SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v Jacob* [2019] QSC 289
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **RAYNARD SMITH JACOB** (respondent)
FILE NO/S:	BS No 5548 of 2015
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	22 November 2019
DELIVERED AT:	Brisbane
HEARING DATE:	22 November 2019
JUDGE:	Davis J
ORDER:	**The court, being satisfied to the requisite standard that the respondent Raynard Smith Jacob has contravened a requirement of a supervision order made by Justice A Lyons on 22 September 2015 as amended by order of Justice Ryan on 26 February 2019, orders that:** **1. the respondent Raynard Smith Jacob be released from custody no later than 12pm on Monday, 25 November 2019 and continue to be subject to the supervision order made by Justice A Lyons on 22 September 2015 as amended by Justice Ryan on 26 February 2019.** **2. A copy of the written submissions of Ms Gover of Counsel be sent to Ms Jolene Monson, High Risk Offender Management Unit, 69 Ann Street, Brisbane, together with a copy of these reasons.**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where a supervision order was made with respect to the respondent under Division 3 of Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) (the

Act) – where it was alleged that the respondent had contravened a requirement of the supervision order under Division 3 of Part 2 of the Act – where a warrant was issued for the arrest of the respondent pursuant to the Act and the respondent was detained in custody – where the respondent has been the subject of proceedings previously for breach of the supervision order – where the applicant sought orders with respect to the respondent under s 22 of the Act – where the applicant had not committed any further serious sexual offences – whether the adequate protection of the community could, despite the contravention of the order, be ensured by the existing supervision order

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 2, s 3, s 13, s 20, s 22

Attorney-General for the State of Queensland v Ellis [2012] QCA 182, cited
Attorney-General (Qld) v Fardon [2013] QCA 64, cited
Attorney-General for the State of Queensland v Fardon [2019] QSC 2, cited
Attorney-General (Qld) v Fisher [2018] QSC 74, cited
Attorney-General v Francis [2007] 1 Qd R 396, followed
Attorney-General for the State of Queensland v Jacob [2015] QSC 273, cited
Attorney-General for the State of Queensland v KAH [2019] QSC 36, followed
Attorney-General v Lawrence [2010] 1 Qd R 505, cited
Attorney-General (Qld) v Sands [2016] QSC 225, cited
Attorney-General (Qld) v Yeo [2008] QCA 115, cited
Fardon v Attorney-General (Qld) (2004) 223 CLR 575, cited
Kynuna v Attorney-General (Qld) [2016] QCA 172, cited
LAB v Attorney-General [2011] QCA 230, cited
Turnbull v Attorney-General (Qld) [2015] QCA 54, followed

COUNSEL: B Mumford for the applicant
K W Glover for the respondent

SOLICITORS: GR Cooper, Crown Solicitor for the applicant
Anderson Fredericks Turner for the respondent

[1] The Attorney-General sought orders under s 22 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (the Act) alleging breaches by the respondent of the supervision order which was made by Justice A Lyons on 22 September 2015[1] and which was amended by order of Justice Ryan on 26 February 2019 (the amended supervision order being "the supervision order"). The length of the supervision order is five years, and is due to expire in September 2020.

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[1] *Attorney-General for the State of Queensland v Jacob* [2015] QSC 273.

[2] The respondent admits the breaches alleged. He submits that he ought to be released back into the community subject to the supervision order without the supervision order being further amended. The applicant agrees that is the appropriate outcome.

Statutory context

[3] The Act provides for the continued detention or supervised release of "a particular class of prisoner".[2] The objects of the Act are twofold, namely the protection of the community and the control, care and treatment of certain prisoners to facilitate their rehabilitation.[3] The prisoners the subject of the Act are those serving a term of imprisonment for a "serious sexual offence"[4] which is "an offence of a sexual nature … involving violence" or "an offence of a sexual nature … against a child".[5]

[4] Part 2 of the Act provides that the Attorney-General may apply to the Court for either a continuing detention order[6] or a supervision order.[7] A continuing detention order requires the detention in custody of the prisoner beyond the date of expiry of the sentence which they are then serving. A supervision order provides for the release of the prisoner under supervision notwithstanding the expiry of the sentence.

