SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v Brown* [2012] QSC 68
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **JAMES WILLIAM BROWN** (respondent)
FILE NO:	BS 5527 of 2011
DIVISION:	Trial Division
PROCEEDING:	By way of originating application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	26 March 2012
DELIVERED AT:	Brisbane
HEARING DATE:	6 and 28 February 2012
JUDGE:	Applegarth J
ORDER:	**The application is dismissed.**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where respondent committed serious sexual offences in two episodes, the first in 1976 and the second between November 1990 and January 1992 – where respondent received no treatment or counselling during first period of incarceration – where respondent released from second period of incarceration on parole in November 2008 for a parole period of 3 years– where the Attorney-General applied for an order pursuant to division 3 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) while respondent's parole was suspended for a short period – where respondent was placed upon an interim supervision order – where expert evidence indicates respondent is at a low or moderate risk of reoffending – where respondent has successfully rehabilitated himself during period of parole and interim supervision order, obtained work and accommodation and has professional and other support – where respondent has insight into risk of reoffending and has taken steps to avoid risk – whether the respondent should be subject to a supervision order

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), ss 3, 13, 16 and 16B

Attorney-General for the State of Queensland v AB [2010] QSC 418, cited
Attorney-General (Qld) v Hocking [2011] QSC 251, cited
Attorney-General for the State of Queensland v Sutherland [2006] QSC 268, cited

COUNSEL: K Philipson for the applicant
J Lodziak for the respondent

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

[1] The principal issue in this proceeding is whether or not the respondent should be subject to a supervision order pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) ("the Act"). To make such an order the Court must be satisfied that the respondent is a "serious danger to the community" in the absence of such an order.[1] This will be the case if there is "an unacceptable risk" that the respondent will commit a serious sexual offence if released from custody without a supervision order being made.[2] The Act provides that I will only be satisfied of this if I am 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.[3]

[2] In deciding whether or not 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, I must have regard to the matters stated in s 13(4) of the Act. I will address those matters in due course.

[3] The circumstances of this application are unusual in a number of respects. Most applications for supervision orders are made in respect of prisoners awaiting release from custody, who have been refused parole. By contrast, the respondent was granted parole and has successfully completed it. During the periods that he has lived in the community since being released on parole in November 2008, and also during recent months when he has been subject to an interim supervision order after his parole ended on 24 November 2011, the respondent has pursued work and further qualifications, obtained accommodation in the community and otherwise taken positive steps towards his rehabilitation. An independent psychiatrist, Dr Beech, described the respondent's preparation for release on parole and his subsequent positive course as "a success story".

[4] The respondent is now aged 58. His sexual offences fall into two groups. The first occurred over a period of months in 1976 and involved violent sexual offences

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1 *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) ("the Act"), s 13(1).
2 The Act, s 13(2).
3 The Act, s 13(3).

against young girls on four different occasions. The girls were unknown to the respondent before he sexually assaulted and threatened them. The sexual offences were said to have been triggered by compulsive reading of certain pornography that aroused a sexual attraction to young girls. After being sentenced in 1977 to 10 years imprisonment, the respondent was released on parole in 1984. He successfully completed parole in September 1987 without any contravention.

[5] The second group of offences occurred between November 1990 and January 1992. They were of a different character in that they involved young girls who were known to him. The first was committed against a nine year old girl who was a friend of the family. The other offences involved the 10 year old daughter of his then girlfriend.

[6] The group of offences that were committed between November 1990 and January 1992 were not detected until many years after they occurred. In November 2004 the respondent was sentenced to seven years imprisonment.

[7] In summary, the most recent sexual offence for which the respondent was convicted occurred over 20 years ago when he was 37 years of age.

[8] The respondent received no treatment or counselling during the period of his incarceration and parole between 1977 and 1987. No rehabilitative programs or other treatments were offered to him to address his offending and to aid his rehabilitation. During his imprisonment for the second group of offences he participated in programs. The programs that he completed include:

- Transitions Program between June and August 2007;
- Getting Started Preparatory Program between September 2007 and October 2007;
- High Intensity Sexual Offending Program between October 2007 and May 2008; and
- Sexual Offending Maintenance Program between October 2009 and February 2010.

The respondent's level of participation and achievement in these programs was praised by informed observers.

[9] Whilst on parole the respondent regularly met with a psychologist and continues to do so. More recently, and pursuant to the interim supervision order, he has consulted another psychologist, who is very experienced and highly regarded in the assessment and treatment of sexual offenders. She assesses his current risk of sexual offending in the absence of a supervision order to be low.

The present proceeding and the making of the interim supervision order

[10] In September 2010 the respondent was charged with a number of sexual offences that were alleged to have been committed between January 1995 and March 1999. As matters transpired, these charges were withdrawn. The complaint in respect of them was not made until 2008. It then took police two years to charge the respondent. He was granted bail in respect of those charges, but his parole was suspended because those charges were laid. In December 2010 the Parole Board

indicated that it was minded to lift the parole suspension upon receipt of a suitable home assessment report. Despite suitable accommodation being sourced for the respondent, for some administrative reason the respondent's parole remained suspended and he remained in detention. Had the charges that were withdrawn not been laid, or been withdrawn sooner, then it would not have been possible for the present application to be brought. He would have been on parole. Instead, when the application was filed on 27 June 2011 the respondent was "a prisoner detained in custody" who was serving a period of imprisonment for a serious sexual offence and therefore was a "prisoner" as defined in s 5(6) of the Act.

[11] On 13 July 2011 an order was made by Douglas J that the application be set for hearing on 14 November 2011, and that the respondent undergo examinations by Dr Harden and Dr Beech who would prepare reports in accordance with s 11 of the Act. The Parole Board met on the same day and ordered the respondent's release on parole. An opinion was formed by those then advising the applicant that the proceedings could not continue against the respondent because he was not "a prisoner detained in custody". Therefore no arrangements were made to have Dr Harden and Dr Beech examine him. Subsequently counsel's opinion was obtained by the applicant and advice was given on 9 November 2011 that, despite the respondent's release to parole, he was still a "prisoner" for the purpose of making final orders. An application to adjourn the hearing set for 14 November 2011 came before Atkinson J and, after argument, the parties agreed to adjourn that application. Atkinson J was not prepared to make an interim supervision order without psychiatric evidence as to the impact of the evidence of the respondent's good behaviour on parole. The matter came before Boddice J on 14 November 2011. The applicant sought an adjournment and an interim supervision order. The interim supervision order proposed by the applicant was submitted to be, in effect, "little more than an extension of his parole". The adjournment was not opposed. The respondent submitted that in the event an interim supervision order was made he did not oppose the conditions set out in the draft order, and noted that the parole conditions that the respondent had been subjected to had been sufficient to protect the community. An interim supervision order was made.

The Department's decision to require the respondent to live at the Wacol Precinct

[12] As at 14 November 2011 the respondent was living peacefully and productively in the community. He had obtained accommodation with a couple who privately rented a two bedroom home in a suburb on the Redcliffe peninsula. The couple were aware of the respondent's criminal history. There were no children living at the residence. The respondent had lived at this address without incident.

[13] At this time he was working, teaching adult students how to operate heavy machinery. This was under the supervision of a certified trainer with a view to obtaining a high-level certificate in training and assessment. His daily schedule required him to leave home early in the morning to commence the first four hour block of work at 7 am. He did not arrive home until about 7 pm each evening. The Parole Board had assessed the address as a suitable place at which the respondent might reside until the completion of his parole on 24 November 2011.

[14] Queensland Corrective Services permitted Counsel for the applicant[4] to submit to the Court on 14 November 2011, and encouraged the respondent to understand, that the proposed interim supervision order was in effect "little more than an extension of his parole". Yet officers of the Department of Corrective Services ("the Department") anticipated as early as 9 November 2011 that the granting of an interim supervision order would have implications as to where the respondent would reside. On 14 November 2011 departmental officers expected that on 24 November 2011 the respondent would be transferred to Wacol, and fitted with electronic monitoring. None of this was disclosed on or prior to 14 November 2011 to the respondent or to the Court.

[15] On 23 November 2011 the respondent attended an appointment at the Redcliffe Probation and Parole Office. Rather than meeting his regular parole officer two other corrective services officers met him. He was told that he had to go to "the Wacol houses to live" and was handed a direction to report there on Friday, 25 November 2011. He was also told that he would be subject to a GPS monitoring device and be subject to a curfew from 6 pm to 6 am. The respondent told these officers that he had booked a visit to Bundaberg to see his daughter for Christmas. They told him not to pay for his travel because he would not be going to Bundaberg to visit his daughter.

[16] The requirements to live at Wacol and to be subject to a curfew jeopardised the completion by the respondent of the on-the-job training which he needed to complete in order to obtain his relevant certificate. The place at which he worked was 10 minutes from his then home. Instead, he would be required to drive from Wacol to Deagon. The curfew and travel time meant he could not maintain his daily work routine.

[17] The applicant sought judicial review of the decision requiring him to live at the Wacol Precinct and the matter came before me urgently on 25 November 2011. After submissions were heard, a consent order was made setting aside the relevant decision.

The respondent's future accommodation

[18] This episode serves to illustrate two matters that are relevant to the decision whether or not to make a final supervision order in this case. The first is the control which such a supervision order has over the respondent's accommodation, his pursuit of gainful employment and his rehabilitation. The second is the fact that in practice powers conferred upon departmental officers under a supervision order can be exercised without regard to the circumstances of his case, and in a manner which is apt to impair his rehabilitation, and thereby undermine the protection of the community.

[19] The housing at Wacol to which the respondent was directed to report in November 2011 is described as the Wacol Precinct and provides "contingency accommodation" for persons released to supervision orders under the Act. The accommodation is provided for an initial three month period whilst persons subject to the Act seek to find suitable alternative accommodation. However, persons stay

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[4] The evidence before me indicates that instructions in these proceedings are given by officers of the Department of Corrective Services.

there for more than three months on occasions. It accommodates 27 persons who are subject to supervision orders under the Act.

