SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General (Qld) v Van Dessel* [2006] QCA 285
PARTIES:	**ERIC HENRI VAN DESSEL** (appellant/respondent) **v** **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (respondent/applicant)
FILE NO/S:	Appeal No 1971 of 2006 SC No 8126 of 2005
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	4 August 2006
DELIVERED AT:	Brisbane
HEARING DATE:	14 July 2006
JUDGES:	Jerrard and Holmes JJA and Mackenzie J Separate reasons for judgment of each member of the Court, Holmes JA and Mackenzie J concurring as to the orders made, Jerrard JA dissenting in part
ORDER:	**1. Appeal allowed** **2. Set aside the order under appeal and make a fresh order in the same terms, with this change: that the words "until further order of the court" appearing in Paragraph 2 are replaced by the words "for the period of 20 years"**
CATCHWORDS:	STATUTES – ACTS OF PARLIAMENT – INTERPRETATION – PARTICULAR WORDS AND PHRASES – construction of *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) ("the Act") – indefinite supervision order imposed on appellant/respondent just prior to his release from prison – supervision order had effect until further order is made by the court – whether an indefinite supervision order that has effect "until further order of the court" satisfied a requirement in the Act that the order for his release be subject to stated conditions have effect "for the period stated in the order" – whether "period" has a finite quality – s 24 of the Act *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld), s 3,

s 13(1), s 13(2), s 13(3), s 13(5), s 14, s 15, s 19, s 23, s 24

Attorney-General v Hansen [2006] QSC 35; BS 9941 of 2005, 6 March 2006, considered
Attorney-General v Van Dessel [2006] QSC 016; SC No 8126 of 2005, 10 February 2006, cited
Fardon v Attorney-General (Qld) (2004) 210 ALR 50; [2004] HCA 46, considered
Project Blue Sky Inc & Ors v Australian Broadcasting Authority (1998) 194 CLR 335, cited
Pyneboard Pty Ltd v Trade Practices Commission (1983) 152 CLR 328, considered

COUNSEL: A W Moynihan for the appellant/respondent
J A Logan SC for the respondent/applicant

SOLICITORS: Legal Aid Queensland for the appellant/respondent
Director of Public Prosecutions (Queensland) for the respondent/applicant

[1] **JERRARD JA**: This appeal involves the construction of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 ("the Act"). The question is whether an order that Mr Van Dessel, on his release from custody, be subject to the conditions stated in the order "until further order of the Court", satisfies a requirement of the Act that the order for his release subject to stated conditions have effect "for the period stated in the order."

[2] The objects of the Act, stated in s 3, are 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 to provide continuing control, care or treatment of a particular class of prisoner to facilitate their rehabilitation. Its constitutional validity was upheld by the High Court in *Fardon v Attorney-General (Qld)* (2004) 223 CLR 575.[1] Gleeson CJ summarised the effect of the Act:

> "Under Pt 2, Div 3 of the Act, the Supreme Court may order, in respect of a prisoner serving imprisonment for a serious sexual offence, that the prisoner be detained in custody for an indefinite term, or that, upon release, the prisoner be subject to continuing supervision."[2]

Mr Van Dessel

[3] In this matter Mr Van Dessel was due for release from prison on 19 February 2006, and by order made on 10 February 2006, following a hearing on 30 January 2006, a judge of this Court made these orders:

> "The order of the court is that
>
> 1. The court is satisfied to the requisite standard that Eric Henri Van Dessel is a serious danger to the community in the absence of a supervision order pursuant to s 13(2)(b) of

1 (2004) 223 CLR 575; [2004] HCA 46.
2 (2004) 223 CLR 575 at 587-588; [2004] HCA 46 at [6].

Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

2. On release the Respondent be subject to the following conditions until further order of the court:"[3]

Then followed conditions considered appropriate and as provided by s 16 of the Act.

