SUPREME COURT OF QUEENSLAND

CITATION:	*A-G (Qld) v Tilbrook* [2012] QSC 128
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **DAVID JAMES TILBROOK** (respondent)
FILE NO/S:	BS 1972/12
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED ON:	11 May 2012
DELIVERED AT:	Brisbane
HEARING DATE:	8 May 2012
JUDGE:	Margaret Wilson J
ORDER:	**Upon being satisfied to the requisite standard that the respondent is a serious danger to the community in the absence of an order pursuant to Part 2 Division 3 of the Dangerous Prisoners (Sexual Offenders) Act 2003, the court orders that the respondent be detained in custody for an indefinite term for control, care or treatment.**
CATCHWORDS:	*Acts Interpretation Act* 1954 (Qld), s 14A *Dangerous Prisoners (Sexual Offenders) Act* (Qld) 2003, s 3, s 5, s 13, s 16, s 27, s 43A *A-G (Qld) v Francis* [2006] QCA 324 *A-G (Qld) v Lawrence* [2009] QCA 136 *A-G (Qld) v Sutherland* [2006] QSC 268 *Lacey v A-G (Qld)* (2011) 242 CLR 573 *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 *R v Barling* [1999] QCA 016 *R v Butcher* [1986] VR 43 *Singh v The Commonwealth* (2004) 222 CLR 322 *Yemshaw v Hounslow London Borough Council* [2011] 1 All ER 912
COUNSEL:	J Rolls for the applicant D C Shepherd for the respondent

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

[1] **MARGARET WILSON J**: The Attorney-General seeks an order against the respondent David James Tilbrook pursuant to s 13 of the *Dangerous Prisoners (Sexual Offenders) Act* (Qld) 2003.

[2] The respondent is presently serving a period of imprisonment for the following sexual offences:

1. sexual assault committed on 16 July 2007 (indictment 106/08);
2. sexual assault committed on 25 March 2009 (indictment 1088/10);
3. sexual assault committed on 12 November 2009 (indictment 1088/10).

His full-time release date is 12 May 2012.

Statutory Scheme

[3] The preamble to the Act states:

> **"An Act to provide for the continued detention of a particular class of prisoner for their control, care or treatment, or for their supervised release, and for other purposes**"

[4] Its objects are stated in s 3:

> **"3 Objects of this Act**
>
> The objects of this Act 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."

[5] By s 5 the Attorney-General may apply for a "division 3 order" in relation to a "prisoner". Subsection (6) of s 5 provides:

> "(6) In this section –
>
> ***prisoner*** means a prisoner detained in custody who is serving a period of imprisonment for a serious sexual offence, or serving a period of imprisonment that includes a term of imprisonment for a serious sexual offence, whether the person was sentenced to the term or period of imprisonment before or after the commencement of this section."

[6] There is also a definition of "prisoner" in the dictionary in schedule 2 as follows:

> "***prisoner*** means a prisoner within the meaning of the ***Corrective Services Act 2006.***

Note -

Also see section 43A."

[7] Section 43A provides –

> **"43A Persons who remain prisoners for particular purposes**
>
> (1) This section provides for the application of this Act to a person.
> (2) A person who is subject to a continuing detention order or interim detention order remains a prisoner.
> (3) A person who is subject to a supervision order or interim supervision order remains a prisoner for the purposes of any relevant application, appeal or rehearing.
> (4) A person who is released from custody, without an interim supervision order having being made, after the court sets a date for the hearing of an application for a division 3 order relating to the person remains a prisoner for the purposes of the application.
> (5) A person who is released from custody, without an interim supervision order having being made, after the Court of Appeal makes an order under section 43(2)(d) relating to the person remains a prisoner for the purposes of the rehearing.
> (6) A person who is released from custody after the hearing of any application under this Act, without an interim supervision order having being made, remains a prisoner for the purposes of any appeal against the decision and for any subsequent appeal."

[8] "Serious sexual offence" is defined in the dictionary in schedule 2 to the Act as follows:

> **"*serious sexual offence*** means an offence of a sexual nature, whether committed in Queensland or outside Queensland -
>
> (a) involving violence; or
> (b) against children."

[9] I shall return to these definitions shortly.

[10] The Act establishes a scheme for the continued detention in custody or supervised release of prisoners who are deemed to be at risk of committing serious sexual offences if released at all, or it released without adequate supervision. The primary orders which may be granted are "division 3 orders", which are provided for in s 13, which is in these terms:

> **"13 Division 3 orders**
>
> (1) This section applies if, on the hearing of an application for a division 3 order, the court is satisfied the prisoner is a serious danger to the community in the absence of a division 3 order (a ***serious danger to the community***).
>
> (2) A prisoner is a serious danger to the community as mentioned in subsection (1) if there is an unacceptable risk that the prisoner will commit a serious sexual offence -
> (a) if the prisoner is released from custody; or

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

(3) On hearing the application, the court may decide that it is satisfied as required under subsection (1) only if it is satisfied -
(a) by acceptable, cogent evidence; and
(b) to a high degree of probability;
that the evidence is of sufficient weight to justify the decision.

(4) In deciding whether a prisoner is a serious danger to the community as mentioned in subsection (1), the court must have regard to the following -
(aa) any report produced under section 8A;
(a) the reports prepared by the psychiatrists under section 11 and the extent to which the prisoner cooperated in the examinations by the psychiatrists;
(b) any other medical, psychiatric, psychological or other assessment relating to the prisoner;
(c) information indicating whether or not there is a propensity on the part of the prisoner to commit serious sexual offences in the future;
(d) whether or not there is any pattern of offending behaviour on the part of the prisoner;
(e) efforts by the prisoner to address the cause or causes of the prisoner's offending behaviour, including whether the prisoner participated in rehabilitation programs;
(f) whether or not the prisoner's participation in rehabilitation programs has had a positive effect on the prisoner;
(g) the prisoner's antecedents and criminal history;
(h) the risk that the prisoner will commit another serious sexual offence if released into the community;
(i) the need to protect members of the community from that risk;
(j) any other relevant matter.

