in those cases was not whether the offences were "of a sexual nature". They were, by legal definition "offences of a sexual nature".

[38] In *Attorney-General for the State of Queensland v Phineasa*[24] and *Attorney-General for the State of Queensland v Tilbrook*,[25] the issue was whether sexual assaults, where there was very little force, were offences "involving violence". It was held that they were not. I consider *Phineasa* in more detail later.[26]

[39] In *Attorney-General for the State of Queensland v Sutherland*,[27] the respondent had been convicted of manslaughter[28] being an unintentional killing committed in the course of a sexual encounter involving bondage. Inappropriate force had been used during the sexual encounter which resulted in the woman's death. That offender received a term of imprisonment but was also sentenced for a subsequent offence of rape with that term ordered to be served cumulatively upon the manslaughter sentence. As the offender was, at the time an application was made under the DPSOA, serving a sentence for rape (unquestionably a "serious sexual offence"), the question as to whether the manslaughter offence was "an offence of a sexual nature involving violence" did not arise.

[40] In *Attorney-General for the State of Queensland v Stanbrook*,[29] the respondent was serving a sentence of imprisonment for a number of offences. These included an offence of administering a stupefying drug,[30] and several counts of sexual assault.[31] The offender had administered a drug to the complainant for the purposes of stupefying her with the intention of then sexually assaulting her which he did. The Attorney-General did not put the case for an order under s 13 of the DPSOA on the basis that the offence of administering a stupefying drug was "an offence of a sexual nature involving violence". The question put to Mullins J was "Did administration of a stupefying drug by the respondent in order to commit the sexual assaults mean that the sexual assaults involved violence?"[32] Her Honour concluded that the sexual assaults upon the complainant were offences of a sexual nature involving violence and the discretion under s 13 of the DPSOA had arisen. The current question did not arise for her Honour's consideration.

[41] Mr Richards of Counsel for the respondent submits that the term "offences of a sexual nature involving violence" encompasses only those offences of a sexual nature as legally

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[23] *Attorney-General for the State of Queensland v Phineasa* [2013] 1 Qd R 305, *Attorney-General for the State of Queensland v Tilbrook* [2012] QCA 279; and see *Dodge v Attorney-General for the State of Queensland* (2012) 226 A Crim R 31 where the issue was whether an offence against s 218A of the Code where a police officer was pretending to be a child was held not to be a sexual offence "against a child". The definition of "serious sexual offence" has since been amended.

[24] [2013] 1 Qd R 305.

[25] [2012] QCA 279.

[26] At [46].

[27] [2006] QSC 268.

[28] *Criminal Code*, s 303.

[29] [2013] QSC 029.

[30] *Criminal Code*, s 316

[31] Code, s 352.

[32] See the heading to the passage commencing at [17] of the judgment.

defined and that deprivation of liberty is not such an offence. In support of that contention:

(i) he submitted that the judgment of A Lyons J (as her Honour then was) in *Attorney-General v Kanaveilomani*[33] which was upheld on appeal[34] supports his submission.

(ii) he submitted that the definition should only be read in an extended way to include offences which, while not legally defined as having a sexual element, have that character in the way they have been committed, if the language is plain and unambiguous. In essence, he calls in aid the principle of legality.

[42] In *Attorney-General for the State of Queensland v Kanaveilomani*,[35] the respondent had been convicted in 1999 of offences which were clearly serious sexual offences. He was released on parole but further offended which was described in these terms:

> "The circumstances of that offending involved the respondent creeping into a home through an unlocked door at 3.30 am. To reach the complainant's bedroom, he needed to walk past a number of people asleep in the house including young children. The respondent then viciously attacked the complainant and she suffered severe head trauma as well as bleeding on the brain."[36]

[43] By s 5 of the DPSOA, an application must be made during the last six months of "the prisoner's period of imprisonment". The question in *Kanaveilomani* was whether the application under the DPSOA had to be made within six months of the expiration of the first sentence or the expiration of the subsequent sentence, and that was thought to depend upon whether the second sentence was imposed upon the commission of "a serious sexual offence"; in context, "an offence of a sexual nature involving violence". The passages upon which Mr Richards relies appear in the judgment of A Lyons J at first instance as follows:

> "[11] Since November 2010, the respondent has been serving a lengthy period of imprisonment for these violent offences committed in Janugry 2009. Arguably, they are not serious sexual offences within the definitions in the DPSOA.
>
> …
>
> [53] The real issue in this application is whether the DPSOA applies in the particular circumstances of this case and whether a Division 3 Order should be made. The legislation is clearly directed at a 'particular class of prisoner'. That is, a prisoner who 'is serving a period of imprisonment for a serious sexual offence'. The respondent is not currently serving a period of imprisonment for a serious sexual offence and he is not in the last six months of that period of imprisonment. He is, however, serving a long period of imprisonment and will not realistically be considered for release for another decade."