[4] The Act permits the Attorney-General to apply to the Trial Division of this Court for a "division 3" order in relation to a prisoner, meaning either a continuing detention order or a supervision order. Prisoners in respect of whom such an order may be sought are those serving a period of imprisonment for a serious sexual offence, meaning an offence of a sexual nature involving violence or against children. Mr Van Dessel had been sentenced to two and a half years imprisonment on 13 July 2004 in the District Court at Cairns for nine offences of indecent treatment of a child under the age of 12 years under his care. He had been convicted of similar offences in 1989, occurring between 1 and 31 December 1987 in Mt Isa; and again in Townsville in April 2001, for offences occurring between 1 June 1999 and 31 October 1999. He had been placed on three years probation for the Mt Isa offences, and sentenced to two years imprisonment for the Townsville ones. It is likely that offending which led to the imprisonment ordered in July 2004 commenced during Mr Van Dessel's parole period for Townsville offences.

The Act

[5] Mr Van Dessel was unquestionably serving a period of imprisonment for a serious sexual offence. Section 13(1) of the Act provides that if, on the hearing of an application for a division 3 order, the court is satisfied that the prisoner is a serious danger to the community in the absence of a division 3 order, that section applies. Section 13(2) provides that a prisoner is a serious danger to the community if there is an unacceptable risk that the prisoner will commit a serious sexual offence –

(a) if the prisoner is released from custody; or

(b) if the prisoner is released from custody without a supervision order being made.

Section 13(3) provides that a court may decide that it is satisfied that a prisoner is a serious danger to the community in the absence of a division 3 order, only if the court 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. Section 13(4) lists matters to which the court must have regard, when deciding when a prisoner is a serious danger to the community in the absence of a division 3 order.

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[3] *Attorney-General v Van Dessel* [2006] QSC 16; SC No 8126 of 2005, 10 February 2006, at para [73].

[6] Section 13(5) provides that if the court is satisfied as required – that the prisoner is a serious danger to the community in the absence of a division 3 order – the court may order –

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

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

The Act provides that in deciding whether to make an order under s 13(5)(a) or (b), the paramount consideration is the need to ensure adequate protection of the community.

The order appealed, and the reasons for it

[7] The reasons for judgment explaining the order under appeal record that Mr Hunter, counsel for Mr Van Dessel on the Attorney-General's application heard below, did not seek to persuade the court that a supervision order ought not be made. Mr Moynihan, Mr Van Dessel's counsel on this appeal, does not challenge in any way the following conclusion by the learned judge:

> "The evidence presented to the court which is both acceptable and cogent demonstrates to a high degree of probability, as required by the Act, that the respondent is a serious danger to the community if he were to be released on the expiration of his sentence unless he is subject to a supervisory order."[4]

[8] The learned judge had considered with care and sympathy the contents of a number of reports, and wrote:

> "Because there is a tendency to 'demonize' sex offenders particularly when their offending is against children it should be recognised that this respondent, like so many sex offenders with entrenched behavioural problems, has himself been the victim of serious sexual abuse as a young child. Accepting as the psychiatrists and other professionals have done, the history related by the respondent, the failure of his family and the wider community to protect him and allow him to grow up with a proper understanding of his own and others' sexuality has made him, in his turn, an offender. Thus at its widest, the order seeks to bring to an end to that particular cycle of victim as offender."[5]

[9] The order to which the learned judge referred was the supervision order which both parties had agreed it was appropriate for the judge to make. The judge described a difficulty in fashioning an order which would manage the risk at an acceptable level, bearing in mind that adequate protection of the community was the legislative object. It was common ground between the psychiatrists, who had assessed the risk Mr Van Dessel posed to the community, that he required supervision and treatment on release. Without it, his risk of re-offending would increase.

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4 *Attorney-General v Van Dessel* [2006] QSC 16, at para [61].

5 *Attorney-General v Van Dessel* [2006] QSC 16, at para [61].

[10] The learned judge was satisfied that there was an overall consensus about the nature of the appropriate conditions, which would both serve the purposes of the Act, be sufficiently certain so as to act as a clear guide to Mr Van Dessel, and also facilitate his rehabilitation. Neither party has suggested to the contrary on this appeal. The learned judge concluded that the opinion of the psychiatrists was that Mr Van Dessel's offending behaviours were deeply entrenched and might be managed, but not eradicated. I respectfully observe that that conclusion was amply supported by the evidence placed before the learned judge, and is not challenged on this appeal. The judge continued that:

> "The protection of the community dictates that the order have no expiration date, that is, so long as the legislation exists in its present form and no variation is made to the conditions imposed the order should continue indefinitely."[6]

The learned judge accordingly made the orders quoted above.