[5] Central to the scheme of the Act is s 13. Section 13 has significance to the present application as the provisions which deal with breaches of supervision orders[8] adopt terms and concepts included in s 13. The section 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 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.

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2 *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) s 3.

3 Section 3 and see generally *Fardon v Attorney-General (Qld)* (2004) 223 CLR 575.

4 Section 5(6).

5 Sections 2 and the Schedule (Dictionary).

6 Sections 13, 14 and 15.

7 Sections 13, 15 and 16.

8 Primarily see section 22.

(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

(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)."

[6] Therefore:

(i) the test under s 13 is whether the prisoner is "a serious danger to the community";[9]

(ii) that initial question is answered by determining whether there is an "unacceptable risk that the prisoner will commit a serious sexual offence"[10] if no order is made;

(iii) if that conclusion is reached, then a supervision order (as opposed to a continuing detention order) can only be made where the adequate protection of the community can be ensured by the making of a supervision order;[11]

(iv) where "adequate protection of the community" can be ensured by a supervision order, then the making of a supervision order ought to be preferred to the making of a continuing detention order.[12]

[7] Breach of a supervision order has consequences under Division 5 of Part 2 of the Act. Section 20 provides, relevantly:

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[9] Section 13(1).

[10] Section 13(1) and (2).

[11] Section 13(6).

[12] *Attorney-General v Francis* [2007] 1 Qd R 396 at [39]; *Attorney-General (Qld) v Yeo* [2008] QCA 115; *Attorney-General v Lawrence* [2010] 1 Qd R 505; *LAB v Attorney-General* [2011] QCA 230; *Attorney-General for the State of Queensland v Ellis* [2012] QCA 182; *Attorney-General (Qld) v Fardon* [2013] QCA 64.

"**20 Warrant for released prisoner suspected of contravening a supervision order or interim supervision order**

(1) This section applies if a police officer or corrective services officer reasonably suspects a released prisoner is likely to contravene, is contravening, or has contravened, a requirement of the released prisoner's supervision order or interim supervision order.

(2) The officer may, by a complaint to a magistrate, apply for a warrant for the arrest of the released prisoner directed to all police officers and corrective services officers to arrest the released prisoner and bring the released prisoner before the Supreme Court to be dealt with according to law.

(3) The magistrate must issue the warrant, in the approved form, if the magistrate is satisfied the grounds for issuing the warrant exist.

(4) However, the warrant may be issued only if the complaint is under oath.[13]

(6) The warrant may state the suspected contravention in general terms … ."

[8] Section 22 provides:

"**22 Court may make further order**

(1) The following subsections apply if the court is satisfied, on the balance of probabilities, that the released prisoner is likely to contravene, is contravening, or has contravened, a requirement of the supervision order or interim supervision order (each the existing order).

(2) Unless the released prisoner satisfies the court, on the balance of probabilities, that the adequate protection of the community can, despite the contravention or likely contravention of the existing order, be ensured by the existing order as amended under subsection (7), the court must—

(a) if the existing order is a supervision order, rescind it and make a continuing detention order; or

(b) if the existing order is an interim supervision order, rescind it and make an order that the released prisoner be detained in custody for the period stated in the order.

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[13] There is no subsection (5).

(3) For the purpose of deciding whether to make a continuing detention order as mentioned in subsection (2)(a), the court may do any or all of the following—

(a) act on any evidence before it or that was before the court when the existing order was made;

(b) make any order necessary to enable evidence of a kind mentioned in section 13(4) to be brought before it, including, for example, an order—

(i) in the nature of a risk assessment order, subject to the restriction under section 8(2); or

(ii) for the revision of a report about the released prisoner produced under section 8A;

(c) consider any further report or revised report in the nature of a report of a type mentioned in section 8A.

(4) To remove any doubt, it is declared that the court need not make an order in the nature of a risk assessment order if the court is satisfied that the evidence otherwise available under subsection (3) is sufficient to make a decision under subsection (2)(a).