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33 [2013] QSC 86 at [11] and [35].
34 *Attorney-General for the State of Queensland v Kanaveilomani* [2015] 2 Qd R 509.
35 [2013] QSC 86.
36 At [8].

[44] The later offending by Kanaveilomani was an offence of doing grievous bodily harm.[37] That is not a "serious sexual offence" as legally defined in that the legal definition of "grievous bodily harm" does not require the offending to be of a "sexual nature". There was also nothing in the way the offence was committed which could be said to give rise to the offence being described as one "of a sexual nature". Her Honour's comments have to be seen in that light and the case is not relevant to the present issue. An appeal against her Honour's order was dismissed.[38]

[45] The principle of legality (although not given that label until much later) was recognised as early as 1908 by Connor J in *Potter v Minahan*[39] where it was said:

> "It is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness; and to give any such effect to general words, simply because they have that meaning in their widest, or usual, or natural sense, would be to give them a meaning in which they were not really used." (citations omitted)[40]

[46] In *Attorney-General for the State of Queensland v Phineasa*,[41] the Court of Appeal considered whether the term "involving violence" being part of the definition of "serious sexual offence" in the DPSOA, caught sexual offences where the degree of force involved was minor. Muir JA, with whom the other judges agreed, observed that the DPSOA operated to affect the right of a respondent to his liberty. His Honour followed judgments of Gleeson CJ in *Al-Kateb v Godwin*[42] and *Plaintiff S157/2002 v Commonwealth*[43] where the Chief Justice applied the principle of legality. Muir JA then read "involving violence" as only involving violence of such a kind to cause "significant injury or significant physical harm" consistently with the discerned objects of the legislation to protect the community from serious sexual offending.[44]

[47] A similar approach to the construction of the DPSOA was adopted in *Dodge v Attorney-General for the State of Queensland*.[45]

[48] The principle of legality was considered in the line of cases commencing with *X7 v Australian Crime Commission*.[46] In *X7* the issue was whether coercive powers vested in the Australian Crime Commission should be read so as to empower the Commission to interrogate, under threat of prosecution for non-compliance, persons who had been charged with offences the subject of the intended interrogation. A majority[47] read the provisions as not granting that power given that clear unambiguous language was required to so drastically alter the usual course of the criminal process by requiring the accused to speak.

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37 *Criminal Code*, s 320, or s 317 where intent to cause grievous bodily harm is made an offence.
38 [2015] 2 Qd R 509.
39 (1908) 7 CLR 277.
40 At 132.
41 [2013] 1 Qd R 305.
42 (2004) 219 CLR 562.
43 (2003) 211 CLR 476.
44 At [38]; and to protect children against sexual offending.
45 (2012) 226 A Crim R 31 [22].
46 (2013) 248 CLR 92.
47 Hayne and Bell JJ and Kiefel J (as her Honour then was).

[49] In *Lee v New South Wales Crime Commission*,[48] a majority held that a provision in the *Criminal Assets Recovery Act* 1990 (NSW) empowered the Supreme Court of New South Wales to make orders for the compulsory examination of persons even though they had been charged with offences arising from the subject matter of the examinations that were ordered. What *Lee*, and subsequent cases show,[49] is that the assumption created by the principle of legality may be discharged not only by express words of the statute but also by implication provided that the implication is sufficiently clear.[50] Ultimately, the matter is a question of construction.[51]

[50] The task of construction is to find the meaning of the words used by Parliament having regard to both context and purpose.[52] In the DPSOA there are expressed objects.[53] Those objects speak of detention and control of "a particular class of prisoner". Given that the "particular class of prisoner" is defined as those who have committed a "serious sexual offence" and that is in turn defined, relevantly here, as "an offence of a sexual nature involving violence", the expressed objects are of little direct assistance to the current question.