(5) If the court is satisfied as required under subsection (1), the court may order -
(a) that the prisoner be detained in custody for an indefinite term for control, care or treatment (***continuing detention order***); or
(b) that the prisoner be released from custody subject to the requirements it considers appropriate that are stated in the order (***supervision order***).

(6) In deciding whether to make an order under subsection (5)(a) or (b) -
(a) the paramount consideration is to be the need to ensure adequate protection of the community; and
(b) the court must consider whether -
(i) adequate protection of the community can be reasonably and practicably managed by a supervision order; and
(ii) requirements under section 16 can be reasonably and practicably managed by corrective services officers.

(7) The Attorney-General has the onus of proving that a prisoner is a serious danger to the community as mentioned in subsection (1)."

[11] If the Court is satisfied that the respondent is a serious danger to the community in the absence of a division 3 order, it must then decide whether adequate protection of the community can reasonably and practicably be managed by a supervision order or whether a continuing detention order should be made. In *A-G (Qld) v Francis* [2006] QCA 324 the Court of Appeal said at [39]:

> "[39] … The question is whether the protection of the community is adequately ensured. If supervision of the prisoner is apt to ensure adequate protection, having regard to the risk to the community posed by the prisoner, then an order for supervised release should, in principle, be preferred to a continuing detention order on the basis that the intrusions of the Act upon the liberty of the subject are exceptional, and the liberty of the subject should be constrained to no greater extent than is warranted by the statute which authorised such constraint."

[12] The onus of establishing that a supervision order would afford inadequate protection to the community is on the Attorney-General: *A-G (Qld) v Lawrence* [2009] QCA 136. In determining that question, it is relevant to consider the requirements that must be contained in a supervision order pursuant to s 16:

> **"16 Requirements for orders**
>
> (1) If the court or a relevant appeal court orders that a prisoner's release from custody be supervised under a supervision order or interim supervision order, the order must contain requirements that the prisoner -
> (a) report to a corrective services officer at the place, and within the time, stated in the order and advise the officer of the prisoner's current name and address; and
> (b) report to, and receive visits from, a corrective services officer as directed by the court or a relevant appeal court; and
> (c) notify a corrective services officer of every change of the prisoner's name, place of residence or employment at least 2 business days before the change happens; and
> (d) be under the supervision of a corrective services officer; and
> (da) comply with a curfew direction or monitoring direction; and
> (daa) comply with any reasonable direction under section 16B given to the prisoner; and
> (db) comply with every reasonable direction of a corrective services officer that is not directly inconsistent with a requirement of the order; and
>
> *Examples of direct inconsistency –*
> If the only requirement under subsection (2) contained in a particular order is that the released prisoner must live at least 1km from any school –
>
> 1 A proposed direction to the prisoner would be directly inconsistent if it requires the released prisoner to live at least 2km from any school.
>
> 2 A proposed direction to the prisoner would not be directly inconsistent if it requires the released prisoner to live at least

> a stated distance from something else, including, for example, children's playgrounds, public parks, education and care service premises or child care centres.
>
> 3 A proposed direction to the prisoner would not be directly inconsistent if it requires the released prisoner not to live anywhere unless that place has been approved by a corrective services officer.
>
> (e) not leave or stay out of Queensland without the permission of a corrective services officer; and
> (f) not commit an offence of a sexual nature during the period of the order.
>
> (2) The order may contain any other requirement the court or a relevant appeal court considers appropriate -
> (a) to ensure adequate protection of the community; or
>
> *Examples for paragraph (a) -*
> - a requirement that the prisoner must not knowingly reside with a convicted sexual offender
> - a requirement that the prisoner must not, without reasonable excuse, be within 200m of a school
> - a requirement that the prisoner must wear a device for monitoring the prisoner's location
>
> (b) for the prisoner's rehabilitation or care or treatment."

Is the respondent a "prisoner" in relation to whom the AG may apply for a division 3 order?

The offence on 16 July 2007

[13] The respondent was originally sentenced for this offence by Richards DCJ on 16 September 2008. The facts on which the prosecutor relied were as follows. The complainant was a 36 year old female. At about 6.20 pm on 16 July 2007 the respondent was at the Ipswich Railway Station when he saw the complainant walk past him. He followed her into the Ipswich City Square and down escalators into a carpark. When she was walking towards her car he came from behind her, grabbed her with both hands on her breast and squeezed her tightly. This caused her pain. He then pulled her backwards. She screamed, elbowing him off, and he ran away laughing as he did so. She drove immediately to the Ipswich Police Station. According to the victim impact statement tendered at sentence, the complainant did not suffer any ongoing physical injury, but she did have emotional problems, for which she sought psychiatric treatment.

[14] The respondent was sentenced for a number of other offences at the same time – property offences, an assault occasioning bodily harm, seven summary offences, and two breaches of probation. Her Honour imposed six months imprisonment for the sexual assault, and various terms of imprisonment for other offences, all terms of imprisonment being concurrent. Her Honour also imposed three years probation, to commence upon his release from prison.

[15] On 9 October 2009 the respondent appeared before Richards DCJ again, when he was sentenced for various further offences (none of them being a sexual offence).

Those offences had been committed in breach of the probation imposed on 16 September 2008. Her Honour re-sentenced the respondent for the offences in relation to which the probation order had been made: for those offences (which included the sexual assault on 16 July 2007) she imposed 18 months imprisonment and ordered immediate release on parole.

[16] The respondent breached that parole by the commission of the sexual offence on 12 November 2009.