[20] In November 2011 officers of the Department apparently thought that the objects of the Act, which include providing "continuing control, care or treatment of a particular class of offender to facilitate their rehabilitation" were served by transferring the respondent from accommodation which had been approved by the Parole Board, and where he lived a law abiding and productive life with two law abiding citizens, to accommodation occupied exclusively by sex offenders at Wacol.

[21] One hardly needs the opinions of experts like Dr Harden and Dr Beech to conclude that requiring the respondent to reside at the Wacol Precinct is apt to jeopardise his rehabilitation. At the final hearing on 6 February 2012 Dr Harden said a requirement for the respondent to reside at the Wacol Precinct would be "a very significant negative step". Dr Beech agreed that it would be a regressive move. Dr Beech expressed the opinion that it was wrong to view the respondent as someone who had been released from prison to a supervision order. Instead he should be seen "as someone who has been under supervision for three years, who is doing reasonably well in the community, who has complied with the requirements for counselling, and who has ... abided by ... the other conditions." Whereas persons who were released from prison to a supervision order were initially placed on a strict curfew and were subject to reporting and other conditions that were appropriate to such a case, such conditions were not appropriate to the respondent who had been under supervision in the community for three years. Dr Beech said that to treat the respondent as if he was on "day one of a supervision order" would be "regressive". However, this is how officers of the Department treated the respondent in November 2011 upon the expiry of his parole order, and it required an order of the Court to set aside the decision to transfer him to the Wacol Precinct.

[22] The November episode prompts consideration of the directions that are likely to be given to the respondent in relation to his accommodation if a supervision order is made. This includes the possibility that the respondent will be directed to live at the Wacol Precinct if accommodation which the Department regards as unsuitable is the only accommodation which the respondent can find.

[23] On 25 November 2011 departmental officers attended the respondent's present place of residence and interviewed one of the occupants. Three female children aged between eight and twelve years were observed playing on the front driveway of the house directly opposite that address. Although this accommodation had been previously deemed suitable by the Parole Board, the proximity of female children was thought by the Department to make the accommodation not suitable.

[24] The respondent also proposed living at another address, close to his place of work. This form of private accommodation, which he proposed to share with the person who has provided him with work and training, was deemed unsuitable by the Department because of that person's criminal history.

[25] Despite finding both these residences unsuitable, and the respondent's attempts over a period of months to find other accommodation, the Department did not suggest, let alone facilitate, arrangements for the respondent to be accommodated at an address that the Department deemed suitable.

[26] Shortly prior to the hearing on 6 February 2012 the respondent applied to reside at another residence in a northern suburb of Brisbane. It was assessed by the Department and deemed unsuitable because it was within 100 metres of a school. Understandably, the Department's preference is for the respondent to live in the community in a place that puts him at the least risk of offending.

[27] As to his current place of residence, at which he is permitted to reside subject to certain conditions by virtue of an amendment made by Daubney J on 9 January 2012 to the interim supervision order, the Department still regards it as unsuitable. The manager of the unit within the Department that deals with the management of persons who are subject to the Act, Ms Embrey, gave evidence on affidavit on 6 February 2012 that:

> "In the event that the unsuitable assessment is accepted by the Court, the Respondent will be directed to nominate alternative accommodation to be assessed. If the Respondent does not make reasonable attempts to find alternative accommodation he will be moved to the Wacol accommodation precinct until such time alternative accommodation can be secured."

In oral evidence on 6 February 2012 Ms Embrey explained that by "reasonable" she meant that she understood that it would take time to find suitable accommodation and that departmental officers would work with the respondent around a reasonable period of time, which might be four to six weeks or longer if that was how long it legitimately took.

[28] The final hearing set down for 6 February 2012 was unable to conclude that day, due to the unavailability of a witness who was required for cross-examination. I indicated the importance of my gaining a proper understanding at the adjourned hearing of the prospects of the respondent being able to locate accommodation that was assessed as suitable by the Department. In the light of the evidence, particularly the evidence of the psychiatrists as to the regressive impact of requiring the respondent to reside at the Wacol Precinct, I considered it appropriate to gain a better understanding of the prospects that the respondent would be required to reside at the Wacol Precinct, possibly for a period of many months, if a supervision order was made upon the final hearing.

[29] The evidence given by Ms Embrey on 6 February 2012 is that it is quite difficult to find accommodation, and that the Department expects someone in the respondent's position to submit a number of addresses which can be assessed as suitable. A case manager will work with someone in the respondent's position and explain the kind of things that are relevant to an assessment of suitability. The Department will refer the person to some housing providers and assist him in that way. However, the Department is "not in the business of housing".

[30] Since 2008 the respondent has applied for approval to live at at least 19 properties. Some have been approved and the respondent has taken up residence there. Others have been approved, but by the time the Department's approval has been given, the vacancy in the rental property has been taken by another person. Approval has been refused on other occasions, for example, because the residence is deemed too close to a park or, following upon inspection by correctional services officers, children are found to live in the same street or congregate nearby. One property was deemed

suitable, and the respondent went to live in a downstairs "granny flat" there, but he later had to vacate when a family came to live in the upstairs flat.

[31] In late 2009 the respondent hoped to obtain accommodation through the Department of Housing. However, it did not become available. Whether and how he dropped off any public housing list is uncertain. The topic of public housing apparently was only raised again with him recently, on 7 February 2012 after the first day of the hearing before me. But as Ms Embrey explained on the second day of the hearing, 28 February 2012, someone can be on the public housing list for years without finding accommodation. Although persons subject to the Act are given some priority, and the Reintegration Coordinator of the Department communicates with officers within the Department of Housing in an attempt to find suitable properties, there are very few suitable properties on offer from the Department of Housing for persons who are subject to supervision orders under the Act. Understandably, some properties available to the Department of Housing are unsuitable because of the proximity of children to them. The limited number of vacancies on offer from the Department of Housing for persons who are subject to the Act, and the fact that the respondent has obtained accommodation in the community by his own means, may explain why he was not required to place his name back on the public housing register until the matter was raised with him on 7 February 2012.

[32] The respondent swore an affidavit (but was not cross-examined on it) which stated that he would "live anywhere that is assessed as suitable but [he] would prefer that it is in relatively close proximity to [his] place of study and possible future employment". He wishes to live, if possible, close to his place of study where he goes to work at 7 am seven days a week, and leaves between 5.30 and 10.30 pm, depending upon how much paperwork and study he has to complete.

[33] Not unreasonably, he has applied in the past to live in accommodation very close to the place at which he undertakes this work and training in accommodation supplied by the person who also provides him with this training. On more than one occasion the Department has deemed this place to be unsuitable. This is not because young children live nearby or the premises themselves are unsuitable. Essentially it is because the occupant/sponsor has a criminal history and the occupant's attitude towards the respondent's offending was not considered appropriate for that of a sponsor. The occupant/sponsor knows of the respondent's past convictions. There is no acceptable evidence that the occupant/sponsor makes light of the respondent's convictions, or that the occupant/sponsor encourages the respondent to downplay them, or even discusses them with him. There is no evidence that the respondent has denied the correctness of his convictions or seeks to minimise the harm which his past criminal offences caused his victims. All the evidence tends to indicate that the respondent accepts responsibility for his past crimes, recognises the risk of reoffending and has taken appropriate steps to minimise such risks.

[34] An assessment report dated 23 December 2011 in relation to the premises in question described their location and environment as "conducive to ensuring compliance" with the respondent's supervision order requirements. The involvement of the respondent in training and work at that location was treated as positive. The report stated, "All aspects of the employment offer and training opportunities for Mr Brown are further evidence of a positive, stable working environment and one that promotes significant interest for him." Against that background, and where the respondent has been able to enjoy a positive, stable

working environment, working under the supervision of his sponsor long hours seven days a week at this location, it is difficult to fathom why the Department would conclude that living in nearby premises was unsuitable. There is no evidence that children visit the premises. The December 2011 report stated that the sponsor/occupant's grandchildren no longer attend the premises and that he meets them off-site at his son's residence. No children aged under 16 years of age were observed in the nearby area. Under cross-examination Dr Harden politely described the Department's conclusion that these premises were unsuitable for the respondent as "a little dismaying". Despite this, and notwithstanding another request by the respondent to live at this address, the Department has again declined to approve it as suitable for the purposes of his interim supervision order.

[35] In the week before the resumption of the hearing on 28 February 2012, there was discussion about another place found by the respondent. There was some dispute over whether the respondent had failed to take prompt steps to apply for this rental vacancy. The respondent apparently was given to understand by a real estate agent that there were 17 other persons interested in renting the property, such that he had a one in 17 chance of being offered it. On 23 February 2012 he had yet to make an application for it, but the real estate agent told corrective services officers that the property was undergoing cleaning as the previous tenant had just recently moved out, and that the real estate agency would not process an application by the respondent until he had physically inspected the property. I do not regard the entries in the Department's computer system as proving that the respondent took inadequate steps on 22 or 23 February 2012 to inspect the premises and apply for it. Mr Brown was not cross-examined on his affidavit about his attempts to obtain approval for this or any other property.

[36] In her affidavit sworn 28 February 2012, Ms Embrey expresses the opinion that since the respondent has been managed under the interim supervision order, he has "not made reasonable attempts to source or secure appropriate accommodation, particularly given that he knows that the [name of suburb one] and current [name of suburb two] addresses have already been assessed as being unsuitable, that his interim supervision order requires him to remain 100 metres from schools, he is aware that he must be registered with the Department of Housing before they can offer him accommodation, and he has been less than truthful about the proposed new accommodation in [name of suburb two]." I am unable to agree with Ms Embrey's opinion, particularly in circumstances in which the respondent was not cross-examined about his attempts to source or secure appropriate accommodation. He was permitted to live by the Parole Board at his current address towards the end of his parole period. He has lived there without incident and another judge of this Court made specific provision for him to live there, subject to conditions, under the interim supervision order. His renewed application to live close to the place at which he works was a reasonable attempt to secure appropriate accommodation, especially in the light of the cross-examination of witnesses on 6 February 2012. At about that time, and notwithstanding what might have been regarded as an unreasonable finding that the proposed address was unsuitable, the respondent applied for approval in respect of a property at another suburb. At the time he located this property he apparently did not know that it was close to a school. There is no evidence that he knew of this and applied for approval anyway.

