

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Levack*
[2007] QSC 275

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

V

KEITH STEWART LEVACK
(respondent)

FILE NO: BS 4655 of 2007

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 4 October 2007

DELIVERED AT: Brisbane

HEARING DATE: 28 September 2007

JUDGE: Daubney J

ORDER: **1. Pursuant to s 13(5)(b) of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)*, I make a supervision order in the terms set out in Annexure A.**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – OTHER MATTERS – QUEENSLAND – whether the *Dangerous Prisoners (Sexual Offenders) Act 2003* applies to the respondent – whether respondent is a ‘serious sexual offender’ – whether respondent is to be released from prison subject to a supervision order – conditions appropriate and practicable to reduce the risk to the community – duration of the order.

Corrective Services Act 2006 (Qld)
Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld) ss 8(2)(a), 9AA, 13, Pt 2 Div 3
Attorney-General v Banks [2007] QSC 267, followed.

COUNSEL: J Rolls for the applicant.
J Hunter for the respondent.

SOLICITORS: Crown Solicitors for the applicant.
Legal Aid Queensland for the respondent.

- [1] **DAUBNEY J:** This is an application by the Attorney-General for final orders against the respondent, Keith Stewart Levack, pursuant to Part 2 Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* (**the Act**). At the hearing before me, the applicant limited himself to seeking a supervision order under s 13(5) of the Act. The applicant submitted a draft supervision order, including various proposed requirements. The respondent did not oppose any of the proposed requirements.
- [2] The respondent, who is 58 years old, is currently serving a term of nine years imprisonment for numerous offences including maintaining a sexual relationship with a child, indecent treatment, taking a child for immoral purposes and assault occasioning bodily harm. The respondent was initially sentenced to eight years imprisonment, but while serving that sentence, a victim who was abused by the respondent in about 1980 came forward with a complaint. He was sentenced to an additional 12 months for these offences, to be served cumulatively with the current sentence.
- [3] The respondent has on two earlier occasions been imprisoned for offences relating to the sexual abuse of children. He has also served two separate periods of probation.
- [4] The respondent is the eldest of five children. His parents remained married until his father's death despite the fact that his father was physically and verbally abusive towards his wife and physically abused the respondent. The respondent had a volatile relationship with his father, which culminated in him leaving home in 1966 when he was 17 years old. His siblings were born in quick succession, demanding much of his mother's attention when he was young. The respondent reports feeling alienated from his family.
- [5] The respondent completed his primary school education but did not attend high school. He did not perform well academically, in contrast to his siblings, so it was suggested he work on the family farm.
- [6] From the age of 11 to 13 the respondent was sexually molested by a male school teacher. The abuse comprised mutual masturbation and anal penetration. When he reported the sexual abuse to his parents, he was not believed. Shortly after the abuse commenced, the respondent began having sexual contact with a similar aged boy from school who was being abused by the same teacher. Eventually he and the boy were caught having sexual contact in a school toilet. It would seem that the respondent and this school friend maintained a relationship, which included a sexual one, on and off until the death of his friend in 1996.
- [7] The respondent has never married or lived in a relationship with either a woman or a man. He lived a fairly solitary life before his imprisonment. He claims to have a friendship with a woman he has known for approximately 10 years. This woman is listed as a support person for him upon release. While he claims that the relationship has a sexual nature, this is doubted by some report writers. He has no children.
- [8] He has been regularly employed throughout his life, mostly on drilling rigs or as a house re-stumper, with a history of changing jobs every two years or so. From about 1977, he began drinking heavily and has had alcohol problems since that time. While the respondent used alcohol in the grooming of his victims, he was not

under the influence of alcohol during the offending. Further, the respondent does not have a history of drug use.

- [9] I recently essayed the statutory scheme provided for under the Act in *Attorney-General v Banks*,¹ and there is no need for me to repeat that commentary here.
- [10] I do note again, however, that by amendments to the Act, effective from 29 August 2007, the court must receive any submissions supplied by an ‘eligible person’. Such a person is required to be given notice of this hearing. An ‘eligible person’ is defined as a person registered as an eligible person in relation to the prisoner on an ‘eligible persons register’. Such register is required to be kept under the *Corrective Services Act 2006* (Qld).
- [11] On the evidence before me there is no ‘eligible person’ able to be identified in respect of the respondent. Thus, no submissions pursuant to s 9AA of the Act have been placed before the Court.
- [12] The applicant has filed affidavits which contain details of and exhibit copies of:
- (a) the respondent’s criminal history;
 - (b) psychiatric and psychological assessments of, treatment of and intervention programs undertaken by the respondent while in custody;
 - (c) the file held by the Queensland Community Corrections Board in relation to the respondent;
 - (d) the ‘Inmate File’, ‘Case Management Files’, Medical File, Detention File, Offender File, Leave of Absence File, and Updating Material relating to the respondent held by the Department of Corrective Services; and
 - (e) sentencing remarks of the various judges before whom the respondent has appeared over the years.
- [13] The respondent was ordered pursuant to s 8(2)(a) of the Act to undergo examinations by two psychiatrists, namely Dr Basil James and Dr Michael Beech. Reports from each of those doctors were tendered by the applicant, and each doctor gave oral evidence and was cross-examined before me.
- [14] The following is distilled from the evidence before me.