Argument on the appeal

[11] On this appeal Mr Moynihan contended the Act did not provide for indefinite supervision. He argued that the learned judge was obliged to fix a finite period within which Mr Van Dessel, released from custody and otherwise free in the community, would be subject to the conditions stated in the order. Those conditions impose restrictions on where he can live (i.e. not within 200 metres of a school or other place where children frequent unless authorised in writing so to do by a Corrective Services Officer), and conditions requiring that he report his surname, place of employment, and residence to a Corrective Services Officer, and report in advance any intended change of any of those. He is also required to avoid shopping centres between specified hours; and not without reasonable excuse to be within a specified distance of a school or childrens' playground; prohibited from unsupervised contact with children under 16 years of age; prohibited from accessing pornographic images containing photographs or images of children on a computer or on the internet; and required to attend psychiatrists or psychologists, and do courses, as directed. There is no complaint per se about any of those conditions, which are clearly intended to assist him and to protect the community, but Mr Moynihan made the point that they will considerably fetter Mr Van Dessel's existence.

[12] Mr Moynihan accepted that the dictionary definition of "period", which is not defined in the Act, includes both indefinite and definite intervals of elapsed time, but argued that since the Act adversely affected fundamental rights and freedoms, it should be strictly construed, citing *Pyneboard Pty Ltd v Trade Practices Commission* (1983) 152 CLR 328 at 341. He also contended that the use of "the" before "period" rendered "period" more particularised, and that it was significant that s 15(b) and s 13(5)(b) did not use the term "indefinite", whereas s 13(5)(a) – dealing with continuing detention orders – did.

Other arguments

[13] Sections 14 and 15 of the Act read as follows:

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6 *Attorney-General v Van Dessel* [2006] QSC 016, at para [69].

"**14 Effect of continuing detention order**

(1) A continuing detention order has effect in accordance with its terms -

(a) on the order being made or at the end of the prisoner's period of imprisonment, whichever is the later; and

(b) until rescinded.

(2) An interim detention order has effect in accordance with its terms –

(a) on the order being made or at the end of the prisoner's period of imprisonment, whichever is the later; and

(b) for the period stated in the order, unless earlier rescinded.

15 Effect of supervision order

A supervision order has effect in accordance with its terms –

(a) on the order being made or at the end of the prisoner's period of imprisonment, which ever is the later; and

(b) for the period stated in the order."

[14] The use of "continuing" in s 14, and its absence in s 15, has no significant effect on the proper construction of s 15(b), the matter in issue in this appeal, because any order for detention made under the Act is for, and can only be for, continuing detention. A respondent to an application for a division 3 order will always be in existing detention, and the effect of an order under s 13(5)(a) of the Act is to continue the detention. I agree with the submission of Mr Logan SC, counsel for the respondent, that the adjectival qualification "continuing", necessary when describing the detention order under s 13(5)(a), is not necessary when describing the supervision provided for in s 13(5)(b) and s 15. The reason an "indefinite" term is referred to in s 13(5)(a) is because that is the only term for which detention may be ordered; there is no power to make a continuing detention order for a finite period.

[15] It does not follow that because a detention order is for continuing detention for an indefinite period, that a supervision order must be for a finite period. The expression "for the period stated in the order" is equally capable of applying to an indefinite or definite period. The *Collins English Dictionary*, Third Edition (Australian Edition), includes the following explanations of "period":

"1. a portion of time of indefinite length.

2. a portion of time specified in some way;"

and other meanings that are not relevant.[7] The *New Shorter Oxford English Dictionary*[8] provides for "period" the relevant meanings of :

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[7] At p 1159.

[8] At p 2163.

> "A course or extent of time", and "The time during which anything runs its course; time of duration".

The *Macquarie Dictionary Federation Edition*[9] provides the meanings:

> "an indefinite portion of time, or of history, life etc., characterised by certain features or conditions".
>
> and
>
> "any specified division or portion of time".