[37] I am not satisfied that the respondent was untruthful about the accommodation that he proposed in February 2012. There is no evidence that he was told that he had to be registered with the Department of Housing prior to 7 February 2012, or that he knew that his previous listing with that department had somehow lapsed. In any event, his prospects of obtaining accommodation with the Department of Housing would appear to be poor, especially in circumstances in which he is not homeless and has obtained, by his own endeavours, accommodation in the private rental market. In the light of the evidence, it is difficult to see why the Department of Housing would prioritise the respondent over other persons who are subject to supervision orders under the Act or other persons who are in urgent need of public housing. The respondent has lived at his current residence for a substantial period without incident, and without contact with children who live in the same street.

[38] A psychologist, Mr Melville, in his oral evidence correctly described the respondent's attempt to secure accommodation through his dealings with the Department as a "rollercoaster ride". I am not satisfied that the respondent has not made reasonable attempts to source or secure appropriate accommodation.

[39] In her affidavit sworn on 28 February 2012, Ms Embrey states:

> "In the case of the Respondent, if a supervision order is made, consideration to relocate him to contingency accommodation would only occur in the event that there is an increase in his risk of sexual reoffending, or if he does not take reasonable steps within a reasonable period of time after such order is made, and he is given a reasonable direction to do so to find and secure appropriate community based accommodation or in the event that his accommodation is no longer available to him and he is unable to secure alternative, appropriate accommodation."

I note that Ms Embrey in the same affidavit expressed the view that the respondent has not made reasonable attempts to source or secure appropriate accommodation. If a supervision order is made then there is a real risk that the Department will again take the view that the respondent has not taken reasonable steps within a reasonable period of time to find appropriate community-based accommodation when he has in fact done so. In such an event the Department is likely to require him to relocate to the contingency accommodation at Wacol.

[40] In the absence of a supervision order, the respondent would probably take up the offer to live close to where he is studying, which would facilitate the completion of his study and the obtaining of his qualifications. The other resident at those premises and his adult daughter know of the respondent's offending history. Children do not live at those premises. The resident's daughter resides in a distant town and visits her father a few times each year. The respondent would be required to pay $100 a week rent for his room. It appears to be a suitable place at which the respondent might reside. However, if a supervision order was made in the form sought, the Department would not give the respondent approval to reside at that residence.

Monitoring and reporting

[41] In the absence of a supervision order the respondent will remain a Registered Sex Offender under the Australian National Child Offender Register ("ANCOR"). Under ANCOR he must abide by numerous conditions. These include numerous reporting conditions in relation to his whereabouts, employment, internet access and telecommunications services. He must also report changes in relation to these matters.

[42] The Parole Board did not consider that the paramount interest of community protection or any other interests justified the respondent being electronically monitored during the period of his parole. This is understandable, given his successful rehabilitation prior to release. The Parole Board's confidence in the respondent successfully completing his parole was not misplaced. However, despite this history of compliance, and a well-established routine concerning his movements, on 23 November 2011 the respondent received a direction pursuant to the interim supervision order requiring him to wear a GPS tracking device. He has been required to wear it ever since, notwithstanding Dr Beech's compelling evidence on 6 February 2012 that, in the special circumstances in which the respondent finds himself compared to other persons who begin a supervision order, he should not be treated as if he has recently been released from prison and is commencing a supervision order.

[43] Whatever justification exists for GPS monitoring or other forms of electronic monitoring in the case of other individuals who are subject to a supervision order, the justification for the respondent being required to wear a GPS tracking device was not explained in the evidence before me. I accept that it may be of use to check whether he has attended some places, such as the real estate office in search of accommodation, and that such a device may have been of use to ensure compliance with a supervision order. However, there is no evidence that the respondent has not complied with reporting obligations and other restrictions on his movements in the period of more than three years since he was released on parole.

[44] Wearing a GPS tracking device has some problems. For example, the device has gone off frequently while the respondent has been giving presentations at work. This has forced him to continually go outside to obtain satellite coverage. His trainers have not been impressed and if this continues, he worries that it may jeopardise his study and future employment. He notes that on Sunday, 19 February 2012, when he was giving a presentation, the device went off six times between 10.30 am and 12.30 pm.

[45] The decision made in late November 2011 requiring him to wear a GPS tracking device (notwithstanding his having lived in the community for three years without being required to wear one) suggests a policy that everyone who is subject to a supervision order should be required to wear a GPS tracking device. The fact that the respondent has been required to continue to wear a GPS tracking device notwithstanding his circumstances and the well-established routine that he has observed during the period that he has lived in the community, suggests that he will continue to be required to wear a GPS tracking device if a final supervision order is made. If required to do so, and if he continues to encounter problems in his training and employment with such a device, then his future employment, and his rehabilitation, will be jeopardised.

Counselling in the community

[46] The respondent has been receiving counselling from a registered psychologist, Mr Melville, since December 2008. The counselling has assisted the respondent with his reintegration into the community and relapse prevention. In June 2010 Mr Melville reported to the Parole Board that the respondent had made "excellent progress on his parole". Mr Melville supported the respondent's pursuit of courses in relation to the operation of plant and equipment, and a relocation of his residence to an address close to the that place of work and training. Such a change was thought to assist the respondent in his integration into the community, and to save the respondent more than $200 per week in expenses. At the time of relocation, June 2010, the respondent was living in a boarding house in East Brisbane and Mr Melville believed that the respondent's safety was compromised.

[47] More recently, and on 26 August 2011, Mr Melville reported that his treatment of the respondent focused on stress management and functioning within the community. Mr Melville did not detect at the time any risk factors and advised that he would contact the authorities immediately if he believed that the respondent was showing such risk factors.

[48] Mr Melville has held post-graduate qualifications in psychology since 1988. He has worked as a psychologist in various fields and in the past has been employed as a probation officer with the Department. He currently works in private practice. The respondent was referred to him by the Department in late 2008 for counselling, and Mr Melville has seen the respondent 34 times since then, in recent times on referral from a general practitioner after a diagnosis of "mixed anxiety and depression". Mr Melville has assisted the respondent to manage his levels of stress and engage in pro-social activities as part of a mental health care plan authorised by the respondent's general practitioner.

[49] Mr Melville has been impressed by the way the respondent has secured appropriate accommodation, workplace training and employment and has established appropriate peer support and family/friendship networks. He says that the respondent has engaged willingly and openly in the counselling process and remains committed to continuing to see Mr Melville for counselling on an ongoing basis. In Mr Melville's professional opinion, the respondent has been able to identify risk factors and ways to avoid them in the future. He is aware of and able to utilise his support network should the need arise. Given these facts, the historical nature of the respondent's previous offences, and the "natural ageing/maturational processes" the respondent has undergone since the commission of the offences, Mr Melville expresses the opinion that the respondent represents a low risk of sexual reoffending.

[50] In recent months, and in accordance with his interim supervision order, the respondent has been assessed and counselled by Ms Sky, a psychologist with significant experience in counselling sex offenders. The respondent has seen Ms Sky seven times in recent months. I will address Ms Sky's professional assessment of the respondent in greater detail below. The respondent asked Ms Sky if she would be willing to see him even if he was not directed by a supervision order to attend appointments with her. She indicated that she would be willing to do so. Ms Sky charges the same hourly rate as Mr Melville. Sessions with her, like sessions with Mr Melville under a mental health care plan, would be subject to

Medicare rebates, requiring the respondent to pay $37.80 per session for which he says that he would make allowances out of his weekly budget. The respondent's preference is to see Mr Melville because of the strong rapport that he has developed with him. He has Mr Melville's direct number and has an understanding that he can contact him any time of the day or night if he is ever in crisis.

[51] The respondent's evidence is that he understands that to remain offence-free it is important to continue with counselling. He says that he knows that counselling assists him to adjust to lifestyle situations, to develop coping strategies for stress and to have someone to speak to about problems. I accept that if a supervision order is not made the respondent will continue to see Mr Melville. Mr Melville will take appropriate steps, including any necessary referral to Ms Sky or other interventions that may be required to enable the respondent to cope with anxiety and stress and to maintain the progress which he has made in the counselling he has received from Mr Melville and, more recently, Ms Sky.

Summary of the respondent's present circumstances

[52] The respondent has worked literally from dawn to dark in undertaking his course as a trainer and assessor, which he hopes to finish in May this year. He will then seek employment with this qualification, teaching adults how to use plant and equipment.

[53] The adult couple with whom the plaintiff resides know of his history. His accommodation with that couple provides him with secure accommodation in reasonably close proximity to his place of work. There is no evidence that he has had any contact with children living in that neighbourhood.

[54] The respondent has a limited social life. He obtains emotional support from his daughter, son-in-law and a few other friends and associates. All know of his past. The respondent explained to Dr Beech that it is better for people to know "up front" what he has done rather than have them find out later. At the time of his interview with Dr Beech on 13 January 2012 the respondent was in a good mood, with normal and eating and sleeping. The same was the case when he was interviewed by Dr Harden on 14 December 2011.

[55] Although the respondent's physical health permits him to live and work in the community, he has received treatment for hypertension, raised cholesterol and insulin-dependent diabetes. The respondent reports that he now has no sex drive. This is partly due to diabetes-induced impotence. In addition, he reports that his libido is not particularly strong, and although maintaining an attraction to adult females he is not currently engaged in any relationships and is not dating. He says that he does not use pornography, and there is no evidence that he does. In his spare time he engages in fishing, reading books and visiting his grandchildren.