Criminal History

- [15] The respondent’s criminal history is as follows:

Date	Description of Offence	Sentence
23.12.70 Ipswich MC	Aggravated assault of a male child under the age of 14 years (2 chgs)	18 months probation and psychiatric treatment or examination

¹ [2007] QSC 267, 4–10.

Date	Description of Offence	Sentence
15.02.80 Ipswich MC	Aggravated assault of a sexual nature on a male child under the age of 14 years (4 charges from 1978 and 1979)	3 years probation with medical, psychiatric & psychological treatment
03.04.81 Ipswich DC	Indecent dealing with a boy under 14 years	2½ years imprisonment
18.06.85 Ipswich DC	Indecent dealing with a boy under 14 years (2 charges)	3½ years imprisonment with recommendation of medical, psychiatric or psychological treatment
07.07.99 Beenleigh DC	<p>Indecent dealing with a child under 12 years (date unknown b/n 31.12.91 and 1.01.93)</p> <p>Indecent dealing with a child under 16 years (2 charges on dates unknown b/n 31.12.92 and 01.01.94)</p> <p>Procure child under age of 16 to commit an indecent act (date unknown b/n 31.12.96 and 01.04.97)</p> <p>Maintain an unlawful relationship of a sexual nature with a child under age of 16 years (between 31.12.91 and 01.04.97)</p> <p>Taking child for immoral purposes and child under 12 years (3 charges b/n 01.01.98 and 19.09.98, 20.09.98)</p> <p>Taking child for immoral purposes – exposing to indecent act (4 charges on dates unknown 01.01.98 and 13.10.98, 17.09.98)</p> <p>Taking child for immoral purposes – indecent dealing (6 charges on dates unknown b/n 07.02.98 and 12.10.98)</p> <p>Assault occasioning bodily harm</p> <p>Indecent treatment of child under 16 (expose) (9 charges b/n 01.01.98 and 13.10.98, 17.09.98)</p> <p>Indecent treatment of children under 16 (9 charges b/n 07.02.98 and 12.10.98)</p>	<p>5 years imprisonment</p> <p>4 years imprisonment (each charge)</p> <p>3 years imprisonment</p> <p>8 years imprisonment</p> <p>3 years imprisonment</p> <p>3 years imprisonment</p> <p>3 years imprisonment</p> <p>3 years imprisonment</p>

Date	Description of Offence	Sentence
	<p>Indecent treatment of child under 16 (child under 12) (procure to commit) (on date unknown btn 01.01.98 and 19.09.98)</p> <p>Indecent treatment of children under 16 (under 12yrs) (3 charges on dates unknown btn 01.01.98 and 19.09.98)</p>	<p>4 years imprisonment</p> <p>5 years imprisonment</p> <p>5 years imprisonment</p> <p>5 years imprisonment</p> <p>Sentences to be served concurrently. Eligible for parole after 3 years</p>
21.02.02 Ipswich DC	Indecent dealing with a boy under the age of 14 years (3 charges on date unknown btn 31.12.79 and 31.01.81)	12 months imprisonment, cumulative on present sentence

- [16] With the exception of a single charge of stealing in 1971, the respondent's criminal history consists exclusively of sexual offending.

Previous Offences

- [17] The respondent's criminal history is a matter which ought be taken into account in the determination of whether he presents a risk contemplated by s 13 of the Act and what response ought be made to that risk.

■ Aggravated assault of a male child under the age of 14 years, sentenced 23.12.1970

- [18] The respondent admits that this offence was sexually motivated. The offences were committed against the 12 to 13 year old son of a friend. The respondent received a probationary sentence. There is no further information available in relation to his offence given the lapse of time.

■ Aggravated assault of a sexual nature on male child under the age of 14 years, sentenced 15.02.1980

- [19] There is no further information available in relation to his offence given the time lapse and there are no details of this offence recorded on the files. The respondent received three years probation with a recommendation that he undergo medical, psychiatric and psychological treatment.

■ **Indecent dealing with a boy under 14 years, sentenced 05.04.1981**

- [20] The offences occurred in 1980. The respondent received his first custodial sentence, 2½ years imprisonment. The offences were committed against the 13 year old son of his housemates.

■ **Indecent dealing with a boy under 14 years, sentenced 18.06.1985**

- [21] The victim in these offences was approximately 12 or 13 years old. The respondent recalled meeting him through a friend. He received 3½ years imprisonment, and served 22 months before being released.
- [22] The respondent's offending over a history of 30 years has remained consistent. He had met his victims through adult friends, usually the children of those friends. He engaged the victims in a relationship with the purpose of grooming them for the sexual offences. The offending is confined to mutual masturbation and oral sex.
- [23] Significantly, the offences against the group of boys for which he is currently incarcerated are somewhat out of character in that the boys were not known to him through any of his usual means.