[51] However, the objects also speak of ensuring "adequate protection of the community".[54] This notion of protection of the community is a common theme throughout the DPSOA. It is mentioned in ss 3, 13(6), 16(2), 16C(1), 19(2), 19A(2), 19A(5), 21(7), 22(2), 22(7) and 30(4). The objects of the DPSOA are to provide adequate protection of the community against the commission of "serious sexual offences" namely, relevantly here, "offences of a sexual nature involving violence".

[52] Given that the purpose of the DPSOA is to protect the community from harm as a result of "offences of a sexual nature involving violence", it would be surprising if the act of stupefying for the purpose of sexual assault in *Stanbrook*, or the unlawful killing in the course of a sexual act involving bondage as in *Sutherland*, were not caught by the definition of "serious sexual offence".

[53] *R v Dabelstein*[55], a case which predated the DPSOA by about four decades, provides another illustration. There, the offender, apparently without the victim's consent[56], forcibly shoved a sharpened pencil into her vagina. The vaginal wall was ruptured, she bled to death and he was convicted of manslaughter.[57]

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48 (2013) 251 CLR 196.

49 *R v Independent Broad-Based Anti-Corruption Commissioner* (2016) 256 CLR 459 and *Alford v Parliamentary Joint Commission on Corporations and Financial Services* (2018) 361 ALR 410 at [48]-[51].

50 See the earlier case of *Hamilton v Oades* (1989) 166 CLR 486.

51 *Lee v New South Wales Crime Commissioner* (2013) 251 CLR 196 at [30] and following; *Lacey v Attorney-General (Qld)* (2011) 242 CLR 537.

52 *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenues (NT)* (2009) 239 CLR 27 at [47], *SZTAL v Minister for Immigration and Border Protection* (2017) 91 ALJR 936 at [14] per Kiefel CJ, Nettle and Gordon JJ and at [35]-[40] per Gageler J; and as to the notion of "purpose" see the explanation by Edelman J in *Unions NSW v New South Wales* (2019) 93 ALJR 166 at [168]-[172].

53 See s 3 set out at paragraph [4] of these reasons.

54 Section 3(a).

55 [1966] Qd R 411.

56 See p 413.

57 By criminal negligence; s 289 of the *Code* "Duty of persons in charge of dangerous things".

[54] The penetration of the victim's vagina with the pencil without her consent would, on the current definition of "rape"[58] constitute the offence of rape. Therefore, if the facts in *Dabelstein* occurred today and the offender was convicted of manslaughter the Crown would effectively prove a rape on the way to proving an unlawful killing.[59] If the term "offence of a sexual nature involving violence" is limited to offences which have a sexual element by legal definition, the offence of manslaughter on the facts of *Dabelstein* would not be caught. Again, that would be a surprising result.

[55] There is nothing expressed in the DPSOA which would suggest that "offences of a sexual nature" are only offences which, by their legal definition, could be said to be "of a sexual nature". The term "of a sexual nature" is quite broad and surely is intended to pick up criminal offences where the act constituting the offence is in fact "of a sexual nature".

[56] Further, while there is no definition in the DPSOA or the *Acts Interpretation Act* 1954[60] of the term "offence", there is in *the Code*. *The Code* defines "offence" in s 2 as:

> "**2 Definition of offence**
>
> An act or omission which renders the person doing the act or making the omission liable to punishment is called an offence."

[57] The *Acts Interpretation Act* assumes the definition of "offence" in s 2 of the *Code*. In particular;

(i) Section 20C provides;

> **"20C Creation of offences and changes in penalties**
>
> (1) In this section—
>
> ***Act*** includes a provision of an Act.
>
> (2) <u>If an Act makes an act or omission an offence, the act or omission is only an offence</u> if committed after the Act commences.
>
> (3) If an Act increases the maximum or minimum penalty, or the penalty, for an offence, the increase applies only to an offence committed after the Act commences."

(ii) Section 45(1) provides;

> "(1) <u>If an act or omission is an offence</u> under each of 2 or more laws, the offender may be prosecuted and punished under any of the laws, but the offender may not be punished more than once for the same offence."

(iii) "Indictable offence" is defined as;

> ***"<u>indictable offence</u>*** <u>includes an act or omission</u> committed outside Queensland that would be an indictable offence if it were committed in Queensland." (emphasis added)

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58 Section 349(2)(b) of the *Code*.
59 Section 303 of the *Code*.
60 The term "offence" does appear frequently in the Acts Interpretation Act; ss 20C, Part 11.