(5) If the court makes an order in the nature of a risk assessment order, the psychiatrist or each psychiatrist examining the released prisoner must prepare a report about the released prisoner and, for that purpose, section 11 applies.

(6) For applying section 11 to the preparation of the report—

(a) section 11(2) applies with the necessary changes; and

(b) section 11(3) only applies to the extent that a report or information mentioned in the subsection has not previously been given to the psychiatrist.

(7) If the released prisoner satisfies the court, on the balance of probabilities, that the adequate protection of the community can, despite the contravention or likely contravention of the existing order, be ensured by a supervision order or interim supervision order, the court—

(a) must amend the existing order to include all of the requirements under section 16(1) if the order does not already include all of those requirements; and

(b) may otherwise amend the existing order in a way the court considers appropriate—

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

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

(8) The existing order may not be amended under subsection (7)(b) so as to remove any requirements mentioned in section 16(1)."

[9] Proceedings upon a contravention or likely contravention of a supervision order are commenced by the issue of a warrant under s 20. In practice, the Attorney-General files an application seeking orders under s 22.[14]

[10] By s 22, once a contravention is proved, the Court shall rescind the supervision order and make a continuing detention order[15] unless the prisoner satisfies the Court that their continuation on supervision in the community will ensure the adequate protection of the community.[16] It is well established that the concept of "the adequate protection of the community" in s 22(7) has the same meaning as it bears in s 13.[17] Therefore, a prisoner facing an application under s 22 must prove that the supervision order will ensure adequate protection of the community by removing unacceptable risk that they will commit a serious sexual offence.

[11] The issue under s 22 of the Act is not whether there is an unacceptable risk that the respondent will breach the supervision order. The issue is whether there is an unacceptable risk that he will commit a serious sexual offence.[18]

Background

[12] The applicant was born on 27 March 1960. He is an indigenous islander man who was born on Thursday Island and grew up in Bamaga.

[13] In March 2003, he pleaded guilty to an offence of indecent dealing with a child under the age of 16 years on a date unknown between 1 January 1999 and 20 July 2000. He was sentenced to six months' imprisonment by way of an intensive correction order. Ultimately, that intensive correction order was revoked and he was imprisoned for 179 days.

[14] Between 1977 and 2009 the respondent accumulated a lengthy criminal history. Those convictions were for unlawful use of motor vehicles, offences against public order (assault-resist-obstruct police, contravene directions given under the *Police Powers and Responsibilities Act* 2000), various offences of violence, breaches of domestic violence orders, breaches of bail and breaches of suspended sentences. Up until 2010 though, his only offence of a sexual nature was the offending for which he was convicted in March 2003.

[15] In 2010 the respondent was convicted on his own plea of guilty in the District Court at Cairns of one count of assault with intent to rape and one count of rape. That offending was described by A Lyons J as follows:

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[14] *Attorney-General (Qld) v Sands* [2016] QSC 225.

[15] Section 22(2).

[16] Section 22(7).

[17] *Kynuna v Attorney-General (Qld)* [2016] QCA 172 at [60]; see also *Turnbull v Attorney-General* (Qld) [2015] QCA 54 at [36].

[18] *Attorney-General (Qld) v Francis* [2012] QSC 275 at [64]-[67].

"[3] … The complainant and the respondent were known to each other and the respondent grabbed the complainant, who was 31 years of age, and forced her into a cane paddock where he placed his hands over her mouth. When she bit him, he choked her with the strap of her bag and forcibly inserted his penis into her vagina. When she kicked him in the stomach, he ceased any further efforts at penile penetration, but forcibly inserted three of his fingers into her vagina. The incident concluded when witnesses intervened. The respondent contended at the sentencing hearing that he was drunk at the time but otherwise accepted the matters contained in the schedule of facts.