Current Offences

- [24] The respondent is currently imprisoned in relation to two different sets of offences. One set of offences involved the intellectually impaired son of a female friend, against whom the respondent offended over a period of five years. The other offences relate to a group of nine boys, who were strangers to the respondent. The respondent primarily offended against three boys in the group and met the other boys through the three main victims.
- [25] The respondent met the intellectually disabled boy through his mother, with whom the respondent initially had a short relationship. The boy did not have any contact with his father, and the respondent was seen as providing a male influence in his life. The respondent was able to continue his relationship with the boy beyond the cessation of his relation with the mother as a result of this belief. The offending involved mutual masturbation. The respondent maintained the relationship over a period of five years until apprehended.
- [26] The offences against the group of boys were committed while the respondent was on bail for the offences against the intellectually impaired boy. These offences were out of character with the respondent's usual offending to the extent that the victims were unknown to him prior to the offending. The respondent met the boys when they approached him at a service station, where they were washing cars. In response, he arranged to meet them in a more isolated place where he provided them with alcohol and cigarettes. He managed to persuade them to swim naked with him, introduced them to sexual conversations and later instigated the sexual contact of mutual masturbation and oral sex. The respondent's offending history does not involve any reports of anal sex.

[27] In sentencing the respondent on 7 July 1999, Hoath DCJ commented:

There can be no doubt, from, your criminal history over nearly 30 years, that you are a committed paedophile. You have served terms of imprisonment for these types of offences in die past and from your history it must be doubted whether there is any real prospect of a change in your sexual orientation...Despite what little can be said in your favour these offences are a serious example of continued predatory sexual abuse on vulnerable youths, the effect of which will have some last effect on them.

[28] While in prison for the current sets of offences, an earlier victim of the respondent, against whom the offending occurred between 31 December 1979 and 31 January 1981, came forward with a complaint. The boy was the son of a friend. The offences involved performing oral sex on the victim. The respondent pleaded guilty and received an additional sentence of 12 months imprisonment, to be served cumulatively upon the current sentence.

[29] In sentencing the respondent on 21 February 2002, Richards DCJ commented '[y]ou have a shocking history for similar offences ...You certainly were in the midst of very regular offending behaviour in any case.'

Medical and Psychiatric History

[30] The respondent has no relevant medical or psychiatric history. He has high blood pressure, for which he is medicated, and has no history of serious mental illness.

Events in Prison

[31] The respondent is described as an easily managed prisoner. There have been no major breaches recorded against him during this current incarceration.

[32] While in prison the respondent has completed the Cognitive Skills Program, Substance Abuse Education Program, Substance Abuse Preventing and Managing Relapse Program and the Sexual Offenders Treatment Program (**SOTP**). Although sentenced in mid-1999, the respondent did not commence the SOTP until August 2002. While one offer of placement made in 2001 was accepted by the respondent, he was unable to complete the course when it was discovered he had outstanding charges.

[33] On 20 February 2006 the respondent accepted an offer of a place in the 'Staying on Track Sexual Offending Maintenance Program' (**SOMP**). The program, which runs for about 12 weeks and was completed by the respondent on 4 September 2006. While the respondent took a consistent interest in the SOMP, his low average participation was considered to be based on artificial concerns regarding some of the other participants. He was able to adequately identify risk factors, including early warning signs. Participation in a community based SOMP was recommended to assist community reintegration and the application of risk management processes.

Psychological and Psychiatric Reports

■ Dr Ian Atkinson, consultant psychiatrist, 18 December 2000

- [34] Dr Atkinson carried out a psychiatric examination of the respondent for the Queensland Regional Community Corrections Board. Although courts had previously made recommendations for psychological and psychiatric treatment, Dr Atkinson was advised by the respondent that while he had sought this in the past, it had not been forthcoming.
- [35] The respondent told Dr Atkinson that he was currently in a relationship with a woman who lives at Tara, west of Dalby, and who continues to be a support person for the respondent. Despite the relationship, the respondent advised that he 'didn't really worry about women', which is consistent with Dr Atkinson's diagnosis of homosexual paedophilia.
- [36] At the time of the interview, the respondent had completed the Cognitive Skills course. Although his participation improved as the course progressed, Dr Atkinson felt that he still lacked any real insight into his offending. It was further noted by Dr Atkinson that the respondent needed a great deal of psychotherapy to improve his self esteem if he is ever to have any chance of controlling his behaviour when released. However, Dr Atkinson noted that, with regard to the homosexual paedophilia, treatment is unlikely to ever change his sexual orientation.