[58] In *R v Barlow*[61] the question arose as to whether, by the party provisions of the *Code* (ss 7 and 8), a party to an unlawful killing by the person who did the act which killed (the actor) could be guilty of manslaughter notwithstanding that the actor was guilty of murder. That gave rise to consideration of the term "offence" in s 8 which made the party liable for the "offence" committed by the actor in prosecution of the common intention to prosecute an unlawful purpose. Was the "offence" the legally defined offence committed by the actor (murder), or was it the act or omission giving rise to criminal liability (blow struck to the victim) which could constitute murder or manslaughter depending upon the state of mind of the actor and of the party?

[59] In the joint judgment of Brennan CJ, Dawson and Toohey JJ, it was held that s 2 of the *Code* made it clear that the reference to "offence" in s 8 was a reference to the act or omission which gave rise to criminal liability. Given the facts of *Barlow*, the "offence" there was not murder but the act which killed. It followed then that Barlow, having no intention that the actor should inflict a life threatening beating upon the victim, could be convicted of manslaughter; an unlawful killing without intent to kill or do grievous bodily harm.[62]

[60] It would follow that if the word "offence" as it appears in the DPSOA in the phrase "an offence of a sexual nature involving violence" has the same meaning as defined by s 2 of the *Code*, the phrase refers to the "act or omission" being of a "sexual nature" rather than the offence as defined.

[61] If so, deprivation of liberty may be an offence "of a sexual nature" depending upon the nature of the act which constitutes the offence.

[62] The incorporation into a statute of a term defined in another statute has its difficulties. In *Yager v R*[63], Mason J (as his Honour then was) said, of the meaning of "cannabis plant" in a statute:

> "[43] A statutory definition exists for the purposes of the particular statute in which it is contained, unless it appears in a statute expressed to have a more general application, such as the Act Interpretation Act. Indeed, the opening words of s 4 of the Narcotic Drugs Act, "In this Act, unless the contrary intention appears", explicitly confine the operation of the definitions there contained to the operative provisions of the Act itself. There is, therefore, no legitimate foundation for resorting to the definitions contained in the Narcotic Drugs Act for the purpose of modifying or qualifying another statutory definition contained in a different Act of Parliament."

[63] Section 1 of the *Code* provides various definitions. Relevantly:

> "**1 Definitions**
>
> In this Code –
>
> '**adult**' means a person of or above the age of 18 years.
>
> …

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61 (1997) 188 CLR 1, considered in depth by Philippides J in *R v KAR* [2018] QCA 211 at [52] – [57].
62 *Criminal Code*, ss 302 and 303.
63 (1977) 139 CLR 28.

'**offence**' see section 2 …" (emphasis added)

[64] The definitions in s 1 are limited to the words as they appear in the *Code*. The definition in s 2, by force of the words "in this Code" applies to the term "offence" as it appears in the *Code*. However, s 2 itself is not qualified by the words "in this Code".

[65] In *Kiely v R*[64], a question arose as to whether the definition of the term "offence" in the Western Australian Code included an offence against a Commonwealth statute. The Western Australian Court of Criminal Appeal held that it did not. Burt J held "… that the legislative intention was that the definite quality of the act or omission in terms of consequences should also be attached to the act or omission by a statute of the West Australian Parliament".[65] His Honour went on to say that he thought the term "offence" may only refer to offences created by the *Criminal Code*[66], although that was doubted in *Renwick v Bell*.[67]

[66] There are various provisions in the *Code* which are expressed to apply to statutes beyond the *Code*. Sections 16 and 36 are examples.

[67] Other provisions, although not being expressed to apply beyond the *Code* itself, have been held to apply to other statutes creating offences. In *Renwick v Bell*[68], it was held that s 7 (one of the party provisions) applied to all offences against the statute law of Queensland. It was held that through s 7 a person could be a party to a simple offence committed by another.

[68] In *Barkworth v Sidhu*[69], a charge of a simple offence was laid under the *Trade Measurement Act* 1990.[70] Punnets of blueberries labelled as containing 125 grams were located at the Brisbane Markets at Rocklea. The punnets in fact weighed less than 125 grams. The packing had been done in New South Wales. One of the questions which arose was whether s 12 of the *Code* applied to summary offences under the *Trade Measurement Act*. That section provides:

> "**12 Application of Code as to offences wholly or partially committed in Queensland**
>
> (1) This Code applies to every person who does an act in Queensland or makes an omission in Queensland, which in either case constitutes an offence.
>
> (2) Where acts or omissions occur which, if they all occurred in Queensland, would constitute an offence and any of the acts or omissions occur in Queensland, the person who does the acts or makes the omissions is guilty of an offence of the same kind and is liable to the same punishment as if all the acts or omissions had occurred in Queensland.