The offence on 25 March 2009

[17] The complainant was a 19 year old female. At about 7.50 am on 25 March 2009 she had parked her car in a carpark at the Garden City Shopping Centre. She walked through the shopping centre to another carpark towards a bus depot. As she went from the shopping centre into the second carpark, the respondent lifted her skirt and squeezed her buttock. She instinctively turned around and saw the respondent, whom she did not know. The respondent backed away when a vehicle pulled up in the carpark. He said something to her but she did not hear what he said. She was unhurt.

The offence on 12 November 2009

[18] The offence on 12 November 2009 also occurred at the Garden City Shopping Centre. The complainant was a 41 year old female. At about 9.50 am she exited some female toilets and walked about 10 metres towards the shops. As she passed male toilets, the respondent pulled her dress up from behind. He touched her stomach and back area in an attempt to pull her underwear down. It was only because she was wearing leotards that he failed. He rubbed his hand on her vaginal area over the top of the leotards. She screamed and he ran off. There was a victim impact statement tendered at sentence. It is not in the material before this Court, but it is apparent from the sentencing judge's remarks that as a result of what occurred the complainant was frightened to go shopping or to enter carparks and that she changed her work schedule with consequent loss of income.

Arrest

[19] On 10 December 2009 the respondent was interviewed by police in relation to the offences on 25 March 2009 and 12 November 2009. He admitted the offences, and told police that he was remorseful for his actions and that he needed help for drug and alcohol addictions. He also said that he believed his actions were "a joke" at the time, and that he had not intended to harm his victims. He was arrested and taken into custody.

The period of imprisonment the respondent is serving

[20] On 2 September 2010 Andrews DCJ sentenced the respondent for the sexual offences committed on 25 March 2009 (count 1) and 12 November 2009 (count 2). He imposed terms of imprisonment of nine months (count 1) and 12 months (count 2), to be served concurrently. He also ordered that the term in respect of count 2 be served cumulatively upon the sentence imposed on 9 October 2009.

[21] His Honour recommended that the respondent be enrolled in Getting Started (a preparatory program for sexual offenders) and that he undertake an appropriate sexual offenders program.

Concession?

[22] Counsel for the respondent submitted that his client was not a prisoner within s 5(6) when the present application was made, because he was not serving a period of imprisonment which included a term of imprisonment for a "serious sexual offence". He submitted in effect that the Attorney-General may apply for a division 3 order in relation to a person only if that person satisfies the definition of "prisoner" in s 5(6). If the person does not satisfy that definition, then an application would be incompetent, and the Court would have no jurisdiction to make a division 3 order.

[23] Counsel for the Attorney-General submitted that it is too late for the respondent to take this point, because it was conceded before Mullins J on 14 March 2012. That was the first return date of the application, and her Honour dealt with it pursuant to s 8. She made the following order –

> "THE COURT, being satisfied there are reasonable grounds for believing that the Respondent, David James Tilbrook, is a serious danger to the community in the absence of an order pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 ('the Act'), ORDERS THAT:
>
> 1. The application for a Division 3 Order be set for hearing on 8 May 2012.
>
> 2. Pursuant to s 8(2)(a) of the Act, the Respondent undergo examinations by two psychiatrists named by this Honourable Court, being Dr Donald Grant and Dr Josephine Sundin who are to prepare independent reports, which are to be prepared in accordance with s 11 of the Act.
>
> 3. Liberty to apply granted."

[24] There was in fact no concession made before Mullins J: counsel for the respondent simply did not take the point before her Honour.

[25] The Court's power to make a division 3 order can be enlivened only by the Attorney-General's making an application under s 5. Unless the respondent is a "prisoner" within the meaning of s 5(6) when the application is made, the application is not properly made and cannot succeed. In this way, the question of whether a respondent is a "prisoner" within s 5(6) goes to the jurisdiction of the Court to make a division 3 order. It is not an issue which may be the subject of a binding concession which is contrary to the respondent's true status or a requirement which may be waived.

[26] When the application was made, respondent was a prisoner within the meaning of the *Corrective Services Act*. He was detained in custody, serving a period of imprisonment that included terms of imprisonment for each of the offences committed on 16 July 2007, 25 March 2009 and 12 November 2009.

[27] His status has not changed since the application was made. Thus, it is not necessary to consider whether the Court's jurisdiction to make a division 3 order is further dependent on the respondent's still being a prisoner within s 5(6) at the time the order is made.[1]

"Serious sexual offence"

[28] Was any of those offences a "serious sexual offence"? In each case the offence was of a sexual nature. In each case the complainant was an adult. Accordingly, to come within the definition of a "serious sexual offence", the offence had to be one "involving violence."

[29] The ultimate purpose of the *Dangerous Prisoners (Sexual Offenders) Act* is the protection of the community against "a particular class of prisoner". An application for a division 3 order may not be made in relation to a prisoner who has committed any sexual offence, but only in relation to a prisoner who has committed a "serious sexual offence". Further, the Court may make a division 3 order only if it is satisfied to the high standard mandated by s 13(3) that there is an unacceptable risk that he will commit a "serious sexual offence" if he is released from custody or released from custody without a supervision order being made.

[30] In *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at 384, McHugh, Gummow, Kirby and Hayne JJ said:

> "…the duty of a court is to give the words of a statutory provision the meaning that the legislature is taken to have intended them to have. Ordinarily, that meaning (the legal meaning) will correspond with the grammatical meaning of the provision. But not always. The context of the words, the consequences of a literal or grammatical construction, the purpose of the statute or the canons of construction may require the words of a legislative provision to be read in a way that does not correspond with the literal or grammatical meaning." (Footnotes omitted)

[31] In *Singh v The Commonwealth* (2004) 222 CLR 322 at 332 Gleeson CJ said:

> "Meaning is always influenced, and sometimes controlled, by context. The context might include time, place, and any other circumstance that could rationally assist understanding of meaning."