■ SOTP Exit Report by Ann Butler, psychologist, 2 May 2003

- [37] The respondent commenced the assessment phase of the SOTP on 12 August 2002 and completed it on 25 March 2003.
- [38] During the disclosure phase of the program, the author noted that although the respondent apparently attempted to be open and honest in his presentations, he exhibited little insight and appeared to be editing some of the content. It was felt that this editing was as a result of the respondent's reluctance to disclose details of other sexual offences for which he had not been charged. Further, when self-reporting the circumstances of his offending, the respondent introduced a co-offender he called 'J', who was not mentioned by any of the victims. Ms Butler reported that this appeared to be an attempt to minimise his offending and noted that his apparent poor memory for some details of his offending behaviour could also possibly be attributed to minimisation. However, it was equally possibly that his poor reporting was attributable to the fact that having offended against so many victims over the years, the details of each offence were confused in his memory.
- [39] The respondent seems to have reached a basic understanding of how he came to sexually offend, but he only partially met the objectives of the treatment phase of the program. The respondent displayed a very limited ability to express concern for his victims and accordingly did not meet the objectives for the consequences module of the program.
- [40] During the program, he successfully developed a reasonable relapse prevention plan, which, it was felt, should enable him to monitor his high risk factors and situations in the future. He displayed a basic understanding of the factors

surrounding his offending behaviour, and outlined strategies to manage these. While he could only name one support person, the long-term female friend, he provided a list of organisations that he intended to approach initially for support and assistance. Ms Butler stated that if the respondent adhered stringently to the components of his relapse prevention plan, it would greatly increase his ability to deal with future stressful situations and will reduce the chance of sexually re-offending.

- [41] Ms Butler concluded that the SOTP program had been completed to a below average standard on some requirements. However, this was deemed to be fair progress in light of the respondent's history.
- [42] At the conclusion of the risk assessment portion of the SOTP, it was considered there was a moderate-high risk of the respondent re-offending. On the Static-99 he was assessed as being a high risk, however the moderate-high risk assessment took into account his moderate risk on the SONAR and SVR-20 scales.
- [43] After listing the factors which may increase and decrease the respondent's offending, Ms Butler recommended that the respondent be considered for post prison community based release and an intensive supervision order.

■ **Mara Dall, psychologist, 27 October 2003**

- [44] Ms Dall was requested to provide a report to assist in determining whether the respondent should be granted remission or whether his application for a leave of absence program should be approved.
- [45] During the interview, the respondent minimised the impact that social isolation had on his risk of offending. Whilst willing to acknowledge that 'feeling depressed' or 'having problems at work' were contributing factors to his offending behaviour, he denied that social isolation was a factor. This is despite the identification during the SOTP that loneliness and social isolation were significant risk factors.
- [46] The respondent again identified the long-term female friend as a support person, stating that she visited regularly and wanted to continue the relationship after his release. None of the home assessment reports have identified the female friend as a potential sponsor. The respondent was not able to verbalise a detailed relapse prevention strategy during the interview, but showed some awareness that it would require some effort from him. Ms Dall's interview occurred less than six months after the respondent's completion of SOTP.
- [47] Ms Dall tested the respondent on a variety of actuarial methods. The results were:
 - (a) VRAG: low-moderate (in relation to violent offending only); and
 - (b) STATIC-99: high risk.
- [48] The respondent's offending history does not include any physical violence, which explained the low-moderate result on the VRAG scale. There also has been no evidence of escalation in the severity of his sexual offending. However, the Static 99 put him in the high risk of overall sexual offending, which was supported by social factors. The respondent stated that he considered he was at a high-risk of re-

offending and would need to be 'on the ball not to offend'. This acknowledgement, while showing some insight, is concerning in the absence of a detailed relapse prevention strategy.

■ **Dr Prabal Kar, consultant psychiatrist, 10 February 2004**

- [49] Dr Kar's report was prepared at the request of the Queensland Community Correctional Board in response to the respondent's application for community-based supervision.
- [50] Dr Kar noted that the respondent's offences are of a very similar nature. He generally does not use any weapon or violence in his offending, but grooms his victims through elaborate means. The respondent admitted that his sexual interest in pre-pubescent boys remained, while also reporting that he still fantasised about boys and masturbated about once a week. It was noted that, at the time of Dr Kar's interview of the prisoner, he had completed the SOTP.
- [51] Dr Kar noted that he has never had a serious adult relationship apart from short periods, and, when he did have relationships with adult women, he was not comfortable. In one of his most significant relationships with an adult woman he proceeded to the sexually abuse her son. Although the respondent claimed to be bisexual, Dr Kar concluded that he is essentially a paedophile who has occasional sexual contact with adult males and females.
- [52] As his interest in boys was not reduced at the time of interview, the respondent admitted that the risks for the future were fairly high. Dr Kar described the respondent's offending as predatory and planned, and he noted the reported offences were perhaps the tip of the iceberg. Although his sex drive had reduced somewhat, the respondent expressed an interest in hormonal treatment. Dr Kar thought that, due to his frank admission about current sexual fantasies, the respondent was likely to benefit more from such hormonal treatment. Further, if there was a genuine reduction in sexual fantasies and sexual interest after the use of these medications, this would be an additional risk control measure and would decrease the likelihood of the respondent re-offending in the community. If medication was effective, the respondent would need to stay on it for at least 20 to 30 years.
- [53] Dr Kar concluded that if the respondent were to go into the community without a strong long-term plan, which included accommodation and support networks, and there was little control of his residential location or his ability to move about in his own transport, the risk of re-offending was extremely high. However, if medication could reduce his sexual drive, and he had effective plan with support networks and was without transport, the risk could be moderate or lower.
- [54] Dr Kar was unable to recommend remission or unconditional release at the completion of his sentence.