[4] He was sentenced to four years' imprisonment on the count of assault with intent to rape and six and a half years' imprisonment on the count of rape. There was a recommendation for parole after two and a half years and a total of 372 days of presentence custody was declared as time served. His full time release date is 1 October 2015 and he will therefore have served the full term of six and a half years at the time of his release."[19]

[16] When making the supervision order, Justice A Lyons received evidence from three psychiatrists, Dr Sundin, Dr Beech and Professor Nurcombe.

[17] Her Honour summarised Dr Sundin's evidence in this way:

"[12] In conclusion, Dr Sundin considered that the respondent met the DSM criteria for Anti-Social Personality Disorder and Alcohol Abuse Disorder (in remission whilst in custody). Dr Sundin conducted a number of actuarial risk assessments and concluded that although he did not meet the full diagnosis for psychopathy with a score of 23 out of 40 on the Hare PCL-R, it was an elevated score. On the Static 99-R, he had a score of 6 which placed him in the high risk of reoffending category. In relation to the VRAG, he had a score of 15 which placed him in Category 7 with a 55% risk of violent reoffending at seven years and a 64% risk at 10 years. In terms of the SVR, he had a moderate to high risk of future sexual reoffending. Dr Sundin was uncertain whether the risk which the respondent presents rises to the level of seriousness that would warrant a supervision order under the Act. She stated:

'When ultimately Mr Jacob [the respondent] is released, he is at a high risk for relapse into a pattern of alcohol abuse and that such relapse will be associated with general levels of violence and the potential for high levels of domestic violence directed towards intimate partners. I consider that he is at moderate risk of sexual violence to non-intimate female partners. I consider his overall risk for future sexual violence is in the moderate zone. I do not consider that his

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[19] *Attorney-General v Jacob* [2015] QSC 273 at [3]-[4].

> participation in the Sexual Offenders Program for Indigenous Males [SOPIM] has significantly altered his risk, given his absolute denial of any offending behaviour and failure to demonstrate any empathy with regards to his victims.'"[20]

[18] As to Dr Beech's evidence, her Honour said:

> "[17] Dr Beech noted that the respondent had completed the SOPIM for indigenous sex offenders. He also considered that whilst he developed a willingness to engage and had an emerging understanding of chronic factors, he presented with denial and minimisation. Dr Beech noted that the respondent had also completed the Getting Smart Moderate Intensity Substance Abuse Program in 2011 and the Ending Offending Program in 2010. Dr Beech considered that the respondent has Anti-Social Personality Disorder with significant narcissistic traits and Alcohol Use Disorder in the community. He also considered that there may have been an element of retribution in the offences for which he was convicted in 2010 and that intoxication played a role in both sexual offences. Dr Beech considered that the offences indicate the respondent's attitude of entitlement and he agreed with Dr Sundin's opinion that there is the possibility of sexual violence within his previous relationships.

And later

> "[19] Dr Beech considered that the respondent's risk of reoffending violently was high and that the risk of sexual violence was in the moderate range. He noted that his convictions for sexual offending are seven years apart and he is now 55 years of age, an age at which the risk of rape starts to decline significantly. Dr Beech considered that there is some evidence that the respondent was settling and he did not see any evidence of sexual preoccupation. He did note that there was evidence, however, in his history and at interview, of ongoing misogynistic views, hostility and resentment.
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> [20] Dr Beech considered that although the risk of sexual violence was moderate, if it did occur he considered physical injury would be high. In relation to the risk of sexual reoffending, Dr Beech stated it was:
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> > '[L]ikely to occur whilst Mr Jacob [the respondent] is intoxicated. He may feel some sense of grievance or entitlement or simply seek to have his way. The woman is likely to have been known to him. I think that he will use significant physical coercion if required. It is likely in fact to be a domestic partner. It may though be someone who he has

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[20] *Attorney-General v Jacob* [2015] QSC 273 at [12]/ the Hare PCL-R, VRAG and SVR are all clinical tests to assess risk.

