SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General v McDonagh* [2020] QSC 227
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (Applicant) **v** **ANDREW ROSS McDONAGH** (Respondent)
FILE NO/S:	BS 3196 of 2020
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	29 July 2020
DELIVERED AT:	Brisbane
HEARING DATE:	20 July 2020
JUDGE:	Jackson J
ORDER:	**The order of the Court is that:** **1. Andrew Ross McDonagh be detained in custody for an indefinite term for control, care or treatment.**
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 applicant applied for a division 3 order under the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) – where the respondent was convicted of serious sexual offences within the meaning of the Act – where the respondent is a serious danger to the community – whether adequate protection of the community can be reasonably and practically managed by a supervision order – where the psychiatric evidence indicated a high level of risk that the respondent will commit another serious sexual offence if released from custody without a supervision order – whether the respondent should be detained in custody for the purpose of further treatment *Child Protection (Offender Reporting and Offender Prohibition Order) Act* 2004, s 50(1) *Criminal Code* (Qld), s 210, s 218, s 218A, s 228C, s 228D *Dangerous Prisoners' (Sexual Offenders) Act* 2003 (Qld), s 5, s 8, s 11, s 13, s 16

Liquor Act 1992 (Qld), s 156A (1)

Attorney General v Francis [2007] 1 Qd R 396
Attorney-General (Qld) v Carter [2020] QSC 217

COUNSEL: J Tate for the Applicant
J Benjamin for the Respondent

SOLICITORS: Crown Solicitor for the Applicant
Legal Aid Queensland for the Respondent

Jackson J:

[1] This is an application under section 13 of the *Dangerous Prisoners' (Sexual Offenders) Act* 2003 (Qld) ("the Act") for either a continuing detention order or a supervision order.

[2] The questions are:

- Whether the respondent is a serious danger to the community?[1]
- Whether adequate protection of the community can be reasonably and practicably managed by a supervision order (and whether the requirements under section 16 of the Act can reasonably and practicably be managed by corrective services officers)?[2]
- What requirements, beyond those that a supervision order must contain by section 16 of the Act, would be appropriate to include in any supervision order?

[3] There is a dispute as to the second and third questions, but the parties agree that the answer to the first question is "yes", accepting that the court must form its own views on each of the relevant questions and as to the exercise of the discretionary power to make an order that may be engaged.

Index offences

[4] The respondent is a 56 year old divorced man, who was 38 years of age at the time of some of the index offences and 51 years of age at the time of others.

[5] On 28 November 2016 the respondent was convicted of serious sexual offences, all committed between 1 April 2002 and 13 October 2002. A complaint was not made until 2015. There were three offences of administering a drug for the purpose of a sexual act[3] and 17 offences of indecent treatment of a child under 16. They comprised an offence of wilfully and unlawfully exposing a child under the age of 16 years to an indecent act,[4] three offences of wilfully exposing a child under the

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1 *Dangerous Prisoners' (Sexual Offenders) Act* 2003 (Qld), s 13(1) – (4).
2 *Dangerous Prisoners' (Sexual Offenders) Act* 2003 (Qld), s 13(5) – (6).
3 *Criminal Code* (Qld), s 218(1)(c).
4 *Criminal Code* (Qld), s 210(1)(d).

age of 16 years to an indecent film,[5] an offence of unlawfully procuring a child under the age of 16 years to commit an indecent act,[6] 10 offences of unlawfully and indecently dealing with a child under the age of 16 years[7] and two offences of unlawfully permitting himself to be indecently dealt with by a child under the age of 16 years.[8]

[6] For some of those offences, it was ordered that the respondent be imprisoned for a period of five years. For others, it was ordered that the respondent be imprisoned for a period of four years. All of the sentences were ordered to be served concurrently.

[7] Those offences involved a single victim over three episodes. The victim was aged between 12 and 13 at the time of the offending. The respondent met the victim at a scout camp. He gave him some alcohol when they were alone in a tent. Later they arranged to go jet skiing. On the journey there, the respondent stopped the vehicle and offered the victim alcohol. He showed the victim pornography on his computer involving males and females. The respondent pulled his penis out of his shorts and began stroking it. After encouragement the victim did the same and they watched pornography together. The respondent touched the victim's penis while masturbating himself and later leaned over and put the victim's penis in his mouth. The respondent requested the victim to masturbate him, which the victim did. The respondent offered him alcohol again.