■ **Professor Stephen Smallbone, consultant psychologist, 7 April 2005**

- [55] Professor Smallbone undertook a psychological assessment of the respondent to assist the Queensland Community Corrections Board in its consideration of the respondent's application for community based supervision order. Professor

Smallbone was also specifically asked to recommend a plan for an intensive community supervision program.

- [56] Referring to the respondent's own sexual abuse by a teacher, Professor Smallbone commented that the early repetition of, and pre-occupation with, his sexual encounters with boys is likely to have further reinforced his sexual deviance. Although he was only 21 at the time of his first conviction, the respondent's paedophilic disposition was probably already firmly established.
- [57] Professor Smallbone considered that his sexual offences arose initially through fortuitous circumstances rather than elaborate planning and occurred only when certain personal and environmental conditions were present. Professor Smallbone expressed the opinion that all of his offending has been motivated, at least partly, by a desire to experience emotional closeness with the boys.
- [58] Of concern, however, was the respondent's adeptness at choosing the right time and the right method to introduce sexual elements in his conversations with boys, and ultimately to involve them in sexual contact. In his interview with Professor Smallbone, the respondent attributed much of his sexual offending to acute loneliness and a related desire for companionship with boys. This is in contrast to his interview with Mara Dall as noted above.
- [59] In Professor Smallbone's view, based on his personal and offending history and the formal risk assessments referred to above, the respondent will continue to be at a moderate to high risk of sexual recidivism for some time. This risk can be managed through community-based monitoring, though it was noted that the success of any monitoring will depend on how well the respondent is able to establish a lifestyle routine that minimises the opportunities and temptations for him to re-offend while still providing him with opportunities to gain employment and have rewarding social experiences.
- [60] It was noted that one of the most important aspects of any release strategy would be to ensure he does not form intimate or close relationship with adults who have male children aged between 10 and 15 years or who might otherwise facilitate the respondent's contact with such children. Professor Smallbone concluded that while the respondent should be regarded as having a considerable potential for sexual recidivism, it was unlikely that the potential risk could be further reduced through continued imprisonment. Accordingly, he recommended a graduated release plan.

■ **Dr Josephine Sundin, psychiatrist, 26 September 2006 and 23 October 2006**

- [61] Dr Sundin's reports were prepared on the instruction of Crown Law for the purpose of risk assessment for a potential application under the Act. The report dated 26 September 2006 was based on an interview conducted with the respondent at Wolston Correctional Centre on 14 September 2006, as well as extracts from the prison files. Gavan Palk undertook actuarial testing of the respondent, the results of which were then used by Dr Sundin in formulating her addendum report dated 23 October 2006.
- [62] Dr Sundin noted that the respondent does not appear to have any mature adult relationships with anyone other than his mother. In relation to his developmental history, she noted there was evidence for a strong link between the respondent's

experiences of loneliness and his long internalised experience that such loneliness can be alleviated by sexual behaviour with prepubescent and pubescent males.

- [63] The respondent reported to Dr Sundin that he had formed an attachment with another prisoner at the Palen Creek Correctional Centre. He indicated that this relationship may not be able to continue after his release as it is discouraged amongst parolees. Dr Sundin thought that if the respondent could sublimate his sexual fantasies into an adult homosexual relationship, this would decrease his risk of recidivism. However, Dr Sundin questioned the likelihood of the respondent being able to successfully form such an enduring adult relationship.
- [64] When questioned about his future plans, the respondent was vague in providing detail and in fact became quite angry when challenged as to the vagueness of the plans he had made. Dr Sundin noted that he remains angry and distressed that a proposed home detention was rejected in 2005 and the respondent stated that he had given up planning while incarcerated. Dr Sundin expressed concern that the respondent lied to his possible sponsor about the areas in which he had committed his offending behaviour. From her review of the material, she noted that the nominated sponsor was left with the impression that the offences had occurred away from Ipswich.
- [65] Dr Sundin found that the respondent's empathic appreciation of the impact of his behaviour on his victims and their extended families was adequate but superficial. He reported to Dr Sundin that he still had ongoing sexual fantasies about adolescent males.
- [66] Based on her interview with the respondent and review of the material, Dr Sundin found there was a moderate to high risk of sexual re-offending. Her opinion was unchanged after reviewing the actuarial testing completed by Mr Palk. She concluded that the respondent's psycho-sexual history suggests his principal comfort and solace in life has come through paedophilic attachments. As a result, relapse into offending behaviour could occur all too easily.