[32] More recently in *Lacey v A-G (Qld)* (2011) 242 CLR 573 at 592 French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ said:

> "The application of the rules [of interpretation] will properly involve the identification of a statutory purpose, which may appear from an express statement in the relevant statute, by inference from its terms and by appropriate reference to extrinsic materials. The purpose of a statute is not something which exists outside the statute. It resides in its text and structure, albeit it may be identified by reference to common law and statutory rules of construction."

Their Honours referred to s 14A(1) of the *Acts Interpretation Act* 1954 (Qld) which provides:

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1 In this regard I note s 43A.

> "**14A Interpretation best achieving Act's purpose**
>
> (1) In the interpretation of a provision of an Act, the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation."

The term "purpose" is defined to include "policy objective": s 36. Their Honours continued:

> "Section 14A requires preference to be given to that interpretation which will best achieve the purpose of the Act. … Assuming that s 14A is not intended to displace common law rules outside its sphere of operation, the interpretations from which the selection which it mandates is to be made must be those which comply with the requirements of those rules, none of which is antagonistic to purposive construction."

Their Honours observed in a footnote that s 14B, which permits some reference to extrinsic materials, may be of assistance.

[33] As Lady Hale SCJ observed in *Yemshaw v Hounslow London Borough Council* [2011] 1 All ER 912 at [27] with respect to "domestic violence" in the *Housing Act* 1996:

> "'Violence' is…. not a term of art. It is capable of bearing several meanings and applying to many different types of behaviour. These can change and develop over time……The essential question is whether an updated meaning is consistent with the statutory purpose…"

[34] Counsel for the Attorney-General submitted that "violence" in the *Dangerous Prisoners (Sexual Offenders) Act* has its ordinary, natural meaning, which is the unlawful or unwarranted application of force.

[35] Counsel for the respondent submitted that "violence" must be construed contextually – that it refers to conduct which warrants the exercise of what are extraordinary powers to detain a person or subject him to supervision beyond the expiration of his sentence. He submitted that "violence" means more than any unlawful touching. I agree.

[36] The Act does not contain an exhaustive definition of "violence". The following inclusive definition appears in the dictionary in schedule 2:

> **"*violence*** includes the following -
>
> (a) intimidation;
> (b) threats."

Thus, conduct not involving actual physical contact can amount to "violence" within the meaning of the Act.

[37] The definitions of "violence" in the *Macquarie Dictionary* (2nd Revised Edition*)* include:

> "1. rough force in action: *the violence of the wind*;

2. rough or injurious action or treatment: *to die of violence*;

3. any unjust or unwarranted exertion of force or power, as against rights, laws, etc; injury, wrong, outrage."

[38] The definitions of "violence" in *The New Shorter Oxford English Dictionary* (1993) include:

"1. the exercise of physical force so as to cause injury or damage to a person, property, etc; physically violent behaviour or treatment …… the unlawful exercise of physical force"

The definitions of "violent" in that dictionary include:

"1. Having a marked or powerful (esp. physical) effect ….

2. Of an action: involving or using great physical force or strength, esp. in order to cause injury; not gentle or moderate."

[39] In *R v Butcher* [1986] VR 43 the Full Court of the Supreme Court of Victoria considered the meaning of "violence' in s 3A of the *Crimes Act* 1958 (Vic) which provided:

"3A(1) A person who unintentionally causes death of another person by an act of violence done in the course or furtherance of a crime the necessary elements of which include violence for which a person upon first conviction may, under or by virtue of any enactment, be sentenced to life imprisonment or to imprisonment for a term of 10 years or more shall be liable to be convicted of murder as though he had killed that person intentionally.

(2) The rule of law known as the felony-murder rule (whereby a person who unintentionally causes the death of another by an act of violence done in the course or furtherance of a felony of violence is liable to be convicted of murder as though he had killed that person intentionally) is hereby abrogated."

Their Honours said at p 53:

"As a matter of etymology, violence is a word having its origin in the Latin *violentia*, often connoting vehemence or impetuosity. It is not synonymous with the use of physical force, although physical force falls within its meaning. It is a word of wider significance in the law, as the cases show. Smith and Hall in their *English-Latin Dictionary* give as their first meaning of violence: 'inherent overpowering force, whether physical or mental'. In the *Oxford English Dictionary* violence is defined as follows: '(Law) unlawful exercise of physical force, intimidation by the exhibition of this.

…

… it seems to us that if the word violence in the phrase 'act of violence' is understood to be used in its etymological sense and in the descriptive way that it has been used in the cases, and to embrace actual force used to overcome or nullify resistance and as well, threats or menaces to induce fear and terror or to intimidate in order to remove or nullify resistance, the

> phrase is apt to express the type of act which is required to call into play the felony murder rule under s 3A."

[40] The use of the expression "involving" is indicative of the Legislature's intention that violence need not be a constituent element of the offence as a matter of legal principle. Rather, the conduct constituting the particular instance of the offence must include or entail violence. See *R v McCrossen* [1991] Tas R 1.

[41] In the present case both counsel submitted that the focus must be on the conduct itself and not on its consequences. I am mindful that in other contexts courts have sometimes considered the consequences of conduct as relevant to whether that conduct involved violence, and that they have declined to hold that conduct resulting in emotional disturbance but no physical injury involved violence. For example, *R v Barling* [1999] QCA 016. I do not find it necessary finally to determine whether the consequences of conduct can be relevant to whether it is conduct involving violence within the meaning of the *Dangerous Prisoners (Sexual Offenders) Act*. If they can be relevant, then in my view there is no warrant for disregarding emotional or psychological sequelae in this context, as it is now widely recognised that victims of sexual offences who suffer no ongoing physical injury may nevertheless suffer ongoing emotional or psychological injuries.