[56] The respondent was on parole in the community between November 2008 and November 2011, subject to the periods when his parole was suspended for the reasons earlier given. Since November 2011 he has been subject to an interim supervision order which was made to facilitate the applicant obtaining the forensic reports required for the purpose of a final hearing of the applicant's application under the Act. During his time on parole and under the interim supervision order the respondent has reintegrated into the community successfully, despite the obstacles faced by anyone released from prison with limited means and who seeks employment and accommodation.

[57] Generally, he has coped well with the stresses that he has encountered, including corrective services officers deciding that accommodation on offer to him was not suitable and the direction given to him in November 2011 that he reside at the Wacol Precinct (which was set aside by the Court). In Dr Harden's opinion, the respondent seems to be able to deal with stressful situations moderately well, and his ability to cope with stresses has significantly improved compared to his earlier life. Dr Beech agreed with this assessment, and in his evidence in chief described the respondent as "a success story for rehabilitation". Dr Beech, however, identified the biggest risk strategically for the respondent as complacency as the years go by. In such an event the respondent's "guard would go down and that's when the risks would start to accrue, and the risk would be that he would get into some negative emotional state, in a dysfunctional relationship, he might tend back to reading child exploitation material and things like that and from there not recognise how ... badly he's going, withdraw from supports and then reoffend."

[58] In summary, through committed preparation for his release on parole in November 2008, including gaining insights into his condition and the risk of reoffending, and through determined efforts in obtaining work and accommodation following his release, the respondent has successfully rehabilitated himself over the period of more than three years following his release on parole. Dr Beech accurately described the respondent's rehabilitation as "a success story", and observed that the respondent "just needs to maintain his progress."

The respondent's plan for the future

[59] The respondent has contact with his daughter, her husband and her five children, none of whom are females aged under 16. He speaks to his daughter regularly, and also obtains emotional support from his son-in-law. Another source of social support and contact is from his work and study. The other trainers and assessors with whom he works treat him with respect and the respondent attends social events with them. He is careful not to attend social events at places where he may come into contact with children. He also has the offer of support from a community organisation which assists released prisoners. However, he has been able to seek accommodation without its assistance.

[60] The respondent is presently studying to be a Trainer and Examiner, and once he has finished his training he will be able to issue licences for heavy machinery. He has attained all his own licences to operate heavy machinery and by May 2012 expects to have completed all the theoretical training. He then intends to commence a course in Civil Construction which will take around two years. He has plans for future employment as an assessor and trainer. He hopes to earn enough from employment to be able to purchase his own home in due course.

The issue

[61] Dr Harden and Dr Beech, who provided reports in accordance with s 11 of the Act, and Dr Sundin who provided a report dated 18 February 2011 which was relied upon for the purpose of the application under s 8 of the Act (together with two short supplementary reports dated 9 November 2011 and 12 November 2011), each identified the benefits that would be gained by the making of a supervision order. Dr Harden identified the principal benefit as a restriction on potential victim access, whereby the order restricts the respondent having unsupervised contact with girls of

a certain age range, namely five to 15. Such a restriction would reduce the risk of deviant sexual arousal. In addition, Dr Harden stated that a supervision order probably benefits the community "as people on the orders in general have much better access to high quality offence specific treatment … and that's likely to continue to reduce [the respondent's] risk".

[62] Dr Beech considered that a supervision order would assist the respondent to maintain the progress that he had made. The support that a supervision order could offer, through counselling and other kinds of support, might be provided by some other means. However, a supervision order provides a means to ensure that people "stick to the rules" and do not regress.

[63] Dr Sundin gave evidence to like effect. Dr Sundin thought that while the respondent had done very well over a period of time and had been managing over the past three years, the risk of reoffending was enduring and would not reduce substantially until he had completed five years without offending following release or until he reached the age of 70, at which stage "the risk profile drops dramatically."

[64] It will be necessary to address the written and oral evidence of the psychiatrists in greater detail. For present purposes, it is sufficient to observe that the benefits associated with a supervision order identified by them are not disputed. The issue, however, for my determination is not whether the making of a supervision order is likely to have certain benefits for the respondent's continuing rehabilitation and for the community. The issue is whether without a supervision order being made there is "an unacceptable risk" that he will commit a serious sexual offence.

[65] The issue for determination is not precisely whether the respondent and the community would benefit from the respondent being ordered to not have unsupervised contact with young girls, to continue counselling and to observe other requirements of a supervision order. Like many other individuals in our society, including persons who have come into contact with the criminal justice system or who are at risk of coming into contact with the criminal justice system, the respondent would benefit from measures such as counselling and other forms of support and supervision that reduce the risk of anti-social behaviour and crime. The issue is not whether the making of a supervision order would benefit the respondent and the community in various ways. The issue is whether there is an *unacceptable* risk that he will commit a *serious sexual offence* if a supervision order is not made.

Principal submissions

[66] On the basis of the risk assessment reports provided in accordance with s 11 of the Act, the applicant submits that the respondent is at least a moderate risk of sexually reoffending in the absence of a supervision order. A supervision order would reduce the risk of sexually reoffending and, in the circumstances, it was submitted that there was an unacceptable risk that the respondent will commit a sexual offence in the absence of a supervision order.

[67] The respondent relies upon the fact that he completed all recommended courses while in custody, was released on parole (thereby persuading the Parole Board that he was not an unacceptable risk to the community), has complied with all conditions imposed on him under his parole order, has pursued studies in an effort to gain employment and has regularly met with a psychologist while in the community. He

relies upon the acknowledged fact that he has insight into risk factors, has developed a comprehensive relapse prevention plan, has been able to identify professional and personal supports to assist him and relies upon those sources of support.

[68] The respondent also relies upon the fact that he has not committed a relevant offence in over 20 years.

[69] Reliance is placed upon professional opinion that the respondent has demonstrated the ability to set appropriate goals, that these goals are realistic and that he appears motivated to pursue them. He was said to be able "to illustrate measures that he had taken to protect himself from the risk of reoffending and he demonstrated a deep level of understanding of these factors."

[70] Having regard to the provisions of the Act, including s 13(3), the respondent submits that, on the whole of the evidence, the Court could not be satisfied to the required standard that the respondent is a serious danger to the community in the absence of a division 3 order.

The legislation

[71] At the start of these reasons I identified the critical provisions of the Act. The objects of the Act, as stated in s 3, 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**." (emphasis added)

[72] A prisoner is a serious danger to the community within the meaning of s 13 if there is "an unacceptable risk that the prisoner will commit a serious sexual offence", if the prisoner is released from custody, or if the prisoner is released from custody without a supervision order being made.[5]

[73] The Court may decide that it is satisfied as required by s 13(1) only if it is satisfied:

> "(a) by acceptable, cogent evidence; and
>
> (b) to a high degree of probability;
>
> that the evidence is of sufficient weight to justify the decision."[6]

[74] The Attorney-General has the onus of proving that a prisoner is a serious danger to the community in the absence of a division 3 order.

[75] In deciding whether a prisoner is a serious danger to the community as defined in s 13 the Court must have regard to the following:

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5 The Act, s 13(2).
6 The Act, s 13(3).

"(aa) any report produced under s 8A;

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

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

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

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

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

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

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

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

(i) the need to protect members of the community from that risk;
any other relevant matter."[7]

[76] The paramount consideration in deciding whether to make a continuing detention order or a supervision order is the need to ensure adequate protection of the community.[8]

[77] If the Court is satisfied that the prisoner is a serious danger to the community in the absence of a division 3 order, then it may order:

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

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

In this matter the application formally sought a continuing detention order, with a supervision order as the alternative. However, the evidence does not justify the making of a continuing detention order. Counsel for the Attorney-General conceded in the light of the evidence that if an order was to be made, the appropriate order is a supervision order.

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7 The Act, s 13(4).
8 The Act, s 13(6).

[78] Section 13(6)(b) provides that in deciding whether to make an order under subsection (5)(a) (a continuing detention order) or (b) (a supervision order):

> "the Court must consider whether –
>
> (i) adequate protection of the community can be reasonably and practicably managed by a supervision order; and
>
> (ii) requirements under s 16 can be reasonably and practicably managed by corrective services officers."

It is not entirely clear whether this statutory command only applies in a case in which the Court is satisfied that the relevant respondent is a serious danger to the community in the absence of a division 3 order, decides that either a continuing detention order or a supervision order should be made and is considering which kind of order to make, or whether these matters must be considered in deciding whether or not to make a division 3 order. On one view of s 13(6)(b) the Court must consider the stated matters in deciding whether or not to make a supervision order in a case such as this, not simply in a case in which it is deciding between a continuing detention order or a supervision order. If, however, this view is erroneous then the issues of whether:

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

(b) requirements under s 16 can be reasonably and practicably managed by corrective services officers;

may be relevant matters and fall within s 13(4)(j), and thereby arise for consideration in deciding whether the respondent is "a serious danger to the community in the absence of a division 3 order", as defined in s 13(2).

Mandatory considerations under s 13(4)

[79] I will address the matters to which the Court must have regard under s 13(4) in a different order to the order in which they appear in the Act. The respondent's antecedents and criminal history will provide a context to consider the reports prepared by the psychiatrists under s 11 and the other matters referred to in s 13(4).

The respondent's history

[80] The plaintiff was born in early 1954 in Brisbane. He was the eldest of four children. He had a relatively stable upbringing. However, one blight on his childhood was that he was subject to sexual abuse by a stranger when he was aged 12. The abuse continued for a few months before he told his parents, who contacted police. In his discussions with Dr Beech the respondent thought that this abuse did not have any lasting effect on him and that he had put it to the back of his mind.

[81] After leaving school at the age of 16 the respondent worked in a variety of occupations, including as a storeman and in a trailer-making business. He was a reliable employee.

[82] He married at the age of 22. There were children from this relationship. The respondent and his wife separated in 1976 and were later divorced.

[83] After his release from prison in 1985 he married in 1986. This relationship ended in divorce in 1988. He had relationships with other women. He was in a de facto relationship from the age of 38 for about three years before his partner returned to her husband.