[8] The second episode occurred at the respondent's home. The respondent offered the victim alcohol, and showed him pornography on the respondent's laptop involving males and females. The respondent touched the victim's penis on the outside of his shorts and showed him some sex toys. The respondent took the victim's penis out of his shorts and began to masturbate him, performed oral sex on him and inserted his finger and a vibrator into the victim's anus. The respondent encouraged the victim to insert his penis into a sex toy.

[9] The third episode occurred when the victim stayed with the respondent, together with the respondent's children, at a hotel. The respondent purchased alcohol which he gave to the victim and invited him into the bedroom to watch pornography of males and females. The respondent touched the victim's penis. They each masturbated while watching the pornography. The respondent then kissed the victim, exposed the victim's penis, started rubbing it, and performed oral sex on the victim. He asked the victim to touch his own penis, which the victim did briefly. The respondent attempted to penetrate the victim's anus with his finger. The victim masturbated himself while the respondent performed oral sex on him.

[10] Also on 28 November 2016, the respondent was convicted of an offence of possessing child exploitation material[9] on dates between 2 June 2013 and 1 August 2015, an offence of distributing child exploitation material[10] on dates between 26 December 2014 and 16 February 2016, and eight offences of failing to comply with a reporting obligation.[11]

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5 *Criminal Code* (Qld), s 210(1)(e).
6 *Criminal Code* (Qld), s 210(1)(b).
7 *Criminal Code* (Qld), s 210(1)(a).
8 *Criminal Code* (Qld), s 210(1)(c).
9 *Criminal Code* (Qld), s 228D(1)(b).
10 *Criminal Code* (Qld), s 228C(1)(b).
11 *Child Protection (Offender Reporting and Offender Prohibition Order) Act* 2004, s 50(1).

[11] For those offences it was ordered that the respondent be imprisoned for three years for the offence of possessing child exploitation material, two years for the offence of distributing child exploitation material and 18 months on each of the offences of failing to comply with the reporting obligation, all to be served concurrently but cumulative upon the balance of a suspended sentence that was activated on the same day.

[12] The child exploitation material contained 47 unique movies and 264 images of naked children, mainly boys aged between six and 16, engaged in sexualised posing and boys engaged in solo masturbation. Some movies showed penetrative sexual activity between children and adults, as well as penetrative sexual activity between children. There were some images of touching sexual activity between children. The distributing child exploitation material offence consisted of the respondent sending two emails to others containing child exploitation material.

[13] Also on 28 November 2016, the respondent was dealt with for breach of a suspended sentence imposed on 18 September 2012 as extended on 28 February 2014. The balance of the suspended sentence for a period of 684 days was activated.

[14] Taking into account the presentence custody that was relevant, the respondent's full time release date for the index offences is 30 July 2020.

Earlier sexual offences

[15] The respondent has a relevant earlier criminal history of serious sexual offences.

[16] On 20 April 2007, the respondent was convicted of 18 offences of a sexual nature. They comprised six offences of wilfully exposing a child under the age of 16 years to an indecent film,[12] three offences of unlawfully and indecently dealing with a child under the age of 16 years,[13] an offence of unlawfully procuring a child under the age of 16 years to commit an indecent act,[14] an offence of wilfully and unlawfully exposing a child under the age of 16 years to an indecent act,[15] four offences of using the internet with intent to expose a child under the age of 16 years to an indecent matter,[16] two offences of using the internet to procure a child under the age of 16 years to engage in a sexual act[17] and one offence of possessing child exploitation material.[18]

[17] It was ordered that the respondent be imprisoned for 16 months, to be suspended after serving four months for an operational period of three years.

[18] The respondent was between 40 and 41 years of age at the time of the offending. There were two victims: the first was 12 to 13 years of age, the second was 14 to 15 years of age.