[16] I agree with Mr Logan that none of these dictionary derived meanings for the word "period" carry with them any inherently finite quality, and the order made by the learned trial judge, "that on release the respondent be subject to the following conditions until further order of the Court", is an order which specifies a period or portion of time during which a respondent will be subject to the order. I accordingly also agree with Mr Logan that it is possible to see a degree of harmony between the alternatives offered by s 13(5) of the Act, in that detention must be, and supervision may permissibly be, of indefinite duration. That construction accords with recognition that orders under the Act impose, for the protection of the community and only after a judicial assessment of evidence, very serious intrusions into personal liberty, of which obviously the most serious is indefinite detention. Orders for such detention are tempered by the review regime provided for in pt 3 of the Act. Section 27 in that part requires that a continuing detention order be reviewed at least annually while a prisoner continues to be subject to it. No like provision is made for review of supervision orders, but s 19 allows the court, on application (which can be by the released prisoner) to amend the conditions of a supervision order.

[17] I agree with the statement by Mackenzie J in *Attorney-General v Hansen* [2006] QSC 35[10] that, as a matter of construction, the period of operation of the order is not a "condition" and therefore cannot be amended under s 19. Mr Logan conceded that point. He nevertheless argued that an opportunity for termination for good cause of an order having indefinite effect is provided for, by the limitation that the supervision order have effect "until further order". I agree that an order so expressed gives jurisdiction to the Supreme Court[11] to hear at a later time an application, not simply to amend the conditions of an order, but to discharge it; indeed, that jurisdiction would exist in this Court in any event, if, for example, a supervised prisoner fell into an irreversible coma, or suffered incapacitating injury or illness making the supervision unnecessary. An order of the type made here is appropriate where the available evidence, again to quote Mr Logan, does not admit of any confidence in the making of a supervision order of finite duration.

[18] The alternative view is that when faced with evidence such as that presented here, namely that for the indefinite future a respondent prisoner presented an unacceptable risk of committing a serious sexual offence if unsupervised in the general community, the Supreme Court either has to select a finite period that did not specifically correlate with any evidence, or tailor the length of the order to a predicative judgment of the likely years remaining in the prisoner's life, or else

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9 At p 1420.

10 BS 9941 of 2005, 6 March 2006, at para [34].

11 If only because of the jurisdiction given by s 58 of *the Constitution of Queensland Act 2001* (Qld).

consider the alternative of indefinite detention. A correlation between the period stated in the order and the serious risk described in the evidence would comply with the statutory object of providing adequate protection to the community.

[19] Despite my agreement with those various arguments advanced by Mr Logan, it is the fact that the oral argument on the appeal established a good deal of uncertainty or ambiguity in s 15(b). Mr Moynihan stressed that the object of the Act is to provide "adequate" and not absolute protection, and he argued that that fact supported a construction of "period" as a finite rather than indefinite term. He conceded, however, that, as Mackenzie J suggested in argument, an order could be made requiring supervision of a (to be released) prisoner for the term of the natural life of the prisoner. For his part, Mr Logan agreed without much enthusiasm that on his argument, an order could validly be expressed to be "for an indefinite period", or even "for an unknown period"; although he suggested it would be unlikely orders would be so expressed.

[20] Mr Moynihan ultimately persuaded me that the evident ambiguity should be resolved in favour of his construction, namely that "the period stated in the order" had to be for a finite period, because of the provisions in s 24 of the Act. Section 23 provides that div 6 (i.e. ss 23 and 24) applies if, after being released from custody under a supervision order or interim supervision order, a released prisoner is sentenced to a term or period of imprisonment for any offence, other than an offence of a sexual nature.

Section 24 reads:

> "**24 Period in custody not counted**
>
> (1) The released prisoner's supervision order or interim supervision order is suspended for any period the released prisoner is detained in custody on remand or serving the term of imprisonment.
>
> (2) The period for which the released prisoner's supervision order or interim supervision order has effect as stated in the order is extended by any period the released prisoner is detained in custody."

[21] The inescapable conclusion is that the expression "the period" in s 24(2) describes a finite period, whether describing the (finite) period for which the supervision order has effect as stated in the order, or whether describing the (finite) period during which the released prisoner is detained in custody. The drafting excludes the possibility that the latter period of further custody could itself be an indefinite term, such as a life sentence, actually served. A period of supervision could not be extended by a life sentence actually served in custody. A sentence of six month's actual custody could not extend a period of supervision of indefinite length. The drafting assumptions exclude either indefinite periods of supervision, or periods of actual imprisonment ending only the prisoner's death or expressed to be indefinite.