> simply seen in the street at night, and it may occur during the course of some break and enter type offence.
>
> It is my opinion that it is unlikely that further courses in custody will act to reduce the risk. A Supervision Order would though act to decrease the likelihood of further violence. This is because I think it would act to restrict his risk of intoxication. It would put limits on his behaviour, and it would monitor his relationships and association.
>
> Importantly, I think it would act to continue to engage him in counselling in the community which might foster some of the earlier changes noted by the SOPIM facilitators. That ongoing counselling would also act to remind him about his aspiration for abstinence. It could help him enter into programs that would facilitate that. It would ease the transition into the community.
>
> Ultimately though I believe the risk of further violence will continue to decrease as Mr Jacob [the respondent] becomes older.'"[21]

[19] As to Professor Nurcombe's evidence, her Honour said:

> "[22] Professor Nurcombe indicated that the respondent has Alcohol Abuse Disorder, in remission, and Anti-Social Personality Disorder. He does not consider he has a psychopathic personality and there was no evidence of paraphilia. Professor Nurcombe also described him as edgy, impulsive, irritable and easily challenged by what he considers to be disrespectful. He has little support in the community and vague plans on release. Professor Nurcombe used the risk assessments to consider the risk of offending and, like Dr Sundin noted, that the instruments may not be valid for Australian indigenous communities."[22]

[20] Professor Nurcombe concluded a lower level of risk than did Drs Sundin and Beech.

[21] Almost three years after being released on the supervision order, it was alleged that the respondent breached two requirements of the order. Those requirements were:

> "(vii) comply with every reasonable direction of a corrective services officer that is not directly inconsistent with the requirement of the order;
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> …
>
> (xviii) respond truthfully to enquiries by a corrective services officer about his activities, whereabouts and movements generally."

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[21] *Attorney-General v Jacob* [2015] QSC 273 at [17], [19] and [20].

[22] *Attorney-General v Jacob* [2015] QSC 273 at [22].

[22] Proceedings for breach of the order were commenced. On 4 September 2018, the respondent appeared before the Supreme Court sitting at Townsville in answer to a warrant issued under s 20 of the Act and he was detained in custody from that point.

[23] The 2018 breaches concerned an incident where, without permission, the respondent had a woman at his residence. Those breaches were found to be proven and he was released on 26 February 2019 on the supervision order, but amended.

[24] The current breaches occurred in August 2019. What is alleged are contraventions of the two conditions contravened in 2018, together with an alleged contravention of the following condition:

> "(xi) not threaten to, or cause physical harm against any person, excluding acts of self-defence."

[25] Queensland Corrective Services Officer Kylie Fuller had been dealing with the respondent who, by late July 2019 had moved to approved accommodation in the community. Ms Fuller issued a written direction to the respondent that he should not allow visitors except by prior approval of Queensland Corrective Services. This angered the respondent who told his treating psychologist that he would "break her [Ms Fuller's] jaw". He told other Queensland Corrective Services Officers that he would "break Kylie's jaw" and that "I don't care what will happen" and "I can do whatever I want". When Ms Fuller was interviewing the respondent on 5 August 2019, he made threats of violence directly to her. On 7 August 2019, the respondent allowed a woman access to his accommodation. He had not previously sought permission for that to occur.

[26] A warrant pursuant to s 20 of the Act issued on 9 August 2019. The respondent was arrested and he has been in custody since.

[27] On 15 August 2019, the respondent pleaded guilty in the Townsville Magistrates Court to two offences against s 43AA of the Act (breaching terms of the supervision order) and one of possessing a small amount of cannabis.

[28] As previously observed, the respondent admits the breaches of the supervision order.

Current psychiatric evidence

[29] Reports have been received into evidence from psychiatrists, Drs Arthur and McVie.

[30] Dr Arthur is concerned about the respondent returning to alcohol abuse. Dr Arthur in his report says:

> "I have previously considered that prisoner Jacob represents a moderate risk of future sexual violence and a high risk of future nonsexual violence. These risks would be elevated should he return to alcohol use.
>
> Whilst he has continued to present as a management challenge, the supervision order appears to have been effective in maintaining his abstinence from alcohol and reducing the incidence of physical violence. The recent breaches have not

involved a return to substance use,[23] sexual offences or physically violent behaviour."