■ **Gavan Palk, consultant psychologist, 13 October 2006**

- [67] Gavan Palk undertook actuarial testing of the respondent on the instruction of Crown Law for the purpose of risk assessment for a potential application under the Act.
- [68] Mr Palk undertook a review of the prison files and an interview with the respondent in order to complete the actuarial testing. He concluded that the respondent meets the criteria to be diagnosed as an individual who suffers from a schizoid personality disorder and who can be regarded as a homosexual paedophile. Mr Palk found some evidence of partial empathy for victims but noted the respondent still holds the view that most of his offending was harmless and the boys enjoyed the sexual contact.
- [69] The respondent indicated that he was 75% confident he could remain offence free if released. The main reason behind this confidence was a feeling that he was getting too old to continue with his sexual offending lifestyle. When questioned about why he did not restrict his activities to consenting adult males, he responded that he felt more comfortable with young adolescent males and that it was easier to entice them

into sexual activities. The respondent reported to Mr Palk that he no longer fantasises about young boys but rather restricts his sexual fantasies to an adult male friend. This statement was inconsistent with some of his written responses to test questions.

[70] Mr Palk tested the respondent on a variety of actuarial methods. The results were:

- (a) SONAR: high risk of sexual reoffending;
- (b) K-BIT (Intelligence Test): below average to average;
- (c) MMPI-2 (Psychopathology test): features of schizoid personality disorder;
- (d) CPS (risk assessment): moderate risk of reoffending generally;
- (e) SORAG: moderate to high risk of sexual reoffending; and
- (f) PCL-R: not classified as a psychopath.

[71] Mr Palk noted that the respondent's fantasies and sexual drive appear to have experienced age related reductions over die years. He also commented that the respondent has a tendency to under-report which, coupled with his somewhat disintegrated personality, suggesting he is probably a high risk for committing further sexual offences. Vulnerable prepubescent and pubescent boys remain at considerable risk, particularly if the respondent is able to conceal his activities through maintaining an itinerant lifestyle.

■ **Dr Michael Beech, consultant psychologist, 15 September 2007**

[72] This report was prepared after an interview with the respondent on 10 August 2007. Dr Beech also had regard to the information identified at page 1 of his report.

[73] Dr Beech notes:

- (a) the respondent suffers from high blood pressure;
- (b) the respondent denied any formal psychiatric history including denying significant periods of depressed mood and anxiety, perceptual abnormalities or persecutory ideation;
- (c) with respect to the respondent's substance use Dr Beech records:

The respondent said that by the age of 16 years he had been drunk on a few occasions without difficulties. As a teenager he had gone to work drunk and admitted to drinking while drilling earlier in his career. He cut down his alcohol use in the 1990's in the context of a zero tolerance policy at work. By the time of his arrest he was drinking in the range of one bottle of or so every three to six months.

There has been no significant use of illicit substances. There is mention in a report by Dr Atkinson of methadone use but nothing else to support this.

In the past he smoked 20 cigarettes daily but this stopped in the 1970's. He drinks no caffeinated beverages

[74] Dr Beech applied some risk assessment instruments in assessing the respondent. Dr Beech noted that on the HARE psychopathy checklist he scored a 15 which did not place the respondent in the range of psychopath. On the STATIC 99 the respondent scored '10' which placed him in the 'high' risk category. On the Sex Offender Risk Appraisal Guide the respondent scored 11 which placed him in category 5 which indicated a 45% risk of reoffending in 7 years and 59% risk of reoffending at 10 years. On the Sexual Violence Risk – 20, the respondent scored positive for 7 factors definitely in 2 factors possibly which placed him, according to Dr Beech, in the 'moderately high range of reoffending'.

[75] Dr Beech noted:²

The respondent is a fifty-eight year old man currently completing a nine year prison term for sexual offences against young prepubescent boys. There is a longstanding history of this offending behaviour that stems back to when he was aged twenty-one years. He has served three prison terms now and there have been multiple sentencing dates. Of concern, he has offended soon after release in the past and while on bail for sexual charges.

[76] Later Dr Beech observed:

His offending, as has been commented on by almost all who have assessed the respondent, occurs in the context of social isolation, limited social relationships, and social difficulties with adults generally. There is a lack of adult intimacy in his life and family members and friends do not seem particularly close. His work has meant that he has lived, as Professor Smallbone noted, on the fringes of the mainstream, and he has led a somewhat peripatetic life. This has probably been both a cause and an effect of his social reserve.

It is likely that in part that his sexual contact with children represents an attempt to develop some form of relationship, albeit an inappropriate one with minors; and also to allow him to feel more in control and to boost his esteem and sense of power.

[77] Dr Beech's opinion, as expressed in his report, is:

In my opinion he is at high risk of re-offending if released into the community without close supervision and strict conditions. He has a pattern of repeated behaviour that in the past has not been contained by legal sanctions. Should he re-offend, it is likely to be similar to his earlier offences where he will meet young boys on the street, in shopping centres or in toilets and entice them to let him touch their penis and fellate them. The risk of violence is moderately low.