[22] Mr Logan gently suggested that that simply meant there would be circumstances in which s 24 would have no work to do, but I consider the drafting shows an erroneous assumption that periods are finite. The assumption is all the more curious because the Act itself provides for indefinite imprisonment. But since that erroneous assumption was clearly made in s 24, consistency requires that the same

expression used in s 15(b) be construed in the same way, namely as meaning a finite period. That construction does not frustrate the object of the Act, of securing adequate protection of the community, providing a cautious approach is taken in setting a finite period. That construction is therefore consistent with the requirements for construing legislation described in *Project Blue Sky Inc & Ors v Australian Broadcasting Authority* (1998) 194 CLR 355 at 381, where the joint judgment of McHugh, Gummow, Kirby, and Hayne JJ reads:

> "The primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all the provisions of the statute. The meaning of the provision must be determined 'by reference to the language of the instrument viewed as a whole'". [Footnotes omitted]

[23] That conclusion on construction means that I have reluctantly been persuaded that it is necessary to set aside part of order number 2 made by the learned judge on 10 February 2006, that being the words "until further order of the Court", and insert instead a finite period. In the circumstances of this case a cautious approach is justified, and I would insert instead the words "for the next 25 years".

[24] I would allow the appeal and amend the order as described.

[25] **HOLMES JA:** I have read the reasons for judgment of Jerrard JA and gratefully adopt his setting out of the relevant statutory provisions and his summary of the reasons of the learned judge at first instance. My reasons for concluding that the supervision order should be set aside, because it was not made for a specified period, can be shortly stated.

[26] Dictionary definitions of the noun "period" do not, in my view, resolve the construction question, because s 15(b) of the *Dangerous Prisoners (Sexual Offenders) Act 2003* contemplates a "period" with a further qualification: that it is capable of being "stated". I do not think one can "state" a period other than by identifying its duration. There is, also, what I consider to be the telling point made by Mr Moynihan for the appellant: that if the legislature had wished to enable imposition of supervision orders for indefinite periods, it could readily have done so by saying as much; as, indeed, it did in respect of continuing detention orders, which, pursuant to s 13(5)(a), are to be "for an indefinite term". That distinction between the detention order and supervision order regimes is further illustrated by these features: continuing detention orders must be reviewed annually (s 27) and, if, on such a review the court is not satisfied the prisoner continues to pose a serious danger, must be rescinded (s 30(5)); in sharp contrast with supervision orders, in respect of which there is no review mechanism, nor provision for their rescission if they are no longer needed. That absence of review suggests that it is when a supervision order is made that the court must attempt to establish the duration for which it is likely to be needed.

[27] All of the factors I have referred to in the previous paragraph lead me to conclude that, unlike a continuing detention order, a supervision order is to be made for a fixed term. I agree, therefore, that the order made by the learned judge at first instance cannot stand in its present form. Counsel were agreed that in that event, a fresh order should be made by this Court on the findings made below. The question then is, what period should be stated in that order?

[28] The appellant is 42 years old. The learned judge at first instance set out in her judgment his history, as a child, of sexual abuse by adults, sometimes with elements of the sadistic. Those experiences were apparently replicated in the three sets of offences of which the appellant was convicted in 1989, 2001 and 2004 respectively. On the first two occasions he had spanked small boys and had fondled their genitals. In respect of the third conviction, the allegation was of smacking children with his hand or a wooden spoon; but he confined himself to fantasising about fondling them. Her Honour succinctly described his pattern of behaviour, as identified by the reporting psychiatrists:

> "[H]e has tended to ingratiate himself with socio economically disadvantaged families and attract children to his house by offering something which they want such as camping trips or computer games or promoting himself as a friendly babysitter. His sexual fantasy is consistent, involving punishment and affection. He dissuades his victims from disclosing the abuse to their parents by threats of one kind or another. He has a well-developed capacity for deceiving himself and others about his true intent."