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64 [1974] WAR 180.
65 At 182.
66 At 183; a reference to the Western Australian Criminal Code.
67 [2002] 2 Qd R 326 at [23].
68 [2002] 2 Qd R 326.
69 [2011] 1 Qd R 419.
70 Now repealed.

(3) Where an event occurs in Queensland caused by an act done or omission made out of Queensland which, if done or made in Queensland, would constitute an offence, the person who does the act or makes the omission is guilty of an offence of the same kind and is liable to the same punishment as if the act or omission had occurred in Queensland.

(3A) It is a defence to prove that the person did not intend that the act or omission should have effect in Queensland.

(4) Where an event occurs out of Queensland caused by an act done or omission made in Queensland, which act or omission would constitute an offence had the event occurred in Queensland, the person who does the act or makes the omission is guilty of an offence of the same kind and is liable to the same punishment as if the event had occurred in Queensland.

(5) This section does not extend to a case where the only material event that occurs in Queensland is the death in Queensland of a person whose death is caused by an act done or an omission made out of Queensland at a time when the person was out of Queensland."

[69] While s 2 of the *Code* defines "offence", s 3 concerns the division of offences. Section 3 provides:

"**3 Division of offences**

(1) Offences are of 2 kinds, namely, criminal offences and regulatory offences.

(2) Criminal offences comprise crimes, misdemeanours and simple offences.

(3) Crimes and misdemeanours are indictable offences; that is to say, the offenders can not, unless otherwise expressly stated, be prosecuted or convicted except upon indictment.

(4) A person guilty of a regulatory offence or a simple offence may be summarily convicted by a Magistrates Court. (5) An offence not otherwise designated is a simple offence."

[70] In *Barkworth,* Fraser JA[71] said:

"[30] In *R v Goulden,*[72] Thomas J, with whose reasons Mackenzie and Byrne JJ agreed, expressed the view that s 12(2) and (3) of the *Criminal Code* might be invoked in relation to offences other than those created by the *Criminal Code,* in that case offences under the *Drugs Misuse Act*. That conclusion was not necessary for the decision in that case but it is consistent with this Court's decision in *Renwick v Bell*[73] that s 7 of the *Criminal Code* applies to all offences against the statute law

[71] With whom the other members of the Court; Keane JA and Atkinson J agreed.
[72] [1993] 2 Qd R 534 at 535 – 536.
[73] [2002] 2 Qd R 326.

> of Queensland. Some of the reasons for that decision given by Davies JA have no application in relation to s 12, but one reason for the decision was Davies JA's conclusion that the term "simple offence" in s 3 of the *Criminal Code* bears the meaning given in the *Justices Act*.[74] Davies JA reached that conclusion after an extensive review of the relevant provisions of the *Criminal Code* and the authorities on the point. I would adopt the same view in relation to the term "offence" in s 12. As the offence against s 32(1)(a) of the *Trade Measurement Act* is a simple offence as that term is defined in the *Justices Act* there is no obstacle to the application of s 12(3). Accordingly, if s 32(1)(a) did not apply of its own force, I think that s 12(3) would render the respondent liable to conviction and the same punishment in any event. As I have indicated, however, I would not base my decision on this view but upon the proper construction of s 32(1)(a) itself."

[71] There is no case that I could locate which stands as authority for the proposition that the definition of "offence" in s 2 of the *Code* applies to that term used in other Queensland statutes. However, *Renwick v Bell* and *Barkworth v Sidhu* demonstrate that various provisions of the *Code* apply to offences created by other statutes.

[72] As already observed, there is no definition of "offence" in the DPSOA. There are other significant statutes where the term "offence" is used but the statutes do not provide a definition of the term. I have already referred to the *Acts Interpretations Act* 1954. Another example is the *Penalties and Sentences Act* 1992. The *Corrective Services Act* defines "offence" but only as "offence means an offence against an Act". While the *Justices Act* 1886[75] defines both "simple offence" and "indictable offence", there is no separate definition of "offence". The notion of an "offence" in the law of Queensland is[76] that as defined by the State's *Criminal Code*; s 2.

[73] It follows then that the term "offence" in the DPSOA as it appears in the phrase "offence of a sexual nature involving violence" refers not to the "offence" as statutorily defined, but to the act or omission constituting the breach of the criminal law.