To his credit he has completed a high intensity sexual offender program and there is evidence that he has gained some insight and has shown evidence of motivation to change. However for this to be effective once he is released into the community where he can come into contact with the objects of his sexual attraction I believe that strict vigilance will be needed.

² See page 19 of report dated 15 September 2007.

- [78] Dr Beech perceives the need for the respondent should continue with a community based maintenance program. He requires individual counselling and support. Dr Beech considers that the respondent should not frequent any public or private setting where he can come into unsupervised contact with minors. The need for strict enforcement is noted as the offences have occurred in the street, car washes and toilets as well as boarding houses and homes.
- [79] Dr Beech does not consider the respondent ought drink alcohol as it has played a role in his offending and could serve to disinhibit him. The adoption of these measures would reduce the risk of re-offending to 'moderately high'.
- [80] When asked in evidence before me whether the respondent ought be the subject of continued detention, Dr Beech expressed the view, albeit 'with some hesitation' because of the respondent's history, that he would be best managed in the community.

■ **Dr Basil James, consultant psychiatrist, 17 September 2007**

- [81] Dr James interviewed the respondent on 23 July 2007.
- [82] Dr James diagnosed the respondent as suffering from paedophilia, male-orientated, non-exclusive. In Dr James' view the respondent fell short of having a personality disorder. The respondent does not demonstrate avoidant traits.
- [83] Dr James applied certain actuarial instruments to assess the risk presented by the respondent. On the psychopathy checklist revised Dr James scored the respondent at '16' which 'very significantly short' of the diagnostic criteria for psychopathy. On the STATIC 99 the respondent scored '9'. Accordingly, his recidivism risk was considered to be 'high'. On the Sexual Offender Risk Appraisal Guide the respondent scored '10' which meant, according to Dr James, that the respondent belonged to a group of individuals 45% whom are likely to reoffend in seven years and 59% of whom are likely to re-offend in 10 years. On the Violence Risk Appraisal Guide the respondent was scored in the class of individuals 17% of whom are likely to re-offend violently in seven years and 31% of whom are likely to re-offend violently in 10 years.
- [84] Dr James considers these results, together with a 'dynamic assessment', which takes into account the more subjective elements specifically appertaining to the respondent.
- [85] Ultimately, Dr James concludes:

In my opinion, Mr Levack's only diagnosis is that of Paedophilia (see Appendix 7), the definition of which is based entirely upon his overt offending behaviour; and that it is not justified to append any other psychiatric diagnosis. He certainly does not, in my opinion, have any mental illness, and the underlying personality traits identified are not in my opinion sufficiently developed to justify a further diagnosis, over and beyond that which leads to his sexual offending.

Although of average intelligence, Mr Levack is not psychologically-minded, and psychodynamic psychotherapy is unlikely to have much beneficial effect.

The programmes in which he has been participant during his imprisonment have had a substantially cognitive and educational basis, and in my opinion that has been very appropriate. My own judgment, which appears congruent with that of the SOTP course facilitators, is that Mr Levack appears to have tried to the best of his ability, with only very partial success, to understand himself, and also to understand the impact of his predations on his victim. There appears little evidence that his underlying personality difficulties have been substantially altered.

It is, however, very likely that he will retain sufficient of what he has learned from the two Sex Offender Treatment Programmes for him to be able to use his newer cognitions to moderate his offending behaviour; other elements of his life, in particular his choice of employment and the availability of a satisfactory social network, will be no less important, as noted also in the report of Mr Smallbone.

- [86] Dr James also sees the need for regular support from a psychologist with experience and skill in the areas of sexual offenders would also be of benefit.
- [87] Dr James does not see any benefit in the use of medical intervention such as the administration of androcur or some similar substance.
- [88] Dr James concludes:

I consider that additional help for Mr Levack in inhibiting his behaviour would be derived from restrictions contained in an Order made by the Court. Such restrictions should include the consumption of alcohol and other non-prescription, intoxicating substances; and should limit occupations and his social and recreational activities in such a way that his opportunities for developing relationships with boys at least under the age of sixteen should be very limited.

Overall, it is my opinion that Mr Levack is of low risk to behave in a gratuitously violent fashion; but that he is of moderate to high risk of recidivism in terms of attempted sexual involvement with young men of the age groups he has previously targeted if there were to be inadequate support provided and restrictions not imposed; were the recommendations made above to be applied and maintained, the risk would in my opinion be moderate to low.

- [89] In his oral evidence, Dr James confirmed his opinion that the respondent was unlikely to benefit from further detention, and that the preferable course would be for him to be released under close supervision requirements.

Conclusions

- [90] In reaching my decision in this matter, I have regard to:
- (a) the reports and evidence of Dr Beech and Dr James;
 - (b) the other psychiatric and psychological assessments referred to above;
 - (c) the pattern of offending behaviour evidenced from the respondent's criminal history;

- (d) the risk that the respondent will commit another serious sexual offence if released into the community without ongoing supervision; and
- (e) the need to protect members of the community from that risk.