[29] The appellant was placed on probation in respect of the 1989 offences; sentenced to imprisonment for two years in respect of the 2001 offences; and sentenced to two and a half years imprisonment in 2004 for nine counts of indecent treatment. Between 1999 and 2001 he had participated in a number of psychiatric and psychological programs aimed at helping him to avoid further offending. While serving his most recent sentence of imprisonment, which ended on 19 February 2006, he participated, with apparent enthusiasm and co-operation, in several educational and counselling programs, including one called the "High Intensity Sexual Offending Program".

[30] The three forensic psychiatrists who reported for the purposes of the application at first instance, Professor Nurcombe, Dr Grant and Dr Moyle, agreed that the appellant exhibited homosexual paedophilia, a trait which would continue into old age. He was at particular risk of re-offending if he were left unsupervised and relapsed into alcohol or opioid use (he had a past history of excessive drinking, methadone dependence, and marijuana use to relieve back pain), if he became socially isolated and depressed, and if he were in a position of contact with children. Professor Nurcombe described the risk of the appellant’s offending, if left unsupervised on his release from prison, as “moderate to severe”; his need for supervision would continue until he reached an advanced age. Dr Grant similarly considered that without supervision there was a "reasonably high risk" that the appellant would fall back into his past patterns of behaviour; he would benefit from long term supervision from a psychiatrist or psychologist experienced in treating in sexual offenders. Dr Moyle said that the appellant would have to "work hard to resist such sexual interest [in paedophilic activity] for the rest of his natural life". There was a “moderately high” risk of his interests being acted on if he were not supervised. Dr Moyle accepted that the risk of the appellant's re-offending would diminish the longer the appellant abstained from offending; but, he said, it was extremely difficult to predict risk after 10 years or so.

[31] The selection of the term of a period of supervision appropriate to "ensure adequate protection of the community", the paramount consideration identified in s 13(6) of the Act, must have elements of the arbitrary about it, given the increasing

difficulties of prediction the further one attempts to look into the future. It is, however, relevant, in my view, to take into account that the Act, while not providing for review, allows for a number of courses of action to be taken in the event of actual or prospective contravention of a supervision order. Section 22 enables the court, if it is satisfied on the balance of probabilities that the person under supervision is likely to contravene or has contravened the order, to amend its conditions; to rescind it and replace it with a detention order; or to make any other order it considers appropriate to achieve compliance or to ensure adequate protection of the community. It is possible that the last power (contained in s 22(d)(ii)) might permit extension of the order's duration; but it is unnecessary, for present purposes, to reach any conclusion as to that.

[32] I consider that an order of 20 years duration would provide adequate community protection in this case. If the appellant significantly contravened its requirements at any point in that lengthy period, there is the real prospect of its rescission and replacement with detention. If, on the other hand, he were able to conduct himself for the entirety of the period without contravention or apprehended contravention (and the order's conditions are many and rigorous) one could expect that the risk of re-offending would be much diminished at the end of that period.

[33] I would, accordingly, allow the appeal, set aside the order under appeal and make a fresh order in the same terms, with this change: that the words "until further order of the court" appearing in para 2 are replaced by the words "for the period of 20 years".

[34] **MACKENZIE J:** This appeal raises a short but important point concerning the interpretation of s 15 of the *Dangerous Prisoners (Sexual Offenders) Act 2003*. It is whether the provision that a supervision order has effect in accordance with its terms "for the period stated in the order" is complied with if an order is made that the supervision order applies "until further order of the Court".

[35] In *Attorney-General v Hansen* [2006] QSC 35, paras [32] to [37], I concluded that the matter was attended with sufficient uncertainty to make it undesirable to make the term of the supervision order indefinite. An order was made in that case prescribing a term of 20 years as the duration of the order on the basis that it struck a balance between protection of the community and the need for continuing restrictive requirements that were likely to be adequate in the circumstances of the case, where the respondent was 48 ½ years of age.

[36] This appeal raises squarely the issue whether the uncertainty that was referred to in *Hansen* is well founded. The facts of this matter, which I respectfully adopt for the purpose of expressing my conclusion, are set out in the reasons for judgment of Jerrard JA.