[42] In my view the offence committed on 16 July 2007 was one involving violence. The respondent grabbed the complainant with both hands on her breast and squeezed her tightly, causing her pain. This was more than mere touching. It involved the unlawful and unwarranted application of physical force; it was rough and injurious treatment. It was conduct warranting the exercise of the powers in the *Dangerous Prisoners (Sexual Offenders) Act* to protect the members of the community. It was, therefore, a serious sexual offence.

[43] The offence on 25 March 2009 was also one involving violence and thus a serious sexual offence. The respondent's action in squeezing the complainant's buttock involved the unlawful and unwarranted application of physical force; it was rough and injurious treatment, warranting the exercise of the powers in the *Dangerous Prisoners (Sexual Offenders) Act* to protect the members of the community.

[44] So, too, the offence on 12 November 2009. The respondent's attempt to pull the complainant's underwear down and his rubbing his hand on her vaginal area over her clothing involved the unlawful and unwarranted application of physical force; it was rough and injurious treatment, warranting the exercise of the powers in the *Dangerous Prisoners (Sexual Offenders) Act* to protect the members of the community. It was a serious sexual offence.

[45] The period of imprisonment the respondent was serving when the application was made included terms of imprisonment for each of these offences. Accordingly he was a "prisoner" within s 5(6), and the application was properly brought.

Antecedents

[46] The respondent is a young indigenous man, presently aged 22 years. In February 2010 a Kaufmann Brief Intelligence Test (KBIT-II) was administered to him. He obtained an IQ composite score of 51, which placed him on the cusp of the mild (IQ range 55 – 70) and moderate (IQ 40 – 54) intellectual disability ranges.

[47] When he was eight years of age, he was diagnosed with ADHD, and was treated with dexamphetamine for some years. He attended a special needs school. He left school during Year 10.

[48] He cannot read or write to an acceptable standard.

[49] On leaving school he commenced an apprenticeship with Caloundra City Council as a landscaper. His employment was terminated after he was charged with the sexual assault of his cousin. (See para [56] below for a description of this offence.) He worked for Ipswich City Council for a brief time, but was dismissed for kicking a co-worker.

[50] He has a five year old daughter, and is reportedly in a stable long-term relationship.

[51] The respondent had a dysfunctional upbringing. He was the eldest of his mother's five children, and the only child of the relationship between her and his biological father. He seems never to have known his biological father, and to have been exposed to domestic violence perpetrated against his mother by her partners. During his developmental years his primary caregiver was his grandmother.

[52] He has also been diagnosed with post traumatic stress disorder related to abuse and depression. He has a history of suicidal ideation and poor emotional coping.

[53] When he was aged about seven and living with his grandmother, he was forced to witness the rape of a nine year old girl who was being cared for by his grandmother as a foster child. He gave evidence against the offender, who was convicted and sentenced to a lengthy term of imprisonment.

[54] When he was about eight, he found the body of one of his mother's boyfriends who had hanged himself.

[55] His first brush with the law occurred when he was 11 years old, when he broke into a dwelling with intent to commit an indictable offence, for which he received a caution. He did this again about a year later, with a similar consequence.

[56] In April 2007 he was dealt with in the Maroochydore Children's Court for two counts of indecent treatment of a child under 12 (on about 27 July 2003 and between 30 November 2004 and 24 December 2004) and one count of stealing. The child with whom he indecently dealt was his female cousin. At the time the respondent was aged 14 – 15 years and his cousin was aged 9 – 10. The charges related to two incidents which took place in their grandmother's bedroom, although similar behaviour occurred approximately 50 times over an 18 month period. On each occasion, the respondent would kiss the complainant, touch and kiss her breasts, and rub his penis on her vagina. He would sometimes ask her to suck his penis, but she refused. She asked him to stop many times and tried to push him away. Convictions were not recorded, but he was placed on two years probation. It was a special condition of the probation that he attend the Griffith Adolescent Forensic Assessment and Treatment Centre or another program as directed.

[57] Further charges of indecent treatment of a child under 12 came before the Ipswich Children's Court on 4 June 2007, but were dismissed.

[58] He claims that when he was about 15 he was sexually abused on many occasions by a male cricket coach aged probably in his thirties. On one occasion when he was about 15 he was sexually abused by another man aged about 28. He reported this last abuse to police. The man was charged, but claimed he believed the respondent was aged 18. He was acquitted.

[59] He was found in a dwelling without lawful excuse on three occasions in 2004.

[60] At about the time of the abuse by the cricket coach, he started voyeuristic behaviour. This continued once or twice a week for about six months.

[61] He told Dr McVie, a psychiatrist who interviewed him in May 2011, that from the age of 17 he had had about 10 partners, and three or four relationships. When he was 15, he first had sex with a girl about a year older; they were together for about three years, and had a daughter together.

[62] He started using cannabis and abusing alcohol as a teenager. He says that by 2009 he was smoking about $50 worth of cannabis each day and drinking alcohol until he was intoxicated on a weekly basis. He previously inhaled paint, glue and petrol.

[63] In January 2007 he was fined for stealing, although a conviction was not recorded.

[64] On 16 July 2007, at the age of 18, he committed the sexual assault described in para [13] above. This was in breach of the probation ordered in April 2007. As I have said, he was dealt with for that sexual assault in the District Court on 16 September 2008. At the same time he was dealt with for three counts of wilful damage, four counts of stealing, one count of receiving with a circumstance of aggravation, one count of assault occasioning bodily harm in company, two counts of unlawful use of a motor vehicle, and a number of summary offences, including four public nuisance offences. He was sentenced to short terms of imprisonment followed by probation. As explained in para [15] – [16] above, he breached the probation and was re-sentenced in October 2009.

[65] He was voluntarily medicated with depo provera in September 2007 to moderate his libido. But he ceased taking the medication in January 2008 because of its effect upon his ability to engage in sexual activity with consenting partners.

[66] In May 2009 he was dealt with for shoplifting.