[74] If the act constituting the offence of "deprivation of liberty" is an act "of a sexual nature" then the offence of deprivation of liberty may, as a matter of law, be an "offence of a sexual nature involving violence".

Is the 2015 offence "an offence of a sexual nature involving violence"?

[75] Forcibly binding the complainant with a dog collar, wire and tape is an act "involving violence". The question is whether it is "an act of a sexual nature".

[76] Given that the jury acquitted the respondent of the allegations that he raped the complainant before he bound her, it is difficult to connect the deprivation of liberty to any sexual act or intention. It is unclear what part of the complainant's version was accepted by the jury and there is insufficient evidence upon which I can make findings.

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74 *Renwick v Bell* [2002] 2 Qd R 326 per Davies JA (McMurdo P and Thomas JA agreeing) at [27].
75 Which predates the *Code*.
76 Subject to contrary intention in an Act other than the *Code*.

[77] As Judge Chowdhury observed, the respondent's behaviour in committing the 2015 offence was bizarre. However, on the material before me it cannot be said to be "an offence of a sexual nature".

Is the respondent a "prisoner"?

[78] As already observed, there are two definitions of "prisoner" used in the DPSOA. The first is found in s 5 and that definition is used for determining whether a respondent to an application is liable to that application being made. For all other purposes, the term "prisoner" in the DPSOA is as that term is defined in the *Corrective Services Act* 2006.

[79] The respondent is most definitely a "prisoner" now. He is "a person who is in the chief executive's custody"[77] and is therefore a "prisoner" both for the purposes of the *Corrective Services Act* 2006 and s 13 of the DPSOA.

[80] Even if the 2015 offence is not a "serious sexual offence" being "an offence of a sexual nature involving violence", the respondent was still a "prisoner" for the purposes of s 5.[78] This is because, even though he was released on parole in relation to the sentences imposed for the 2008 offences, that parole was cancelled once he was convicted for the 2015 offence. From that point until his full time release date he was serving a term of imprisonment "that includes a term of imprisonment for a serious sexual offence."[79]

The psychiatrists' evidence

Diagnoses

[81] Dr Brown diagnosed the respondent as suffering from:

- Substance Use Disorder (in remission in controlled environment); and
- possible low to borderline IQ, requiring further evaluation.

[82] Dr Sundin diagnosed the respondent as suffering from:

- Substance Use Disorder (cannabis and alcohol in remission in custody); and
- strong avoidant personality traits.

[83] Dr Beech diagnosed the respondent as suffering from:

- personality vulnerability traits (self-esteem, problem solving, self-awareness, coping with stress and loss, and avoidance); and
- Substance Use Disorder (past).

Risk

[84] Dr Brown administered various risk assessment tools and on the question of risk concluded:

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[77] *Corrective Services Act* 2006 dictionary.
[78] *Attorney-General for the State of Queensland v Newman* [2018] QSC 156.
[79] *Attorney-General v Kanaveilomani* [2015] 2 Qd R 509 at 523 and *Dangerous Prisoners (Sexual Offenders) Act* 2003, s 5(6).

> "The Static-99 score indicates a well above average risk of offending and the RSVP indicates a range of outstanding risk management needs that overall suggest that without appropriate supervision in the community the risk of sexual (and non-sexual) re-offending would be high. His risk of reoffending would be particularly exacerbated in context of a relationship, during breakdown of a relationship or if intoxicated. Victims may include intimate partners or strangers. He would struggle to maintain abstinence from substances if stressors occurred, either in context of a relationship or otherwise (for example the death of a family member).
>
> It is my view that if Mr Sorrenson were to be released into the community without any supervision, the risk of sexual reoffending would be high. Previous supervision and offender management programs have not been sufficient to prevent recidivism. A more intense and assertive supervision program would likely reduce Mr Sorrenson's risk to others to a low-moderate and manageable level in the community."