[37] In para [34] in *Hansen*, the opinion was expressed that, as a matter of construction, the structure of the Act suggested that the period of operation of the order was not a "condition" and therefore could not be amended under s 19. That conclusion was not challenged by the respondent, the Attorney-General, in these proceedings.

[38] Mr Moynihan, for the appellant, relied on the reasoning in *Hansen* and submitted, in addition, that the question of whether there was a power in the Act to impose an indefinite supervision order was answered by construing the term "the period" in s

15 in a literal and purposive way within the context of the whole Act. He referred to authority of which *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at 381 and 384 was one. He referred to the objects of the Act in s 3. They 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."

[39] He noted that the word "period" was not defined in the Act itself. He submitted, correctly in my view, that the parliamentary debate, the second reading speech and the explanatory notes did not provide a definitive answer to the intention of the legislature. He submitted that the term "the period" in s 15 should be construed to mean a finite fixed period rather than an indefinite length of time because, amongst other reasons, it was contained in the statute which adversely affects fundamental individual rights, as White J had said in her reasons ([2006] QSC 16 at para [17]).

[40] Dictionary definitions were referred to but they are inconclusive since they refer both to indefinite and finite periods as being encompassed by the word "period". It was submitted by Mr Moynihan that the use of the definite article "the" before "period" rendered the word "period" more particular or individual. He also submitted that, had the legislature intended that a supervision order might be indefinite, it would have used the same express language employed in s 13(5)(a) of the Act.

[41] On behalf of the respondent, Mr Logan submitted that the extent to which prisoners who were subject to the Act may require rehabilitation, care or treatment may vary from transient to entrenched. He submitted that the objects of the Act envisaged that providing rehabilitation, care or treatment would be "continuing". He submitted that that implied that it was to continue for as long as necessary. He submitted that the criteria in s 13(4) for making a division 3 order did not suggest any assumption by Parliament that any resultant need for supervision must be of definite duration.

[42] He submitted that it seemed an unlikely result that, faced with evidence that a prisoner presented an unacceptable risk for committing a serious sexual offence for the indefinite future, a court would be constrained to either arbitrarily select a finite period that did not correlate with that evidence or to make a predictive judgment of the time at which the prisoner might not need ongoing supervision having regard to his age. He submitted that a correlation between the length of the supervision order and the degree of risk established by the evidence accorded with a statutory object of providing "adequate protection" to the community. He submitted that the concept of preventive detention for people who were mentally ill had been a relevant factor in construing the Act, for example in *Fardon v Attorney-General (Qld)* (2004) 223 C.L.R. 575 at 590.

[43] It was submitted that the rationale for that kind of prescription was similar to the reason why it would be natural to interpret s 15 as allowing prescription of indefinite supervision, having regard to the impreciseness of prediction of recidivism. It was submitted that those considerations did not ignore the canons of statutory construction concerning a beneficial construction in favour of the liberty of the

subject. Other public interests including the protection of society from unacceptable risk were also relevant as was provision of rehabilitation, care or treatment for as long as necessary for prisoners who were subject of a division 3 order. It was submitted that, where there were competing public interests of those kinds, the liberty of the subject, although important, ought not to predominate if there were competing constructions open. It was submitted that no uncertainty attended the meaning of "period" when its use in s 15 was read in the context of the Act as a whole.

[44] Despite the arguments about the influence of competing considerations and the balance between them being of importance in resolving the issue, it is, in my view, a case where they do not assume a paramount place in resolving the issue. It is unusual, if it was intended to permit a continuing supervision order to have an indefinite operation, that the legislature did not say so. That of itself is not determinative either. However the existence of a review mechanism for detention orders and the absence of review mechanism in respect of supervision orders in my view points to the conclusion that, despite or perhaps because of the imprecision of predictability of future offending, the court is required to do the best it can to fix a finite period, which must be stated in the order.

[45] In my view, an order the duration of which is defined by reference to a further event that may or may not happen, which an order "until further order" is, does not state a period for the purpose of s 15 of the Act. For that reason the order should be set aside only in so far as it contains the words "until further order of the Court". The reasons given by Holmes JA for fixing a period of 20 years in lieu thereof coincide with my view on the matter. I therefore agree with the orders proposed by her.