[67] In October 2009 he was convicted of one count of common assault, two counts of stealing, one count of entering premises with intent, public nuisance and breach of probation. The common assault occurred on 28 January 2009: it involved his attempting to grab a woman's handbag at Redbank Railway Station; he slapped her on the bottom and then walked off.

[68] As described in para [20] above, he appeared before the District Court again on 2 September 2010 when he was dealt with for the sexual assaults on 25 March 2009 and 12 November 2009.

Aberrant sexual behaviour more extensive than that which resulted in convictions

[69] The respondent has a history of sexually aberrant behaviour extending beyond those incidents which resulted in convictions. On his account, the abuse of his young cousin occurred on many more than two occasions. He was convicted of four offences involving touching women who were strangers to him – the offence at Ipswich Railway Station on 16 April 2007, the common assault at Redbank Railway Station on 28 January 2009, and the offences at shopping centres on 25 March 2009 and 12 November 2009. On his account, he engaged in similar behaviour towards a number of other women who did not report it to the police.

[70] In March 2010 the respondent's risk and intervention needs were assessed by an officer of Queensland Corrective Services, who administered actuarial risk assessment instruments as well as interviewing him. The table of results of the Stable-2000 assessment contains some very concerning material. He self-reported a preoccupation with sex, and an escalation in his offending behaviour over time. His attitudes included the following: that everyone is entitled to sex, that women need more sex than men and "that is why there are prostitutes out there"; that women become prostitutes because they always want to have a lot of sex; that the women he offended against dressed like sluts; and that "there were many sluts out there for him to have sex with whenever he want[ed]".

Conduct in prison

[71] The respondent is currently incarcerated at the Wolston Correctional Centre, where he is classified as a high security prisoner. His behaviour in prison has been persistently disruptive and he has been dealt with for breach of prison discipline on about 10 occasions. He has had various jobs in the prison, but his disruptive behaviour has resulted in termination or suspension of employment.

[72] His risk and intervention needs were assessed in 2010. In the upshot there was a recommendation by appropriate officers within Queensland Corrective Services that he participate in the Getting Started: Preparatory Program ("GS:PP") in preparation for participation in the Crossroads: High Intensity Sexual Offending Program.

[73] He participated in GS:PP between 23 March 2011 and 4 May 2011. The Exit Report in relation to his participation in that program concluded:

> **"(6) Summary and recommendations-**
> The aim of the GS: PP is to prepare prisoners for further engagement in intensive intervention aimed at addressing their sexual offending behaviour. This section of the report highlights their response to the program, levels of participation, motivation for further engagement as well as considerations for risk management strategies and areas of supervision.
>
> Mr Tilbrook completed the program within seven sessions and is assessed to be in the contemplation stage of change. He missed four sessions during the early stages of the program due to feeling stressed and traumatised regarding the disclosures of other participants, as a result of his own sexual abuse. For most of his participation in the program, Mr Tilbrook was hesitant, nervous and found it difficult to provide feedback to participants whose victims were children. At times his feedback was judgemental towards these participants. However it is noted that towards the end of the program Mr Tilbrook was able to provide feedback to all participants including those whose victims were children without being judgemental.

> When discussing his offences Mr Tilbrook had the propensity to shift the focus away from his offences and would instead discuss his own childhood sexual abuse. During both his presentations, it was observed that while Mr Tilbrook took full responsibility for his offending, he did not show concern for the victims of his offending. Similarly, during his Autobiography presentation, Mr Tilbrook was observed referring and speaking of women in a derogatory manner and demonstrated negative emotionality in this regard. He also stated that he thinks he has a high sex drive as he thinks about sex most of the time. From his account of his offending, Mr Tilbrook's behaviour appears to be impulsive and he also seems to have poor problem solving skills.
>
> Although the HISOP was recommended as the treatment program for Mr Tilbrook from the assessment outcome, the GS:PP facilitators recommend he participate in the Inclusion program. This recommendation is based on the responsivity factors that were identified in the SOPA, the assessment undertaken by Bridging the Gap and his progress in the GSPP. As indicated within this report in the responsivity section, Mr Tilbrook cognitive functioning and literacy issues are major responsivity factor for his participation in the HISOP and as such it is considered that his needs would be best addressed through the Inclusion Program."

[74] The Inclusion Sexual Offending Program ("ISOP") is an intervention to treat adult sexual offenders. It is directed at sexual offenders who have been assessed as intellectually and socially low functioning. Its content is similar to that of the High Intensity Sexual Offending Program ("HISOP"), but its delivery has been appropriately adapted to the specific needs of such offenders. It is run in a group setting. It is offered only in a custodial setting, and appropriately so – because only a custodial setting can provide the support that may be necessary to an offender when he is challenged in relation his past and his attitudes. An Exit Report is issued within about two to four weeks of completion of the program.

[75] ISOP is usually of about 108 hours duration, over a period of 27 weeks. There are two sessions per week, each of about two hours. The next ISOP is scheduled to commence at Wolston Correctional Centre in early July 2012 and to conclude in December 2012. The respondent is to be offered a place in it.

[76] Two psychologists in private practice offer a sexual offending treatment program known as "Better Lives". It is available in the community and intended for individuals with intellectual and developmental disabilities. But it is less intensive than ISOP, and because it is offered in the community rather than a custodial setting, the necessary supports are not available. I am satisfied that it would be inadequate to meet the respondent's needs.

Psychological and psychiatric assessments

[77] There have been various psychological and psychiatric assessments of the respondent over the last four years, culminating in assessments by Dr Donald Grant and Dr Josephine Sundin, psychiatrists, pursuant to the order of Mullins J made on 14 March 2012. I will briefly refer to the most significant ones, before addressing the evidence of Drs Grant and Sundin.