[84] At age 43 he formed a new relationship that lasted for about seven years and there were two children from this relationship. The end of this relationship in 2002 occurred at about the time he was charged with the offences that had occurred in 1990-1992.

[85] It appears that overall the respondent had reasonable relationships with his wives and partners. They appear to have been stable relationships with no particular volatility.

[86] The respondent apparently had no sexual interest in children until he was exposed to pornography in around 1975. He came across pornographic books that had been left by workmen and found them to contain pictures of young girls. He began to read them compulsively and two or three months later his sexual offending started. He said he was aroused by the photographs and the "innocence" of the girls. He was attracted to pre-pubescent females, and would fantasise about their images. His fantasies involved a simple sexual relationship and he denied any fantasy of violence or sadism.

[87] The respondent drinks socially and has never experienced problems with alcohol. Nor has he engaged in illicit substance abuse. He developed panic attacks when he was in prison for the first time and was prescribed medication for it.

[88] His medical problems, particularly heart and vascular disease and diabetes which requires insulin four times per day, have rendered him sexually impotent. In an interview with Dr Harden he said that his sexual drive was not strong and that he had not had an erection for about 10 years.

Criminal history

[89] The respondent's criminal history includes four minor property offences, including one minor episode of delinquency at the age of 17 when he and older boys stole cigarettes. In 2010 he was charged with unauthorised dealing with shop goods when he forgot to pay for some items that he put in his bag at the shops. This episode coincided with a period of stress in his life when he was facing charges that were later withdrawn. He was fined $200.

[90] The relevant criminal history relates to the two groups of sexual offences that I have previously summarised. The first group occurred in 1976. The second group occurred between 1990 and 1992. On 4 April 1976 the respondent raped a schoolgirl in the male toilets at a train station. He had gone to the station looking for a girl to commit sexual offences against, and he threatened her with a screwdriver.

[91] On 28 July 1976 the respondent approached two young girls in parkland in the mid-afternoon, produced a knife and raped one of the girls, and afterwards said he knew where she lived and would come back to kill her if she said anything.

[92] In relation to the four charges of aggravated assault of a sexual nature of a female on 30 August 1976, the respondent entered toilets in school grounds, armed with a screwdriver, and told a young girl to remove her pants. He then went on his knees and licked her vagina, produced a pocket knife and told her to remain there and await his return. The respondent was also charged with assaulting a girl in school toilets. He put his hand over her mouth and touched her on her private parts and attempted to remove her pants, put his hand inside her pants and tried to remove her underclothing. The respondent was also charged with approaching a student in school toilets, threatening her with a knife and telling her to take her pants off, and kneeling down on the ground and exposing himself.

[93] On 26 September 1976 the respondent approached an 11 year old girl and her sister and a friend in a railway subway. He told the girl to sit and take off her pants. He put his hand between her legs and his finger in her vagina. The respondent was carrying a large stick with a sharp point at the time.

[94] In summary, the 1976 offences, for which he was sentenced in 1977 with concurrent sentences of ten years, nine years, three years and six months, involved seven charges involving young girls on four different occasions. These offences occurred over a period of months between April and September 1976.

[95] In 2004, the respondent pleaded guilty to a series of offences, the first committed against a nine year old girl who was a friend of the family, which had involved him putting his penis in her mouth while she was blindfolded and in the course of pretending it was a game involving lollies. The offences occurred between 3 November 1990 and 1 January 1992.

[96] The other offences involved the ten year old daughter of his then girlfriend and involved more persistent offending, rubbing his hand over her vagina, on occasions getting her to touch him on the penis and masturbate him and on the last occasion, attempting to sodomise her. In the latter case, there was force used and he told her not to tell anyone.

[97] The respondent desisted from offending when the victim said she thought it was wrong and that she wanted it to stop.

Reports prepared by psychiatrists under the Act

[98] Dr Harden interviewed the respondent on 14 December 2011 for approximately two hours. He also reviewed extensive documentation and produced a report in accordance with s 11 of the Act.

[99] Dr Harden noted that the respondent had been convicted of two clusters of sexual offences in his life, with a total of nine victims, and he was effectively untreated in the period between the two clusters, although he was detected and incarcerated. The second cluster involved two victims who were groomed by the respondent.

[100] According to Dr Harden, the respondent seemed to express genuine remorse for the offences, and had an understanding of the effect that they would have had on the

young people who were involved. Dr Harden did not identify any particular problems with the respondent's ability to deal with day-to-day life in the community. He noted that the respondent had successfully undertaken appropriate interventions and sex offender maintenance programs. The respondent met the diagnostic criteria for "Paedophilia, non-exclusive, limited to females". In Dr Harden's opinion, the respondent does not have a personality disorder. The respondent's "ongoing unmodified risk of sexual reoffence in the community" is said to be moderate. Dr Harden's report identified that the greatest risk factor was the respondent's deviant sexual arousal. In Dr Harden's opinion, the respondent may have some decline in his sexual interests associated with age and medical infirmity, but it would be surprising if the respondent did not still have deviant sexual arousal.

[101] Dr Harden gave the opinion that a supervision order would reduce the respondent's risk to moderate to low, but the risk factor in terms of deviant sexual arousal was likely to persist over time and require ongoing management by the respondent and/or existing professionals.

[102] Dr Harden recommended that:

(a) the respondent have ongoing treatment with an appropriate forensic psychologist or psychiatrist who had significant experience in treating individuals with deviant sexual arousal;

(b) the respondent should not have unsupervised contact with females under 16 years of age;

(c) the respondent should avoid any use of pornography, particularly of pre-pubertal females, and noted that the respondent identified pornography as a significant risk and trigger; and

(d) the respondent should not keep any other pictures of pre-pubertal females, such as from shopping catalogues etc.

[103] Having reflected on the matter before giving oral evidence at the final hearing on 6 February 2012, Dr Harden considered that the appropriate period of any supervision order would be five years.

[104] Dr Harden was asked during his evidence-in-chief whether he considered that the respondent would be "at an unreasonable risk to the community" if he was not subject to any kind of supervision order. Dr Harden responded that he did not think that the question of reasonableness was one for him to answer as an expert. He considered that the respondent was a moderate risk of recidivism in terms of sexual offences and that, at a pragmatic level, the disadvantage of there not being a supervision order was that it might be very hard for the respondent to organise and pay for the kind of additional therapeutic input that people get when they are under supervision orders.

[105] Dr Harden stated that the respondent had insight into his past sexual offences, and understood the need to comply with risk reduction strategies. The respondent accepted that there was always a risk of reoffending.

[106] The respondent was said to be able to deal with stressful situations reasonably well, and far better than he had in his earlier life. In fact, Dr Harden observed that the respondent had coped well in recent years in dealing with the justice system and that he would have expected the respondent "to be more aggrieved than he is."

[107] Dr Harden's assessment of the respondent as a moderate risk was based largely on the respondent's criminal history, which albeit more than 20 years ago, was concerning in terms of two clusters of offences. The respondent had done well in terms of reintegration. The advantages of supervision orders, according to Dr Harden, are that they restrict access to victims and they provide better therapeutic services and monitoring than would otherwise be provided. The disadvantages included issues in relation to accommodation and employment, and processes in relation to these can "at times impede people's reintegration into the community."

[108] Dr Beech interviewed the respondent for about two and a quarter hours on 13 January 2012, reviewed relevant documents and provided a report dated 25 January 2012.

[109] Dr Beech noted that the sexual offences for which the respondent was convicted in 1977 had their genesis in the onset of sexual fantasies that were triggered by reading pornography while the respondent was stressed by domestic circumstances. Dr Beech gave the opinion that the nature of the fantasies and the offending indicated that the respondent had the sexual deviance of Paedophilia.

[110] Dr Beech noted that the earlier offences were notable for offences on young girls in the community and the use of coercion. The more recent offences indicated a capacity for predation and grooming, and the offending appeared to have been callous, however empathy had developed later in the context of rehabilitation.

[111] In Dr Beech's opinion, the offences appear to have been related to inter-personal difficulties and strains within the respondent's domestic relationships, which the respondent recognised as a risk factor.

[112] The respondent demonstrated a good understanding of the principles of risk reduction in his interview with Dr Beech. He noted that the respondent had realistic plans for the future, that the respondent had been compliant with supervision, that there was a long offence-free period after 1992 and that the respondent had been in the community for approximately three years without returning to offending. Dr Beech noted that the respondent had moved from temporary accommodation, secured employment, made new friends and expanded his support network. He had also engaged in a number of self-enhancing activities that included volunteer work. The respondent was "able to illustrate measures that he had taken to protect himself from the risk of reoffending and he demonstrated a deep level of understanding of these factors." The respondent had developed a comprehensive relapse prevention plan and was able to identify professional and personal supports to assist him.

[113] Like the other assessing psychiatrists, Dr Beech undertook both an actuarial risk assessment and a dynamic risk assessment. In assessing the risk of sexual reoffending, Dr Beech had regard to a number of factors including diagnosed paedophilia, coercion associated with past offending and the fact that there was persistent or dense offending during the two relevant periods.

[114] As against these factors there was an absence of a history of mental illness, no alcohol or substance abuse, a limited pattern of general criminal offending, the respondent's realistic plans and his compliance with supervision.

[115] Dr Beech placed importance upon the fact that there was "a long offence-free period" after 1992 and that the respondent has now been in the community for about three years without a return to offending.

[116] Overall, Dr Beech assessed the risk as moderate. His report gave two reasons for this:

> "Firstly, three years is still a relatively short period of time given the nature of his deviance, the persistence of the offending, and the fact that his reoffending occurred around five years after his first release. Secondly, it may in fact be the supervision of his parole that has helped him to stabilise in the community and in its absence he may be more stressed, and less likely to pursue counsel. The 2010 shoplifting is a concern."

[117] Dr Beech thought that the respondent's risk would remain at this level until he can demonstrate that he can remain offence-free in the community for at least five years. Dr Beech expressed the opinion that the risk would be lowered to low to moderate by a supervision order that provided for ongoing monitoring, and which ensured ongoing counselling and support.