- [91] The evidence before me is acceptable, cogent evidence, which persuades me to a high degree of probability that the evidence is of sufficient weight to justify a decision under s 13(1) of the Act.
- [92] On the basis of that evidence, I am satisfied that there is an unacceptable risk that the respondent will commit a serious sexual offence if he is released from custody without a supervision order being made, and accordingly I am satisfied that the respondent is a 'serious danger to the community' within the meaning of that term in s 13(1) of the Act.
- [93] When determining the adequacy of the requirements of the supervision order, my paramount consideration is the need to ensure adequate protection of the community. The proposed requirements in this case are very stringent, and extend to quite specific limitations on the respondent's capacity to move about the community. The proposed prohibitions on him visiting shopping centres, public parks and public swimming pools without prior written permission of an authorised corrective services officer may appear overly intrusive, but have a good foundation, on the evidence before me, as operating to keep him away from locations which have been connected with his offending behaviour in the past.
- [94] Accordingly, pursuant to s 13(5)(b) of the Act, I make a supervision order in the terms set out in Annexure A.

ANNEXURE A

THE ORDER OF THE COURT IS THAT:

1. The Court is satisfied to the requisite standard that the respondent, Keith Stewart LEVACK, is a serious danger to the community in the absence of an order pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003*.
2. The respondent be subject to the following conditions until 5 October 2017:

The respondent must:

- (i) be under the supervision of a corrective services officer ('the supervising corrective services officer') for the duration of this order;
- (ii) report to an authorised corrective services officer at the Queensland Corrective Services Probation and Parole Office close to his place of residence between 9am and 4pm on the day of release from custody and on that occasion advise the officer of the respondent's current name and address;
- (iii) report to and receive visits from an authorised corrective services officer at such times and at such frequency as determined by Queensland Corrective Services;
- (iv) notify and obtain the approval of the authorised corrective services officer for every change of the prisoners name at least two business days before the change occurs;
- (v) notify the authorised corrective services officer of the nature of his employment, or any offers of employment, the hours of work each day, the name of his employer and the address of the premises where he is or will be employed;
- (vi) seek permission and obtain approval from an authorised corrective services officer prior to engaging in volunteer work or paid or unpaid employment;
- (vii) reside at a place within the State of Queensland as approved by way of a suitability assessment undertaken by Queensland Corrective Services;
- (viii) not reside at a place by way of short term accommodation including overnight stays without the permission of the authorised corrective services officer;
- (ix) seek permission and obtain the approval of an authorised corrective services officer prior to any change of residence;
- (x) not leave or stay out of Queensland without the written permission of an authorised corrective services officer
- (xi) not commit an offence of a sexual nature during the period of the order;
- (xii) not commit an indictable offence during the period of the order;

- (xiii) comply with every reasonable direction of an authorised corrective services officer;
- (xiv) respond truthfully to enquiries by authorised corrective services officers about his whereabouts and movements;
- (xv) not have any direct or indirect contact with a victim of his sexual offences;
- (xvi) notify the authorised officer of the make, model, colour and registration number of any vehicle owned by or generally driven by him, whether hired or otherwise obtained for his use;
- (xvii) attend upon and submit to assessment and/or treatment by a medical practitioner, psychiatrist, psychologist, social worker, counsellor or other mental health professional as directed by the authorised corrective services officer at a frequency and duration which shall be recommended by the treating practitioner, the expense of which is to be met by Queensland Corrective Services;
- (xviii) permit any medical, psychiatric, psychological or other mental health practitioner to disclose details of treatment, intervention and opinions relating to level of risk of re-offending and compliance with this order to Queensland Corrective Services if such a request is made for the purposes of updating or amending the supervision order and/or ensuring compliance with this order;
- (xix) undergo assessment for a sexual offending maintenance program, and if assessed as suitable, attend such a program, on a group or individual basis, as directed by the corrective services officer;
- (xx) attend any program, course, psychologist or counsellor, in a group or individual capacity, as directed by an authorised corrective services officer in consultation with treating medical, psychiatric, psychological or other mental health practitioners where appropriate;
- (xxi) not have any ongoing unattended contact with, or approach any male child under the age of 16 except with the prior written approval of an authorised corrective services officer. The respondent is required to disclose the full terms of the order and the nature of offences to the guardians and caregivers of the children before any such contact can take place; Queensland Corrective Services may disclose information pertaining to the offender to guardians or caregivers and external agencies (e.g. Department of Child Safety) in the interests of ensuring the safety of the children;
- (xxii) seek written permission from an authorised corrective services officer prior to joining, affiliating with, attending on the premises of, or at the activities carried on by, any club, organisation or group;
- (xxiii) not be on the premises of any shopping centre, without prior written permission from the authorised corrective services officer;
- (xxiv) not visit public parks or public swimming pools without prior written permission from the authorised corrective services officer;

- (xxv) abstain from the consumption of alcohol;
- (xxvi) abstain from taking illicit drugs;
- (xxvii) submit to drug and alcohol testing as directed by the authorised corrective services officer;
- (xxviii) comply with a curfew direction or monitoring direction.