[85] As to risk, Dr Sundin opined:

> "In my opinion Mr Sorrenson is a 48-year-old man of dull intellect with a lengthy history of impulsivity and lack of consequential thinking. He has a longstanding history of an avoidant coping pattern. He has a longstanding history of both abuse of and reliance on alcohol and cannabis. The use of both substances was relevant to the 2008 offence.
>
> His sexual offences do not fall into the very serious category I have seen with many other prisoners who have come under high levels of supervision in order to contain his risk. While there is no clear evidence of a paraphilia, there were concerning coercive elements to the serious sexual offence he committed in 2008. There was clear coercion in the 2015 offence, although Mr Sorrenson denies this deprivation of liberty was sexually motivated. Although the complainant alleged rape, Mr Sorrenson was subsequently found not guilty in a trial by jury.
>
> Although the current STATIC 99 R raises him to the category of offenders who are considered to be moderate to high risk for future sexual recidivism, I note that he was not convicted of the two charges of rape in the 2015 offences and the 2008 offence was not determined by the presiding Judge to warrant a serious violent offence categorisation. The victim in the 2008 offence stated that she was not hurt …
>
> The principal issue with Mr Sorrenson is the need for him to abstain from the use of intoxicating substances and for him to avoid relapse back into avoidant coping patterns.
>
> If released into the community unsupervised the risk for sexual recidivism is not imminent but would rise if he relapsed back into use of intoxicating substances. The risk he poses to the community can be mitigated by ensuring that he remains abstinent from the use of intoxicants, is engaged with meaningful employment, is engaged with professional support services such as ATODS and a psychologist and is assisted to develop a range of pro-social activities which will enhance his capacity for developing a supportive network.

> If Mr Sorrenson were to offend again it is likely to occur in the setting of intoxication and would involve a sexual assault upon an adult female. The risk of an offence would be heightened if he was experiencing significant psycho-social stressors with which he was not coping.
>
> Overall, I consider his risk to the community for sexual recidivism is moderate to low and that any risk posed could be reduced to low if he were placed on a supervision order which addressed the risk factors identified above. Principle amongst these would be a requirement for him to abstain from intoxicants.
>
> Should the Court impose a supervision order I would recommend that Mr Sorrenson be required to abstain from intoxicants for the entirety of the supervision order."

[86] Dr Beech described risk as:

> "In my opinion, the risk of further sexual re-offending is in the moderate range.
>
> Ordinarily, the risk of re-offending would substantially decline after the age of 40 years, but there are some factors in Mr Sorrenson's case that militate against this. His offending commenced later in life, at the age of 36 years. He re-offended on parole at the age of 44 years. He has shown continued signs of limited self-awareness, poor problem-solving abilities, and poor planning. His relationship difficulties have continued. I think that he has limited personal supports in the community. Although he has completed programs, I think that he has difficulty holding onto his understanding of his offending, the risks, and the strategies that he might use to mitigate those risks.
>
> On the other hand, he does understand, or he asserts that he understands, the need to remain abstinent. He has generally been employed and not particularly otherwise anti-social or disruptive. His behaviour in prison has been generally compliant. There is nothing that points to continued sexual preoccupation or attitudes that condone sexual violence. A concern though is that on release, his poor problem-solving skills will come to fore, he will associate or seek to associate with people in problematic relationships, and he will find himself again acting stupidly and unable to get out of a predicament, and in that context he will re-offend.
>
> I think that if he were to offend, it would most likely occur while he is intoxicated, probably in an unpremeditated fashion. The return to substance use, or the offending, might be triggered by particular difficulties in his life that have stressed him and brought issues of grief, loss, depression or low self-esteem to the fore. The victim is most likely to be an adult female. Physical coercion is likely to occur, and there is a particular concern about the use of restraints.
>
> This risk would be substantially reduced, to low, by supervision and monitoring ..."

Period of risk

[87] Section 13A of the DPSOA provides that the Court shall fix the term of the supervision order. As a supervision order ensures the "adequate protection of the community",[80] the supervision order must subsist while the respondent remains an unacceptable risk[81] if in the community when not subject to a supervision order. The term of the supervision order must extend to that point when the respondent ceases to be an unacceptable risk of committing a serious sexual offence.[82]

[88] Neither Dr Brown nor Dr Sundin expressed any opinion as to the length of a supervision order. Dr Beech opined that it should be at least five years. There is no evidence from which I could conclude the supervision order ought to be longer than five years.

Conclusion/Orders

[89] I accept the evidence of the psychiatrists.

[90] I find the evidence of the psychiatrists to be acceptable cogent evidence[83] which proves to a high degree of probability that the respondent now[84] is an unacceptable risk of committing a serious sexual offence if released into the community without an order made under Division 3 of Part 2 of the DPSOA.[85]

[91] I am satisfied that a supervision order containing appropriate conditions will ensure adequate protection of the community by removing any unacceptable risk that the prisoner will commit a serious sexual offence.[86]

[92] The parties have agreed on the terms of the appropriate supervision order and I accept that the draft order that has been provided to me contains all necessary terms and conditions.