[118] Dr Beech noted that it was important that the respondent did not establish and maintain contact with young females, he should not use child pornography, and he should continue his efforts in employment and the development of social supports.

[119] In his oral evidence Dr Beech expressed the opinion that a supervision order was to be preferred to "no supervision". In general, "the trajectory of reoffending" fell markedly once one reaches five years offence-free following release. As Dr Beech said, "If you can make it to five years, you're doing very well." Dr Beech recognised the limitations upon statistical analysis due to the small number of older offenders in statistical studies.

[120] Dr Beech acknowledged that the respondent had done all that he can do in terms of courses. Dr Beech's concern was for the respondent to maintain matters by regular sessions with a suitably qualified psychologist. He stated:

> "I truly think, in terms of rehabilitation, it's a success story. He needs: but he just needs to maintain his progress and I think that to release him now from all supervision is just premature."

[121] Dr Sundin assessed the respondent on 27 January 2011, and produced a report dated 18 February 2011 which was relied upon at the preliminary hearing that occurred on 13 July 2011. She also provided two short supplementary reports dated 9 November 2011 and 12 November 2011. Dr Sundin did not have the same advantage as Dr Harden and Dr Beech of interviewing the respondent in recent times. However, she had the advantage of reading their reports and hearing their oral evidence. Her opinions were generally in accordance with theirs.

[122] At the time of her initial assessment, Dr Sundin considered that the respondent represented a substantial risk of reoffending, by which she meant moderate to high.

The potential victim was a pre-pubescent girl. Dr Sundin considered that the respondent's risk of recidivism was such that it could be managed by a supervision order which, amongst other things, required him to continue psychological treatment and ensured that he did not have access to young females. Dr Sundin thought that the respondent's risks justified any supervision order being for a period of 10 years.

[123] I will not detail the actuarial assessments undertaken by each psychiatrist. The psychiatrists recognised the limitations upon such assessments and, as Dr Sundin observed, the interpretation of actuarial assessments "must be exercised with caution, given the research data was developed from North American prison population."

[124] The opinions of the three psychiatrists who provided reports and gave oral evidence were not in marked conflict. They agreed on the diagnosis of paedophilia and the risks of reoffending. As between their respective opinions about the level of risk, I prefer the assessment of Dr Harden. Dr Harden explains that his assessment of the respondent's "ongoing unmodified risk" of sexual reoffence in the community as moderate related to the risk "in the absence of supervision or intervention". His opinion that a supervision order would reduce the risk to a lower level was not to say that other forms of intervention, including ongoing appropriate counselling, would not also reduce the risk.

Other medical, psychiatric, psychological or other assessments

[125] Whilst in prison the respondent completed the High Intensity Sexual Offender's Program ("the HISOP") and a large number of other courses, mostly vocational, and he obtained skills and certificates in heavy machinery. While on parole he completed a Sexual Offender Maintenance Program ("the SOMP").

The HISOP Exit Report, dated June 2008

[126] The respondent completed 70 sessions between 29 October 2007 and 28 May 2008. In these sessions: he comprehensively refuted his permissive cognitive distortions which had enabled his offending behaviour; he developed an understanding of the impact of his offending on his victims; themes identified by the respondent included sex as coping, a chaotic relationship history, intermittent but recurrent use of prostitutes and significant gratification during offending, creating for him a sense of control; and, background factors identified as common to both offending periods included dissatisfaction with his sex life with his adult partner, unhappiness with work, poor self concept, use of pornographic materials, having been a victim of sexual abuse himself, feelings of loneliness and relationship concerns.

[127] The facilitators noted that: the respondent completed the module of victim empathy to a good standard; at the time of both offending periods, the respondent had marital problems, including concerns about sexual activity with partners; the quality of his relationships could prove to be a high risk factor; he had a pattern of co-dependency in some of his relationships; and, his short and long term goals on release from prison were extremely thorough and detailed.

[128] The facilitators considered that the risk factors increasing the respondent's risk of re-offending included:

- embarking on an unhealthy relationship in an attempt to meet his intimacy needs;

- using pornography, particularly illegal pornography, which would reinforce sexual deviance/age-inappropriate sexual interests; and

- negative mood states, which would be related to feeling that his intimacy needs were not being met, and generally low self-esteem, which use of pornography would further exacerbate.

[129] It was considered that protective factors to modify his high risk included counselling, volunteer work, establishment of business interests, and using cognitive behavioural techniques to think more positively and to problem solve more effectively.

The SOMP Completion Report, Nicola Martin, dated 12 February 2010

[130] Ms Martin noted that: prior to the respondent's participation in the maintenance program, he had developed a comprehensive New Future Plan, but that plan had changed since being released from custody; he had highlighted the need to continue to acknowledge and challenge his negative feelings and continue to build on his self-esteem; he had achieved a number of goals he planned whilst incarcerated including moving from temporary accommodation, securing employment, making new friends and expanding his support network and complying with conditions of his parole; he placed strong focus on re-establishing his relationship with his daughter; and, he had engaged in a number of self-enhancing activities including volunteer work, maintaining health and fitness and seeing his counsellor, Mr Melville, on a regular basis.

[131] Ms Martin noted that: the respondent demonstrated an ability to set specific, appropriate and achievable goals, and a commitment to achieving his goals; his goals in all domains were realistic, appropriate and achievable; he appeared motivated to pursue them; and, he was able to define clear steps needed in order to achieve them, and to actively implement those steps whilst in the program.

[132] Ms Martin noted that: the respondent was able to illustrate measures he had taken to protect himself from risks of re-offending; Queensland Corrective Services staff supervising him should remain vigilant around his high risk factors and encourage him to maintain protective measures he had put in place; the respondent demonstrated a deep level of understanding of his risks factors and the thoughts, feelings and behaviours that related to each risk factor; he identified intimacy problems, insecurity in relationships, pornography and inappropriate sexual thoughts and low self esteem as potential risk factors; he developed a comprehensive New Future Plan that encapsulated his risk factors, interventions, appropriate supports and realistic goals for the future; and, the new Future Plan should assist him in attaining his goals and, if adhered to, reduced the likelihood of recidivism.

[133] Ms Martin noted that since completing the treatment program, the respondent had continued to develop his social skills, self-esteem, management of emotions and

problem solving skills. He was encouraged to review his New Future Plan and, if he experienced any instability in his life or there should be any concerns about his risk factors, it was recommended that he be re-referred to the SOMP.

Mr Melville – psychologist

[134] During his parole period, and since it ended in November 2011 the respondent has received regular counselling from Mr Melville. Although Mr Melville is not a specialist in sex offending, his professional assessment of the respondent's condition warrants considerable respect. Mr Melville considers that the respondent is at low risk of recidivism due to his age and self-regulatory mechanisms.

[135] Dr Beech was respectful of Mr Melville's approach to counselling of focusing upon stress management and problem solving, given Mr Melville's awareness of the respondent's history of offending and risk profiles. As previously noted, Mr Melville offered to contact authorities immediately if he believed the respondent was showing risk factors.

Ms Sky – psychologist

[136] Ms Sky is a psychologist in private practice. She has great experience in the assessment and treatment of sexual offenders. This includes having worked for Queensland Corrective Services between 1996 and 2010. Her duties included the development of programs for the assessment and treatment of sex offenders and training staff to deliver programs. The respondent was referred to her on 4 January 2012 for the purpose of psychological assessment and intervention. She was asked to assess his risk and needs relating to future sexual reoffending. She has had seven consultations with the respondent since then. She prepared a forensic psychological assessment report in February 2012. Ms Embrey spoke highly of Ms Sky's experience in the field, as did the psychiatrists who gave evidence.

[137] Ms Sky's report comprehensively addressed the respondent's relapse prevention strategies. She noted that the respondent had completed three years under a parole order without engaging in behaviour that increased his risk of sexual offending. Ms Sky identified a number of protective factors including the respondent's social support network which, though limited, appeared to be pro-social and positive. They served to decrease his potential for isolation, associated loneliness and lowered self-esteem. Other factors included the importance which the respondent placed upon his family, particularly his daughter's family, his reported reduced libido due to diabetes and heart disease, his reported absence of interest in sexual contact with girls and decisions and actions taken by him to avoid being alone with females under 16, including disclosing his offending history to any family that has a daughter under that age. Other protective factors included the respondent's acceptance and acknowledgment of the negative impact that his offences had had on victims. The respondent was said to make constructive use of his time, have stable accommodation and stable work and study experiences. The respondent had not committed sexual offences nor engaged in risky behaviour since 1992. His age was also associated with a lowered risk of sexual offending.

[138] Ms Sky reported that the respondent's relapse prevention strategies had been successful during his parole period and that he would be further protected by giving a high priority to managing stress, examining mechanisms that lead to stress and not using the internet without scrutiny or accountability to some trusted individual. The

respondent told Ms Sky that he managed the risk of using illicit pornography by having his housemates check if he was using the internet too long or receiving unusual mail and that if his housemates noticed any concerning behaviour they were instructed to intervene. He also had strategies to avoid being involved in bad relationships, being alone with female children and avoiding isolation and stress.

[139] Ms Sky's report concluded that the past three years that the respondent has spent in the community is the period "when most recidivism occurs particularly the first 12 months". The respondent had successfully established himself in the community and made important changes which, together with 20 years of not reoffending sexually, substantially lowered his risk of sexually offending. Further psychological intervention would further lower his risk of sexual recidivism.

[140] Ms Sky assessed the respondent's current risk of sexual reoffending as likely to be low. She clarified in her oral evidence that the respondent's risk of sexual recidivism was low, irrespective of whether or not a supervision order was made. As with the other expert witnesses, Ms Sky identified the fact that a supervision order would constrain the respondent, allow further scrutiny of his movements, and also would mandate psychological interventions. She continued:

> "I just wonder though, in any case, when do we as a society say that a person has ... engaged in sufficient intervention processes. I mean, I don't know. I honestly don't know whether it's going to make a difference."