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12 *Criminal Code* (Qld), s 210 (1)(e)
13 *Criminal Code* (Qld), s 210(1)(a).
14 *Criminal Code* (Qld), s 210(1)(b).
15 *Criminal Code* (Qld), s 210(1)(d).
16 *Criminal Code* (Qld), s 218A(1)(b).
17 *Criminal Code* (Qld), s 218A(1)(a).
18 *Criminal Code* (Qld), s 228D(1)(b).

[19] There were two episodes of offending. The first took place between July 2004 and November 2005. The respondent stayed with the first victim's family and showed him sexual images on the respondent's computer of women and used his mobile telephone or computer to send images to the victim. On another occasion the respondent engaged the victim in an internet chat room and expressed the intention to send pornographic images to him to view. On 13 November 2005, the respondent possessed 67 images of children aged 10 to 12 years, classified as child exploitation material.

[20] The second episode occurred between January and April 2005. The respondent met the second victim and his friend and invited them to the respondent's house. The respondent showed the victim pornographic films on his computer. The victim and his friend stayed overnight at the respondent's house. The next morning, the respondent again showed the victim pornographic films and later placed a vibrator against the victim's penis and produced a condom for the victim to put on. A few days later, they met and drove to a location where they both got into the back seat of the car and the respondent showed the victim images of men and women engaged in sexual activities with animals, placed a vibrator against the victim's penis and tried to kiss him. The victim resisted by punching the respondent and moving away. Sometime later, another encounter occurred and on that occasion, the respondent masturbated in front of the victim.

[21] On 18 September 2012, the respondent was convicted of an offence of wilfully exposing a child under the age of 16 years to an indecent film[19] and an offence of unlawfully and indecently dealing with a child under the age of 16 years.[20] Both offences occurred on 1 February 2012. It was ordered that the respondent be imprisoned for two years and six months for each offence to be suspended for three years after serving 228 days.

[22] Also on 18 September 2012, the respondent was convicted of an offence of possessing child exploitation material[21] and an offence of irresponsible supply of liquor to a minor in a private place,[22] again both offences occurred on 1 February 2012. It was ordered that the respondent be imprisoned for a period of twelve months for the offence of possessing child exploitation material and he was not further punished for the offence of irresponsible supply of liquor to a minor in a private place. All sentences were to be served concurrently.

[23] Those offences related to a male victim of 14 years of age at the time. The offences occurred at a hotel where the respondent lived and worked. The respondent offered the victim work as a dish hand. The respondent gave the victim a uniform and offered him to have a shower in the respondent's room. The respondent made an alcoholic drink which he offered, but the victim refused. The respondent invited the victim to come back to his room after his shift, where he again showered. The victim drank a small quantity of a mixed drink and the respondent showed him pornography on his laptop and television. The respondent put his hand on the victim's knee and ran it up his thigh when the victim pushed him away and told him

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19 *Criminal Code* (Qld), s 210(1)(e).
20 *Criminal Code* (Qld), s 210(1)(a).
21 *Criminal Code* (Qld), s 228D (1)(b).
22 *Liquor Act* 1992 (Qld), s 156A (1).

to stop. The respondent turned off the television. The victim collected his belongings and left.

[24] The victim complained to the police shortly afterwards. The police searched the respondent's property and located child exploitation material on the respondent's laptop which consisted largely of males aged 14 to 15 posing naked for photographs.

Psychiatric report and risk assessment reports

[25] The respondent has been examined by three psychiatrists who prepared reports that were tendered at the hearing of the application. Each of the psychiatrists also gave oral evidence. The report by Dr Beech was prepared for the purpose of the preliminary hearing[23] upon the application for an order under section 8 of the Act to set a date for the hearing of this application.[24] By that order, the respondent was ordered to undergo examination by two psychiatrists who were to prepare independent reports.[25] The reports by Dr Moyle (including an addendum) and Dr Timmins were risk assessment reports[26] prepared under section 11 of the Act, for the purposes of this hearing as a result of those ordered examinations.

[26] Each of the psychiatrists opined that the respondent suffers from a paedophilic disorder. Dr Beech says that he has a sexual deviance of hebephilia, an attraction to underage pubescent males, but it is not an exclusive sexual deviance. As well, has an alcohol use disorder in remission in prison and significant avoidant personality disorder traits. Dr Moyle says the respondent has a life history of alcohol use disorder and paraphilias, including the boundary of paedophilia and hebephilia and a suggestion of bestiality. Dr Timmins says the respondent most likely meets the DSM-IV-TR criteria for paedophilia, attracted to males, non-exclusive, has an alcohol use disorder with likely dependence and evidence of an avoidant personality disorder.