And later

"My opinion remains that prisoner Jacob's risk of sexual recidivism can be managed adequately under the conditions of his current supervision order. It appears to have been effective in assisting him remain abstinent from alcohol, one of the most significant risk factors for future general and sexual violence. Although the charges for possession of cannabis may indicate that he is at risk of a return to illicit substance use, I acknowledge that cannabis use is not directly related to his sexual offences."

[31] As to whether the duration of the supervision order ought to be extended, Dr Arthur said:

"Prisoner Jacob's supervision order is due to expire on 22 December 2020[24] and I have been asked to provide an opinion as to whether the period of the supervision order ought to be amended .

Factors not supporting an extension of his supervision order include the following -

Based on the static and dynamic risk factors, he represents a moderate risk of future sexual violence.

There has been no clear evidence of further sexual offending or a return to alcohol use throughout the duration of his supervision

- At the completion of his order he will be close to 60 years of age; advancing age is associated with a reduction in risk of sexual recidivism.

Factors supporting an extension of the order would include the following-

- There have been further unsubstantiated allegations of sexual violence towards women.
- He has continued to make verbal threats of violence against female staff members and behaved in an intimidatory manner during case management sessions.
- Prisoner Jacob's underlying Antisocial Personality disorder remains static.
- It was previously noted that he did not express a firm conviction to remain abstinent from alcohol at the completion of the order.

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[23] Although he was convicted of cannabis possession.

[24] The supervision order in fact expires in September 2020.

- There appears to be no evidence of a shift in the core attitudes which support sexual violence.

His propensity to reoffend has not altered. There is no compelling evidence that he has gained any appreciable benefit from treatment programs with responsivity factors including his ongoing denial of culpability, mistrust of authority and perceiving himself as a victim of an unjust judicial system.

Whilst, to his credit, he has remained abstinent from alcohol for the duration of his order, he has been ambivalent about returning to alcohol use in the future. The relevance of his recent cannabis possession is unclear, although suggests an ambivalence towards substance use.

Despite his advancing age, he is still sexually active and is seeking out further intimate relationships. The risk of future domestic violence remains significant. Although his breaches and contraventions to date have not involved alcohol use nor a return to sexual offending, they have involved threatening and intimidatory behaviour towards women.

The main benefit of an extension would be to ensure prisoner Jacob remains abstinent from alcohol. Based on the fact that (apart from advancing age) his other risk factors have remained largely static, this is the most relevant factor amenable to change. I believe this would justify the extension of his supervision order."

[32] Dr McVie expressed this opinion:

"Assessment, actuarial and structured clinical, continues to indicate Mr Jacob remains at least at moderate risk of reoffending sexually. This risk would be decreased to low with community supervision.

Based on his history, the risk of violent non sexual reoffending remains moderate. The risk of general offending remains high. Sexual reoffending would most likely occur in the context of a domestic violence situation or due to a combination of external stressors and alcohol intoxication.

Further detention in custody or further programs in custody are unlikely to modify this man's attitudes or risk of future sexual offending.

His failure to comply with conditions of his supervision order in August 2018 and again in August 2019, did not lead to serious criminal offending.

The issue of whether the supervision order should be extended past September 2020 is more complex.

I note Professor Nurcombe, in his report of 9 September 2015, questioned if this man's risk then warranted the use of the legislation and recommended five years if an order were made.

Mr Jacob's antiauthoritarian and misogynistic attitudes are unlikely to alter significantly in the longer term. He is unlikely to gain any further insight, remorse or empathy regarding his past behaviours. Continuation of the order may well