The principal benefit, however, was mandating what would otherwise be voluntary psychological interventions. Additional interventions by way of courses and programs were unnecessary in the respondent's case. Counselling in the community through a psychologist would assist him to cope with stress and further reduce his risk of reoffending.

[141] I consider that Ms Sky's assessment should be accorded significant weight. She has recognised skill and experience in the field. She has seen the respondent more frequently and more recently than the other experts, save for Mr Melville who is not a specialist in forensic psychology. I accept her opinion that the respondent's risk of sexual reoffending is likely to be low, whether or not a supervision order is made.

Propensity and pattern of offending

[142] These matters are referred to in s 13(4)(c) and (d). I have already addressed these in my discussion of the expert reports and other evidence given before me.

Efforts by the respondent to address the cause of his offending behaviour

[143] I have previously addressed the respondent's commendable efforts to address the causes of his offending behaviour and to avoid the risk of reoffending. These efforts include having completed numerous courses whilst in prison including the HISOP between October 2007 and May 2008, and the SOMP between October 2009 and February 2010. His level of participation and achievement in these programs was praised by informed observers. Since his release on parole the respondent has met regularly with a psychologist and continues to do so.

[144] In various ways the respondent has developed and implemented a comprehensive relapse prevention plan, and been able to identify professional and personal supports to assist him. He has taken steps to protect against the risks of sexual reoffending. With one minor blemish, he has lived a law abiding and productive life since his release on parole in November 2008. As previously noted, the steps taken by him to progress his own rehabilitation have been commended by those who have assessed him. I accept Dr Beech's view that in terms of rehabilitation, the respondent has been a success story.

The risk that the respondent will commit another serious sexual offence if released into the community

[145] This statutory factor is cast in terms that reflect the usual case in which a respondent to an application under division 3 has yet to be released into the community. In this case, the respondent was released into the community more than three years ago. The relevant matter in his circumstances is the risk that he will commit another serious offence in the absence of a supervision order.

[146] The relevant risk has already been identified in the reports of the psychiatrists that I have considered, and in their oral evidence. In simple terms, it is the risk that the respondent will fail to use the protective measures that he has developed and implemented, access child pornography or take other steps that may arouse a deviant sexual interest in girls aged between five and 15. Each of the psychiatrists identified the importance of his not establishing or maintaining contact with young females (subject to appropriate exceptions such as supervised contact with grandchildren). They also emphasised the importance of his not having access to child pornography, or even collecting pictures of pre-pubescent females in shopping catalogues or magazines. They also emphasised the importance of his receiving ongoing treatment with an appropriate psychologist. It was also important that he continue his efforts in employment and the development of social supports.

[147] Dr Beech remarked upon the responsibility to access the support of psychologists and others and his use of appropriate cognitive strategies in stressful situations. He said that he was reasonably confident about the respondent's ability to use appropriate cognitive strategies. He considered, however, that a supervision order would allow the respondent to continue the progress that he has made and avoid the risk of becoming complacent and "lowering his guard".

[148] Importantly, the respondent has an insight into risk factors. He does not deny that he is at risk of reoffending. Instead, he has taken positive steps to address this risk. I am not persuaded that the respondent underestimates the extent of that risk.

[149] There is a need to protect members of the community from that risk and, fortunately, the respondent appreciates this fact.

Other relevant matters

[150] I take account of the fact that the Parole Board concluded in 2008 that the respondent was not an unacceptable risk to the community and should be released on parole. In making that decision the Parole Board was required to give paramount consideration to the protection of the community. Its assessment has not been shown to be flawed. Had it not been for the events that I have previously noted, and had the respondent not been returned to custody for a relatively brief period, it

would not have been possible for the present application to be brought. Still, the fact that the application was only able to be commenced in those unusual circumstances does not alter the fact that it must be determined according to the same criteria as any other application for orders under division 3 of the Act. Instead, the application is factually unusual in that the respondent was on parole for approximately three years and has had an opportunity to demonstrate his progress towards rehabilitation in the community.

[151] Another relevant matter is whether the respondent's successful rehabilitation could be undermined by the administration of a supervision order. This includes the risk that decisions made by corrective services officers pursuant to a supervision order may unreasonably restrict his accommodation in the community and jeopardise his education and employment.

[152] The respondent has handled stresses in recent years very well in the circumstances. However, instability in his accommodation and a practical inability to live close to where he undertakes work and training may have serious implications for his rehabilitation and the protection of the community.

[153] In the absence of arrangements for his accommodation in the community which the Department deems suitable, the making of a supervision order exposes the respondent to the risk of being required to live in the Wacol Precinct in the company of up to 26 sex offenders. This risk arises despite the respondent's attempts to locate suitable accommodation. The risk of the respondent being required to live at the Wacol Precinct in such circumstances is a disadvantage associated with the making of a supervision order.

[154] Such a requirement would jeopardise the respondent's rehabilitation and thereby reduce protection of the community from the risk of his reoffending. The episode in November 2011 in which the respondent was directed to reside at the Wacol Precinct and to be subject to a curfew between 6 pm and 6 am illustrates the potential for a supervision order to jeopardise the rehabilitation of a person subjected to it, and thereby jeopardise protection of the community, due to the manner in which the supervision order is managed without regard to the circumstances of the case. The respondent was treated as if he might have been upon release from custody upon a supervision order, not as someone who was working and living productively in the community, and who had successfully completed three years of parole.

[155] The decision to require the respondent to reside at the Wacol Precinct and to be subject to a curfew between 6 pm and 6 am was not withdrawn. The respondent was required to instruct lawyers to commence judicial review proceedings in this Court, whereupon the relevant decision was set aside by consent.

[156] The Department's refusal to approve the respondent's recent application to live close to his work in a residence that he would share with the same individual with whom he works for long hours each day is hard to justify, and as Dr Harden said, a little dismaying. The Department presumably will adhere to the view that this residence remains unsuitable.

[157] It is possible that the respondent will find other private accommodation to rent, and that the Department will approve it as suitable before it is offered by a landlord or real estate agent to some other potential tenant. The process of departmental

approval can take weeks on some occasions. Understandably, the respondent is limited in the houses that he can submit for approval. If he finds somewhere that does not appear to have children living in the same street, further investigation may show this not to be the case, or the home may be close to a park or some other place that makes it unsuitable. Public housing is not readily available to the respondent, and any public housing that is offered to him cannot be in a place close to children.

[158] The Department may reach the view that the respondent has not taken reasonable steps to secure appropriate accommodation when he has in fact done so, in which event he is likely to be directed to reside at the contingency accommodation at Wacol. Without access to accommodation which the Department regards as suitable, and despite the respondent's efforts to locate alternative accommodation, the point may be reached at some stage if a supervision order is made that the respondent will be directed to live at the Wacol Precinct. The uncontested evidence is that being required to live at Wacol would be regressive and impair his rehabilitation.

[159] The requirements of a supervision order include requirements to:

- comply with any reasonable direction under s 16B; and
- comply with every reasonable direction of a corrective services officer that is not directly inconsistent with a requirement of the order.

Section 16B permits a corrective services officer to give a released prisoner a reasonable direction about, amongst other things, accommodation. Depending upon the circumstances, a direction that a released prisoner be accommodated at the Wacol Precinct may be entirely reasonable. Such a direction may be reasonable in the context of a supervision order made against someone in the respondent's unusual circumstances where suitable accommodation in the community is not available, where suitable accommodation is available and the person does not take reasonable steps to obtain it or if there has been a change in a person's circumstances relating to the level of risk of committing a serious sexual offence. However, in many other circumstances, a direction under a supervision order for the respondent to live at the Wacol Precinct would be unreasonable. It would be unreasonable if such a course jeopardised his rehabilitation and with it, the protection of the community. It would be unreasonable if the direction arose because of inadequate steps taken by the Department to locate suitable accommodation in the community or because the Department unreasonably found accommodation proposed by the respondent to be not suitable.

[160] It might be said that such an unreasonable direction could be challenged in court proceedings because it was unauthorised by law. However, no simple procedure exists for such a decision to be reviewed on the merits. The course of instituting and pursuing judicial review proceedings is costly and complicated. Incidentally, counsel for the Chief Executive of Queensland Corrective Services challenged whether the decision made requiring the respondent to reside at the Wacol Precinct in November 2011 was a decision of an administrative character made under an enactment and thereby a decision to which the *Judicial Review Act* 1991 (Qld) applied. If, however, such a decision is of such character or is otherwise amenable to judicial review, the practical and forensic task of challenging such an unreasonable direction by means of judicial review is substantial.

[161] The course of events in November 2011, and subsequent events including the unreasonable recent decision to refuse approval for him to live close to his place of work, call into serious question whether requirements under s 16 as to the respondent's accommodation can be reasonably and practicably managed by corrective services officers. They also call into serious question whether adequate protection of the community can be reasonably and practicably managed by a supervision order if the respondent's rehabilitation is jeopardised by unreasonable directions that he reside at the Wacol Precinct.

[162] I am not satisfied that requirements under s 16 can be reasonably and practicably managed by corrective services officers in the respondent's case.

The possible disadvantages of a supervision order

[163] The problems that I have highlighted in respect of the respondent's accommodation during the course of the management of the interim supervision order illustrate a potential disadvantage of making a final supervision order in the same or similar terms. Absent satisfaction that the requirements of such an order can be reasonably and practicably managed by corrective services officers, such an order carries the risk that the powers and discretions that it confers on corrective services officers will not be managed reasonably and practicably, will jeopardise the respondent's successful rehabilitation and, in its practical operation, thereby elevate the risk of his reoffending. This would be inconsistent with the paramount consideration of ensuring adequate protection of the community.

Can some of the benefits of a supervision order be obtained by other means?