[93] The parties accept that the supervision order should be in place for a period of five years. I agree.

[94] I make an order that the respondent be released on 25 August 2019, subject to the requirements set out in the Schedule to these reasons until 25 August 2024.

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80 Section 13(6)(b)(i).
81 Section 13(2).
82 Section 13(1) and (2) and the Schedule; definition of "serious sexual offence"; and see *Attorney-General for the State of Queensland v PCO* [2019] QSC 44 at [68]-[70] and *Attorney-General for the State of Queensland v KAH* [2019] QSC 36 at [53]-[54].
83 *Dangerous Prisoners (Sexual Offenders) Act* 2003, s 13(3).
84 *Attorney-General in the State of Queensland v Kanaveilomani* [2015] 2 Qd R 509, [118]-[120].
85 *Dangerous Prisoners (Sexual Offenders) Act* 2003, s 13(1) and (5).
86 *Dangerous Prisoners (Sexual Offenders) Act* 2003, s 13(2) and (6).

SUPREME COURT OF QUEENSLAND

SCHEDULE TO:	*Attorney-General for the State of Queensland v Sorrenson* [2019] QSC 203
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **SHANE LACHLAN SORRENSON** (respondent)

SCHEDULE

THE COURT, being satisfied that there are reasonable grounds for believing that the respondent, Shane Lachlan Sorrenson, is a serious danger to the community in the absence of an Order made under Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (the Act), ORDERS THAT:

1. The respondent be subject to the following requirements until 25 August 2024:

The respondent must:

General terms

(1) be under the supervision of a Corrective Services officer for the duration of the order;

(2) 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 his release from custody and at that time advise the officer of his current name and address;

(3) report to, and receive visits from, a Corrective Services officer at such times and at such frequency as determined by Queensland Corrective Services;

(4) notify a Corrective Services officer for every change of the respondent's name, place of residence or employment at least two (2) business days before the change occurs;

(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 the order;

(8) not commit an offence of a sexual nature during the period of the order;

(9) not commit an indictable offence during the period of the order;

(10) not have any direct or indirect contact with a victim of his sexual offences;

Employment

(11) 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;

(12) 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 (2) business days prior to commencement or any change;

Residence

(13) not leave or stay out of Queensland without the permission of a Corrective Services officer;

(14) 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;

(15) if this accommodation is of a temporary or contingency nature, comply with any regulations or rules in place at this accommodation and demonstrate reasonable efforts to secure alternative, viable long term accommodation to be assessed for suitability by Queensland Corrective Services;

(16) not reside at a place by way of short term accommodation including overnight stays without the permission of a Corrective Services officer;

Disclosure of weekly plans and associates

(17) respond truthfully to enquiries by a Corrective Services officer about his activities, whereabouts and movements generally;

(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) 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;

(20) if directed by a Corrective Services officer, make complete disclosure of the terms of this supervision order and the nature of his past offences to any person as nominated by a Corrective Services officer who may contact such persons to verify that full disclosure has occurred;

(21) notify a Corrective Services officer of all personal relationships entered into by him;

Motor vehicles

(22) 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;

Alcohol and other Substances

(23) abstain from the consumption of alcohol and illicit drugs for the duration of the order;

(24) submit to any form of drug and alcohol testing including both random urinalysis and breath testing as directed by a Corrective Services officer;

(25) disclose to a Corrective Services officer all prescription and over the counter medication that he obtains;

(26) not visit premises licensed to supply or serve alcohol, without the prior written permission of a Corrective Services officer;

Treatment

(27) 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;

(28) permit any medical, psychiatrist, psychologist, social worker, counsellor or other mental health professional to disclose details of attendance and compliance with treatment and provide opinions relating to level of risk of re-offending to Queensland Corrective Services if such a request is made for the purposes of updating or amending the supervision order and/or ensuring compliance with this order;

(29) 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;

Access to Information Technology and Phones

(30) notify a corrective services officer of any computer or other device connected to the internet that he regularly uses or has used;

(31) 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;

(32) supply to a Corrective Services officer details of any email address, instant messaging service, chat rooms, or social networking sites including user names and passwords;

(33) 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, including reporting any changes to mobile phone details;

(34) 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.

Signed: . . . . . .
Registrar of the Supreme Court of Queensland