[27] In April 2017, the respondent declined the getting started preparatory program, and again rejected a similar program on 12 March 2018 and in 2019. On 15 February 2019, he said that he wished to engage with individual interventional counselling for sex offending.

[28] From 4 March 2019 to 10 June 2019, the respondent attended individual or one on one sessions with Dr Oertel, a psychologist, who produced a report for the respondent's application for parole made at the end of July 2019. Since then he has completed further sessions with another psychologist, Ms Piat. There have been possibly 15 sessions overall, and he feels he has benefitted.

[29] The reports of the psychologists on those sessions provide some support for the respondent having gained some insight, but one dated 17 June 2019 commented on his never having engaged previously in any form of psychological treatment for his mental disorder (described as complex trauma and PTSD), alcohol abuse or sexual offending behaviour, although describing the respondent as then highly motivated to

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23 *Dangerous Prisoners' (Sexual Offenders) Act* 2003 (Qld), s 5(3).
24 *Dangerous Prisoners' (Sexual Offenders) Act* 2003 (Qld), s 8(1).
25 *Dangerous Prisoners' (Sexual Offenders) Act* 2003 (Qld), s 8(2).
26 *Dangerous Prisoners' (Sexual Offenders) Act* 2003 (Qld), s 11(1).

engage in treatment services to address his psychosexual functioning and offending behaviour. The most recent report dated 1 April 2020 noted the respondent's anxiety and recommended that the respondent would continue to benefit from engaging in sessions which at that time were interrupted by COVID-19 restrictions.

[30] In a six page handwritten document dated 6 August 2019, produced by the respondent in support of his parole application, he set out his understanding of his criminal behaviours, substance abuse, mental health, relationship and community support, proposed accommodation and key risks of reoffending. As to the latter, he acknowledged his sexual interest in children, the risk situations where he engages with alcohol and young people, that he uses sex as a coping mechanism, that he does not follow rules, his impulsivity and other factors.

[31] Each of the psychiatrists expressed opinions relevant to the level of risk that the respondent would commit another serious sexual offence if released from custody without a supervision order.

[32] Dr Beech opined that the risk of further offending is high. The respondent did not commit a contact offence between the 2012 conviction and the 2015 arrest and was in the community during that time. However, he repeatedly failed to comply with the reporting conditions and continued to access child exploitation material. He was employed, but continued to abuse alcohol. Dr Beech did not consider the respondent had properly addressed the factors that make him vulnerable to offending, being his sexual deviance and use of sex for coping, sexual preoccupation and problems with intimate relationships. The extent of his sexual preoccupation is indicated by the respondent's persistent possession of child exploitation material even though arrested and on bail and serving a suspended sentence.

[33] Dr Beech considers the risk is that on release without formal treatment, the respondent will return to his former ways, returning to drinking, use of child exploitation material and if the opportunity arises, to commit an offence against a vulnerable male child.

[34] Dr Moyle considers that without a supervision order, the respondent is a moderately high risk of reoffending, that goes to a high risk if intoxicated with alcohol or events that leave him unmotivated to avoid alcohol and child sexual excitement.

[35] Dr Timmins is of the opinion that the respondent will be a high risk of offending in a sexual manner if released into the community without a supervision order. In her view, he has limited insight into his sexual behaviour and his avoidances likely present a barrier to effective management.

[36] In my view, there is acceptable cogent evidence of sufficient weight to justify the decision to a high degree of probability that there is an unacceptable risk that the respondent will commit a serious sexual offence if released from custody without a supervision order being made and is a serious danger to the community in the absence of a division 3 order.[27] Accordingly, I find that the respondent is a serious danger to the community if released from custody without a supervision order.

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27 *Dangerous Prisoners' (Sexual Offenders) Act* 2003 (Qld), s 13(2)-(3).

[37] I recently discussed the general requirements of a supervision order in a case with some similarities to the present.[28] Each of the psychiatrists considered the effect of a supervision order on the level of the respondent's risk of committing another serious sexual offence or considered a supervision order in a way that is relevant to the assessment of that level.