[78] In April 2008 Dr Danielle Shumack, a forensic psychologist with the Griffith Youth Forensic Service, reported that his engagement with that service had been poor. In her opinion the risk he would engage in sexually abusive behaviour, antisocial behaviour and violence was largely dependent on his exposure to stressful conditions to which he was vulnerable, such as interpersonal conflict. That he missed appointments was indicative of lack of motivation. Although he could clearly articulate his consideration of the longer term consequences of his sexually abusive and antisocial behaviour, he continued to engage in such activities. She recommended various measures to assist him manage and change his behaviour. Of particular concern for present purposes was her assessment that the risk of sexual and nonsexual recidivism was high.

[79] Dr Prabal Kar, psychiatrist, prepared a pre-sentence report in May 2008. He noted that the respondent accepted responsibility for the sexual assault on 16 July 2007, but that he displayed no remorse or empathy. He denied that he had had any sexual motivation for the offence, claiming instead that it was an accident and that he had actually been trying to steal the victim's handbag. Dr Kar considered that he met the diagnostic criteria for anti-social personality disorder. In his view the risk of future sexual offending was difficult to predict but likely to be low; he did not think the respondent would commit a serious sexual offence.

[80] In March 2010 Ms Leesa Smith, a Program Delivery Officer at the Wolston Correctional Centre assessed the respondent's suitability for participation on a sexual offending treatment program. She assessed him on the Static-99 and Stable-2000 scales as being at a high risk of sexual reoffending and in the high needs category in terms of treatment needs.

[81] Mr Nick Smith, psychologist, interviewed the respondent in July 2010 at the behest of his legal representatives. His report was placed before Andrews DCJ on 2 September 2010. Mr Smith noted a gradual increase in the severity of the respondent's inappropriate sexual behaviour – from early mastubatory behaviour to voyeurism to low level contact offending. He described the respondent as engaging in, at least superficially, self-justification and minimisation of the sexual assaults, but nevertheless thought that he had gained some insight into his conduct. Mr Smith applied a number of tests to assess the risk of sexual recidivism. On the Hare Psychopathy Checklist – Screening Version ("PCL-SV Scale"), he did not receive a score sufficient to attract the diagnosis of psychopathy. On the Sexual Violence Risk-20 ("SVR-20") test, he was assessed as being at moderate to high risk of future sexual offending. There were some indications that he met the criteria for anti-social personality disorder. Mr Smith recommended that the respondent participate in a sexual offending treatment program and a drug and alcohol treatment program. On his return to the community it would be essential that he be abstinent from alcohol and cannabis and that he engage in ongoing therapy focussed on both his offending behaviour and his own history of sexual abuse.

[82] Crown Law commissioned a report by Dr Ness McVie, consultant psychiatrist, for the purposes of a risk assessment in relation to a possible application under the *Dangerous Prisoners (Sexual Offenders) Act*. The report is dated 18 July 2011; there is also a short supplementary report dated 12 March 2012. The respondent made contradictory statements in discussing the offences committed in 2009. At one point he said he felt bad when he thought about things, but at anther point he said he was angry about being in custody "for just lifting up skirts". At one point he said he

was "hopeful" about "[getting] something out of the sex offenders course", but at another point he said he would not be in custody except for the "fucking course". Dr McVie also noted a progression in his sexual deviance from a history of sexual abuse and witnessing sexual abuse at a young age, to voyeuristic behaviours, to sexual exploration with a female relative and then to sexual assaults of adult females. She applied a number of formal tests to assess the risk of recidivism –

(i) on the Static-99 he scored 7, placing him at high risk of sexual recidivism;

(ii) on the Hare Psychopathy Checklist (PCL – Revised Scale) he received an overall score of 19, which was insufficient to attract the diagnosis of psychopath;

(iii) on the RSVP, his sexual history was suggestive of chronicity, diversity and escalation. Further, he minimised his sexual offending;

(iv) on the Stable-2007 he had some positive social influences or supports and some capacity for relationship stability based on his self report. While there was no clear evidence of hostility towards women, he appeared to have a lack of concern for others, poor cognitive problem skills, impulsive acts, a degree of emotional negativity and poor sexual self-regulation.

[83] In Dr McVie's opinion the respondent was at moderate to high risk of reoffending sexually and generally. Ideally he should complete a group sex offender treatment program prior to his release into the community. Although he would be extremely difficult to supervise (having regard to his youth, his impulsivity and his history of offending), the risk could be reduced by a supervision order. He should complete the HISOP, a drug and alcohol program and a program that enhances problem solving.

Dr Donald Grant

[84] Dr Grant interviewed the respondent on 19 March 2012 at the Wolston Correctional Centre.

[85] He reported that the respondent shows no signs of any major psychiatric disorder. It is likely that he functions at a below average or borderline level of intelligence and part of his cognitive problems may relate to a specific dominant hemisphere problem with language.

> "… he needs further neuropsychological examination to determine his precise intelligence level and specific cognitive or memory problems. Such testing may play an important part in determining appropriate future sexual offender treatment."

He has displayed a variety of paraphilic behaviours since the age or 14 or 15. While he has apparently not offended against children as an adult and describes no sexual attraction to children, future paedophilic behaviour could not be ruled out.

> "Mr Tilbrook has also shown a form of paraphilic behaviour involving grabbing women in public places and touching them on the breast, buttocks or genitals through their clothes and then promptly absconding from the scene. It is difficult to precisely classify that behaviour but it has elements

> of Frotteurism. It is possible that this behaviour has the potential to escalate to more serious sexual assaults."

He has an antisocial personality disorder falling short of psychopathy. His history of alcohol and marihuana abuse as well as inhalant abuse is consistent with a diagnosis of polysubstance abuse without dependence. This may be in remission in custody.

[86] Dr Grant used a number of formal instruments to determine the risk of future sexual offending:

(i) on the Static-99 he scored 6, placing him at high risk of sexual reoffending;

(ii) on the Hare PCL-R 2nd Ed he scored 25/40, meaning he has significant psychopathic traits without meeting the cut-off point for that diagnosis;

(iii) on the HCR-20 he had an overall rating of high risk violent re-offending (both sexual and non-sexual).