> intensify his resentment of the justice system and his beliefs regarding being discriminated against based on ethnicity. This could paradoxically increase his agitation and increase risk, probably more risk of physical violence rather than sexual violence.
>
> He has not reoffended sexually and has been abstinent from alcohol throughout his over three years residing in the community on the supervision order.
>
> He does not have a paraphilia.
>
> In July 2019, his treating psychologist considered him to be a low risk of recidivism, in spite of his continued denial of his sexual offending.
>
> Risk of sexual violence, in particular adult rape, decreases with age. Mr Jacob is reaching an age where his sexual recidivism risks would be decreased.
>
> Caution should also be applied in any interpretation of risk assessment in the indigenous population as validation of these assessment tools has not been completed in this population.
>
> In my opinion, Mr Jacob should be returned to his current supervision order and he should be returned to therapy with his male treating psychologist, Dr Walkley, who appears to have engaged him in supportive counselling as an approach to possible cognitive repositioning.
>
> Overall, my opinion is that further extension of the supervision order past September 2020 is not required in this case. I would be happy to review this opinion if further information were provided or following a further interview with Mr Jacob."

Consideration

[33] I accept the evidence of the psychiatrists that despite the contraventions the respondent can be adequately managed in the community. I am satisfied then that the respondent has discharged the onus cast upon him under s 22(7) of the Act "that the adequate protection of the community can, despite the contravention … of the existing order be ensured by a supervision order".

[34] The doctors disagree as to whether the supervision order ought to be extended.

[35] The primary consideration under s 22(7), like under other sections (s 13 for instance), is whether the supervision order provides for "adequate protection of the community". Part of that consideration is to predict the time in the future at which the respondent will be an acceptable risk without supervision.[25]

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[25] *Attorney-General (Qld) v Fisher* [2018] QSC 74, *Attorney-General for the State of Queensland v Fardon* [2019] QSC 2 at [4] and *Attorney-General for the State of Queensland v KAH* [2019] QSC 36 at [55].

[36] Therefore, it would be appropriate to extend the order here if the respondent was predicted to be an unacceptable risk of committing a serious sexual offence if not supervised beyond September 2020.

[37] Dr Arthur's opinion that extension of the order is warranted is based on the view that alcohol is a relevant risk factor and the supervision order prohibits the respondent from consuming alcohol.

[38] Dr McVie also recognises alcohol intoxication as a risk factor. However, as both doctors observe, the respondent was in the community for three years, and did not, it seems, consume alcohol and did not commit a serious sexual offence.

[39] In my view, an extension of the supervision order is not warranted.

[40] I was told from the Bar table that arrangements for the release of the respondent on supervision will be unable to be completed before Monday, 25 November. It is important that the respondent's release be effected in an orderly fashion and so I will release him back on supervision from Monday.

[41] Ms Gover, who appeared for the respondent, made this submission:

> "4. The psychiatric evidence notes that the respondent has continuing hostility towards women and what could be described as anti-establishment attitudes. The respondent's treating psychologist, Mr Walkley, reports that the respondent considers it culturally inappropriate to discuss matters of a sexual nature with women. In view of those issues, the respondent asks the court to recommend that Queensland Corrective Services assign a male case manager to monitor his compliance under supervision. The evidence suggests that this would reduce the occurrence of friction between the respondent and his case manager and promote his compliance with the requirements of his supervision order."

[42] The matter raised by Ms Gover is complicated. It raises cultural issues, and also issues concerning the treatment and rehabilitation of the respondent.

[43] It is not appropriate for me to make the recommendation as invited by Ms Gover. However, it is appropriate that a copy of Ms Gover's submission be brought to the attention of Ms Jolene Monson who is the Acting Manager of the High Risk Offender Management Unit within Queensland Corrective Services. She swore an affidavit which was read in the application and is a person concerned with the respondent's management. She can be expected to take appropriate action.

[44] I make the following orders:

The court, being satisfied to the requisite standard that the respondent Raynard Smith Jacob has contravened a requirement of a supervision order made by Justice A Lyons on 22 September 2015 as amended by order of Justice Ryan on 26 February 2019, orders that:

1. The respondent Raynard Smith Jacob be released from custody no later than 12pm on Monday, 25 November 2019 and continue to be subject to the supervision order made by Justice A Lyons on 22 September 2015 as amended by Justice Ryan on 26 February 2019.

2. A copy of the written submissions of Ms Gover of Counsel be sent to Ms Jolene Monson, High Risk Offender Management Unit, 69 Ann Street, Brisbane, together with a copy of these reasons.