[38] Dr Beech considered that a supervision order might reduce the risk, but the respondent's failure to comply with the reporting conditions over the years was a poor sign as was his continued offending with child exploitation material despite being subject to community release orders such as bail, probation and a suspended sentence. Dr Beech, however, (as it was not his function in preparing a report for section 8) did not express comparative or quantitative views as to the level of risk on a supervision order.

[39] Dr Moyle did not address the level of risk of the respondent reoffending on a supervision order in his report. Rather, he expressed views as to treatment that the respondent should undergo before being released upon a supervision order. There are difficulties with that form of opinion in relation to the questions that the court is required to answer on this application as I discussed recently in another case.[29] Dr Moyle expressed the opinion that while a supervision order may lower the respondent's risk to a moderate level from a high level "if he adheres", he doubted that the respondent would find it easier to adhere until "he faces his fears in custody and addresses his paedophilic and hebephilic interests, his anxious avoidance and oppositional defiance and his alcohol use disorder, and having done so prepares an adequate release plan to inform the conditions of a supervision order".

[40] In Dr Moyle's addendum report, he specifically addressed the level of risk if the respondent were released under a supervision order. In Dr Moyle's opinion, the respondent is unlikely to adhere to supervision requirements. Dr Moyle points to the respondent not meeting reporting requirements and not seeking out treatment whilst released into the community under previous orders. I note that Dr Moyle describes them as supervision orders under parole and probation, which is not an accurate description.

[41] In oral evidence, Dr Moyle emphasised the respondent's history, in that he tends to go places where he can get on with life the way he wants to, rather than according to restrictions placed on him and that he had not clearly indicated an ability to think through all of the issues that are to do with his rehabilitation for a lowering of the risk factors that contribute to the way he assessed risk. On a supervision order, he still considered the respondent to be a high risk without having completed a high intensity sexual offenders Program ('HISOP') and further one-on-one counselling sessions.

[42] Dr Timmins expressed the view in her report that the respondent's risk may be modified by a supervision order and he would most likely fall into a moderate risk category, but only after treatment targeting his sexual deviance, sexual offending and substance use.

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28 *Attorney-General (Qld) v Carter* [2020] QSC 217, [43]-[50] and Schedule. That case did not involve a relationship between the offending and alcohol abuse.

29 *Attorney-General (Qld) v Carter* [2020] QSC 217. However, it is not necessary to expand on those questions further in the present case.

[43] In oral evidence, Dr Timmins said that if released on a supervision order without treatment, the respondent would probably still fall at the top end under the moderately high risk, because he has not assisted himself in the reduction of his own risk to the community. In her mind, the respondent did not really understand his offending pathway or what the risk factors were that would increase his risk. He could not explain how to manage himself better. Accordingly, release under a supervision order without treatment would be limited to the provisions of the order reducing the risk, not the respondent himself engaging in reduction of his risk.

[44] To some extent, these views echo an approach which would require a respondent to agree to undertake an HISOP and other treatments as suggested, because that would or might lower the level of risk of committing another serious sexual offence without squarely engaging upon the question whether, in the absence of those steps, the effect of making a supervision order with appropriate requirements would reduce the level of the risk to moderate, in any event. However, the overall impression of the evidence I gleaned was that the combination of the factors affecting the level of the respondent's risk was such that his level, in particular, remained high in the absence of the potential effects of the further treatments recommended.

[45] Against this, the respondent relies on the course of treatment in which he is engaged with two psychologists whilst in prison, Dr Oertel and Ms Piat, Dr Oertel said in her report dated 17 June 2019:

> "Mr McDonagh has participated in six individual treatment sessions at the Maryborough Correctional Centre since the 04 March 2019 with his most recent appointment being 10 June 2019. Mr McDonagh has been pleasant and cooperative during the treatment sessions. It is perceived that a good level of rapport has been achieved and Mr McDonagh's engagement in treatment appears genuine. Mr McDonagh admits to and accepts responsibility for his acts of sexual offending as well as the consequences of those acts."