[164] One of the identified advantages of a supervision order is the requirement to receive suitable counselling in order to progress rehabilitation. Dr Harden favoured ongoing treatment with an appropriate forensic psychologist or psychiatrist who has significant experience in treating individuals with deviant sexual arousal. The respondent might receive such treatment as part of a reasonable direction pursuant to s 16B of the Act in the event that a supervision order was made. As previously noted, Dr Harden nominated the most significant pragmatic benefit of a supervision order as the fact that it is often very hard to organise and pay for the kind of psychological counselling that people get when they are under supervision orders, and he was concerned that the respondent may not have access to such counselling. However, during the adjournment evidence was obtained which indicates that the respondent is likely to be able to obtain counselling from Mr Melville, Ms Sky or some other suitably-qualified psychologist on referral from his general practitioner through a mental health care plan. The respondent understands the importance of continuing with counselling and, accordingly, it is likely that some of the benefits identified by Dr Harden will be obtained in the absence of a supervision order in the respondent's case.

[165] Although I accept that it would be best if the respondent could receive counselling and treatment from an appropriate forensic psychologist or psychiatrist, I nevertheless consider that a significant part of the benefit of such treatment could be gained by his continuing to receive counselling and other support from the psychologist who has treated him for more than two years or some other suitably-qualified psychologist. Provided that psychologist is aware (as is Mr Melville) that deviant sexual arousal is the respondent's single greatest risk factor and should

continue to be addressed, I consider that the receipt of such counselling will provide considerable benefit to the respondent.

[166] A supervision order that required the respondent to not have unsupervised contact with females under 16 years of age would reinforce his existing relapse prevention program. The same can be said in respect of a requirement to not access child pornography. However, during the period that he was in the community on parole the respondent conducted himself so as to avoid unsupervised contact with young females, did not consume child or other pornography and took other steps to minimise the risk of deviant sexual arousal.

[167] In the absence of a supervision order the respondent will still be required to report in accordance with his ANCOR obligations, including reporting about his internet and mobile telephone use. He has arrangements with housemates, friends and work colleagues to monitor his use of the internet and his receipt of mail.

Has the applicant proven to the required standard that there is an unacceptable risk that the respondent will commit a serious sexual offence in the absence of a supervision order?

[168] The respondent has been living in the community for most of the time since his release on parole in November 2008. He has successfully rehabilitated himself and taken positive steps to avoid the risk of sexual reoffending.

[169] It was said in the evidence that there would be a greater degree of assurance of his continuing in this manner if he had been in the community for five years without reoffending. This was based on statistical studies which were said to show that the risk of reoffending dropped considerably after a person had been in the community without reoffending for five years following release. It may be that a five year period would give a greater degree of comfort that the respondent is unlikely to reoffend. Further supervision under a supervision order would have the benefits that have earlier been identified and reduce the risk of the respondent becoming complacent and minimise risk factors. However, I do not have the option of making a supervision order for a period of two years or some similar period such that it would expire at a time when the respondent had lived in the community without sexually offending for a period of five years. Pursuant to s 13A(3) of the Act the period fixed in a supervision order cannot end before five years after the making of the order or the end of the prisoner's period of imprisonment, whichever is the later.

[170] I accept, on the basis of general statistical studies to which Dr Beech alluded in his evidence, that "the trajectory of reoffending" drops significantly five years after release from prison. The risk of reoffending is less after someone has been offence-free for five years compared to the three year point. Of course, rates of reoffending depend upon many factors, including the age of the offender, the type of offence, the steps taken by the offender toward rehabilitation and the support that the offender enjoys through employment and other forms of support. In general, however, statistically speaking, if one can reach five years offence-free in the community, the risk of reoffending is halved. On this basis Dr Beech thought that if the respondent can reach five years then, taking into account all relevant factors, his risk would have reduced to low.

[171] The respondent has been living in the community since November 2008 without sexual reoffending. His rehabilitation has been successful and he engages in

pro-social activities and work. He has a limited but important network of social support, especially with the people with whom he mixes at work. He has the support of his daughter and son-in-law and the professional support of Mr Melville with whom he has established a sound therapeutic relationship. Although having the respondent subject to a five year period of parole and/or supervision might give the additional confidence that might be derived from the statistical patterns referred to by Dr Beech, as Ms Sky noted, the past three years that the respondent has spent in the community is the period when most recidivism occurs and most recidivism occurs in the first 12 months.

[172] Dr Beech preferred a supervision order as an alternative to "no supervision". This is not to say that in the absence of a supervision order the respondent would be without any form of supervision. The ANCOR reporting requirements and the monitoring of housemates, friends and family provide some form of supervision. In other words, the alternative to a supervision order is not necessarily "no supervision". Dr Harden made a similar point in explaining the statement in his report that the respondent's "unmodified risk of sexual re-offence in the community is moderate", when he explained that "unmodified" was a reference to not having intervention or support from counselling and the like. In the absence of a supervision order the respondent is likely to receive counselling from Mr Melville and/or Ms Sky or some other suitably qualified psychologist. The main benefit identified by Dr Harden of a supervision order is in having the respondent receive support from professional psychologists to manage any recurrence of deviant sexual arousal from access to child pornography. Counselling to manage such risks, to avoid stress and to continue to avoid unsupervised contact with girls aged under 16 is likely to reduce the risk of sexual recidivism. The respondent identified his need for support in this regard, and his affidavit evidence showed that such support is available and will be accepted by him.

[173] I accept Ms Sky's opinion that the risk of the respondent committing further sexual offences is low, whether or not a supervision order is made. I do not regard her opinion as completely at odds with Dr Harden's assessment that the respondent's "unmodified risk of sexual reoffence in the community is moderate". As he explained, unmodified means not having intervention or support from counselling and the like. The respondent has the support of counselling, friends and family who assist him to maintain the progress he has made, and avoid situations of potential risk. Also, terms like "moderate" and "low" when used in conclusions to expert reports are helpful, but ultimately are terms of indeterminate reference. One expert may describe a risk as being low and another describe the same risk as being "moderate" without there being in fact a significant difference of opinions. Their conclusions must be understood in their context and in the context of the evidence as a whole.

[174] I accord substantial weight to the reports and opinions of Dr Harden and Dr Beech as the independent psychiatrists appointed, since they have had regard to a large volume of material and interviewed the respondent in December 2011 and January 2012 respectively. I also accord weight to Dr Sundin's opinions. She assessed the respondent a year earlier, and gave oral evidence having had the advantage of hearing the evidence of Dr Harden and Dr Beech. I take account of the fact that their respective assessments of risk are based, in part, on actuarial assessments (which come with their acknowledged limitations) and also upon a

dynamic risk assessment. Ms Sky has seen the respondent more frequently and more recently.

[175] The risk assessments of the psychiatrists appointed under the Act, together with the assessments undertaken by Ms Sky, Mr Melville and others, must be evaluated along with all of the other evidence in reaching a conclusion about the risk that the respondent will commit a serious sexual offence if released into the community, and whether that risk is "unacceptable". Of course, it is "not for any witness to say whether the risk is unacceptable or that adequate protection to the community requires a certain result, that being the matter for judicial opinion."[9] Still, in reaching a conclusion about whether the relevant risk is "unacceptable" I take account of the views of the psychiatrists as to the benefits that a supervision order might provide in reducing the level of risk. A supervision order would be of benefit in reinforcing the good practices that the respondent has adopted in the community for the last three years. Maintaining those behaviours for another two years would bring the respondent's statistical risk of reoffending to the low point that is reached some five years after release into the community. One of the main benefits of a supervision order in achieving that would be to mandate the counselling that the respondent has already received as part of his mental health care and proposes to continue to receive. A supervision order might serve to reinforce good practices and provide additional monitoring. A supervision order might also have some potential disadvantages and impede the respondent's reintegration into the community.

[176] The practical issue is whether the benefits of a supervision order are required to reduce the risk of reoffending to an acceptable level.

[177] The respondent has impressed all who have assessed him as having insight into the risk of reoffending, and of having taken appropriate steps to minimise those risks during the three years he has lived in the community. While a supervision order might reinforce those sound practices, and provide monitoring in addition to ANCOR reporting and the supervision undertaken by friends and family, I do not consider that the risk of the respondent committing a serious sexual offence in the absence of a supervision order is unacceptable. Like Ms Sky and Mr Melville, I consider that the risk is low.

[178] If, however, I had reached the conclusion, as Dr Harden did, that the "unmodified" risk should be described as "moderate" in the absence of intervention or support then this would not necessarily have meant that the risk was "unacceptable".[10] A moderate risk may be acceptable or unacceptable, depending upon the circumstances.

[179] In the respondent's case, he has access to counselling and other support. The last sexual offence of which he was convicted occurred more than 20 years ago. He has successfully rehabilitated himself and obtained employment and accommodation in the community, despite considerable difficulty and stresses since his release from prison in November 2008. He is now aged 58. Having regard to all the evidence, I conclude that his risk of sexual reoffending is low.

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9 *Attorney-General for the State of Queensland v Sutherland* [2006] QSC 268 at [45].

10 *Attorney-General for the State of Queensland v AB* [2010] QSC 418; *Attorney-General (Qld) v Hocking* [2011] QSC 251 at [60].

[180] In circumstances in which the respondent has been living in the community since November 2008, has successfully undertaken his rehabilitation despite significant stresses during that period, and there is no indication that he does not intend to continue to progress his rehabilitation, I do not consider that the applicant has discharged the onus imposed by s 13 of the Act. I am not satisfied to the standard required by s 13 that there is an unacceptable risk that the respondent will commit a serious sexual offence in the absence of a supervision order. There is a risk that the respondent will commit a serious sexual offence. However, in the light of his rehabilitation to date in the community, the support that he enjoys from family members and others, and his preparedness to continue to receive counselling from Mr Melville, Ms Sky or some other appropriately qualified psychologist, I do not consider that there is an unacceptable risk that he will commit a serious sexual offence. I remind myself that on a hearing of an application of the present kind I may decide that I am satisfied that the respondent is an unacceptable risk of committing a serious sexual offence if released from custody without a supervision order being made only if I am satisfied by acceptable, cogent evidence and to a high degree of probability that the evidence is of sufficient weight to justify the decision.

[181] I am not satisfied to the required standard.

[182] The application is dismissed.