[46] None of the examining psychiatrists appeared to consider that the results of the one on one sessions between the respondent and Dr Oertel and Ms Piat answered their concerns as to the level of risk that the respondent will commit another serious sexual offence if released under a supervision order.

[47] Dr Moyle considered that the psychologists reports describe the respondent as having insight as to the role anxiety plays in his offending pathway, but also highlighted that the issues to do with his sexual deviance are not addressed at this stage.

[48] Dr Timmins considered that the more recent session reports with Ms Piat did not really have an impact on her views about the respondent's insight into his own sexual offending and how it occurs. In her view, when it comes to a more complex, in depth understanding of himself and why he might offend and what would raise his risk of offending, he could not tell her the scenarios nor could he then go to the next step of telling her what he would do instead of offending. He had no real plans or strategies that he could do instead of that. She considered that it would be a bit misleading to say that the respondent demonstrated a fairly significant degree of insight in what his offending had been and how it had occurred and why.

[49] Another point raised by the respondent was that although an HISOP would not be available to him if he were released from custody on a supervision order, he might obtain similar or some of the benefits of that program by performing a medium intensity sexual offender program ('MISOP') in the community instead. Dr Timmins agreed that it would provide him with some benefits. She also considered that individual therapy can assist in managing anxiety of the kind that the respondent has.

[50] Dr Beech considered the alternative of a MISOP to be a difficult question because the respondent's level of offending would require an HISOP that would not be available to him in the community, but that a MISOP would still offer assistance. As well, individual counselling would address risk factors like anxiety and alcohol abuse and could even be used to address the sexual attraction, but the evidence for reducing the risk of offending was really with group programs and the cognitive behavioural therapy group programs.

[51] Dr Moyle agreed that the contents of the reports from the psychologists support that the respondent had reasonable insight into his sexual drives, but that did not appear to affect his overall conclusions as to the level of risk.

[52] Niclaire Byrne is the acting manager in the Offender Intervention Unit, Rehabilitation and Management Services within Queensland Corrective Services. She said that the HISOP was designed for people who had been assessed as being a high risk of sexual recidivism. There are a number of staff who are trained in the relevant assessments for determining the level of risk of sexual recidivism with a view to determining who is eligible or appropriate for which program. She said that her unit would not advocate for someone to be released under a supervision order if they were a high risk of reoffending because the MISOP would not give all of the treatment hours required to address the risk and offending needs. If a prisoner were assessed as high risk, there was nothing that would reduce the required level of intervention to something that would make the MISOP appropriate for that prisoner, in her view. However, despite repeated attempts by the respondent's counsel, she would not answer the question whether it was better to have some form of group therapy intervention, such as the MISOP, than none at all, for a prisoner who was assessed as requiring an HISOP.

[53] In my view, upon the paramount consideration of the need to ensure the adequate protection of the community, the evidence is equivocal as to whether that protection can be reasonably and practicably managed by a supervision order on the requirements contained in the draft order that was handed up for consideration.

[54] There must be a concern that if so detained, the respondent will not engage in an HISOP or other treatment that is recommended or offered to him in order to better manage his risk of committing another serious sexual offence if released from custody with or without a supervision order being made. He does not appear to be obliged to do so.[30] It seems unsatisfactory to find that continuing detention is, inter alia, "for… treatment"[31] when that outcome is not one that will necessarily be achieved.

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30 *Attorney-General (Qld) v Carter* [2020] QSC 217, [62].

31 *Dangerous Prisoners' (Sexual Offenders) Act* 2003 (Qld), s 13(5)(a).

[55] But the court cannot foretell the future. The best that can be done is to make the required findings on the evidence having regard to the considerations that must be taken into account under the provisions of the Act on the hearing of this application. On the evidence as it presently stands, in my view, the conclusion is required that the court is not satisfied that the protection of the community can be reasonably and practicably managed by a supervision order.[32]

[56] Because of the paramount consideration of the need to ensure the adequate protection of the community, in my view, that results in the conclusion that the respondent should be ordered to be detained in custody for an indefinite term for control, care or treatment.

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32 *Dangerous Prisoners' (Sexual Offenders) Act* 2003 (Qld), s 13(6)(b); *Attorney General v Francis* [2007] 1 Qd R 396, 405 [39].