(iv) on the RSVP he was rated as a high risk of reoccurrence with some risk of escalation of violence. While it is uncertain how soon or how frequently offending might occur, the risk is long term.

> "Management would be assisted by monitoring for drug and alcohol abuse and monitoring stress levels and social adjustment. Treatment would include a sexual offender treatment program addressing insight into his motivations and the effects of the sexual abuse on himself and others.
>
> Management might include the application of a supervision order with some monitoring of his movements and monitoring of substance abuse, along with facilitation of appropriate treatments. Abstinence from alcohol and drugs would be an important consideration and individual therapy, along with drug and alcohol treatments and sexual offender treatments, are the core of the treatment approach.
>
> Judgements regarding the potential for serious physical harm and other problems from his offending behaviour would be assisted by further exploration of his motivations, which would occur as part of a sexual offender treatment program."

[87] Dr Grant said –

> "Given Mr Tilbrook's evident lack of insight and ongoing emotional problems relating to his past sexual abuse, plus the presence of antisocial personality traits and clear paraphilic behaviours, along with his past failure to engage and persist with treatment directed at his aberrant sexual behaviour, it seems very likely that such behaviours may recur, despite Mr Tilbrook's assertions to the contrary. In my opinion, the risk of sexual re-offending is high based on my clinical assessment and the formal instruments outlined above.
>
> Whilst the recent sexual offences are on the lower end of the severity scale they have nevertheless had a reasonably traumatic effect on at least some of his victims and there is a risk (given the diversity of aberrant sexual behaviour in the past) that there may be an escalation in severity of future sexual offending although this is difficult to predict with certainty.

The most urgent need for Mr Tilbrook is further assessment of his sexual offending problems and effective treatment of those problems. This could preferably occur in a formal High Intensity Sexual Offender Program or, if he is deemed unsuitable for such a program, an applicable replacement program. He should in addition have individual therapy to address post-traumatic symptoms arising from his abuse. Treatment with a resumption of hormone reduction medication would also be an option in management with Mr Tilbrook's consent.

Given the nature of the offending and Mr Tilbrook's young age, the court may not consider a strict supervision order to be the most desirable approach in his management at this stage. Certainly Mr Tilbrook is trenchantly opposed to supervision and electronic monitoring and sees it as severely inhibiting his ability to 'move on'. However, without the institution of a supervision order it may not be possible to ensure that Mr Tilbrook has the necessary treatment. An option would be to keep him in custody until he has completed an appropriate sexual offender treatment program. He might also benefit from literacy programs. A thorough Neuropsychological assessment would assist in deciding what programs are appropriate for him to participate in.

In summary, my opinion is that the risk of re-offending is high but it might hopefully be reduced to low to medium by the instigation of effective treatment. The role of a supervision order is not totally clear beyond its usefulness in ensuring the application of treatment and compliance with that treatment. The disadvantage of a supervision order at his stage of development would be an inhibition of his abilities to undergo appropriate social development and employment. It is possible that if he were to undergo appropriate treatment whilst in custody this would be sufficient to reduce the risk to a level where a supervision order would not be required upon release. Certainly the completion of the HISOP (or suitable program) would make it clearer whether a supervision order after release could meaningfully contribute to his future management.

If Mr Tilbrook does not undergo a suitable sexual offender treatment program whilst in custody, a supervision order would be more urgent in terms of his ongoing management. Such an order should attempt then to address his treatment needs outside prison as well as mandating abstinence from alcohol and drugs. He will need quite extensive assistance in rehabilitation in terms of consolidating a social network and gaining employment. There would be quite a high chance that he would breach the supervision order, perhaps by substance abuse or some recurrence of sexually aberrant behaviour.

If a supervision order is put in place it should try and strike a balance between Mr Tilbrook achieving realistic rehabilitation aims and the safety needs of the community. Such a supervision order should in my opinion be in place for five years with the option then of extending it if he is not making satisfactory progress in rehabilitation and not remaining breach and offence free. A longer period of supervision order at this stage could be seen as necessary, given his young age, but it might be overwhelmingly inhibiting and demoralising from the point of view of Mr Tilbrook's social and interpersonal development."

[88] In oral evidence Dr Grant expressed grave concern that the escalation in the respondent's sexually aberrant conduct will continue and become more violent. In expressing that opinion, he stressed the following factors: that the respondent has engaged in multiple kinds of sexual offending; that its frequency is increasing; that its physicality is increasing; that he does not understand why it is happening; and his own history of abuse. Dr Grant said that the risk is of offending against adult women rather than children – adult women who are strangers to him and who are in public places. So far, he has stopped when the women have objected and screamed, and he has run from the scene. But Dr Grant was concerned he would seek opportunities to progress that aggressive behaviour, perhaps in more isolated situations. The end point could be rape, although it might not necessarily be so.

Dr Josephine Sundin

[89] Dr Sundin interviewed the respondent on 5 April 2012 at the Wolston Correctional Centre.

[90] She considered that he met the criteria for anti-social personality disorder and those for psychopathy. She found no evidence of current PTSD.

[91] She used a number of formal risk assessment tools, but cautioned as follows –

> "These instruments talk in group figures and cannot be applied with absolute specificity to an individual offender. Caution needs to be applied in their interpretation as the material was derived from North American prison population. No comparable material is as yet available from the Australian prison population and in particular, no material is as yet available from the Australian indigenous prison population."

(i) on the Static-99 he scored 9, placing him at high risk for sexual recidivism;

(ii) on the Hare Psychopathy Rating Scale (PCL-R 20) he had a total score of 20, which was sufficient to attract the label of psychopath;

(iii) on the Sexual Violence Risk Scale (SVR – 20), his risk of recidivism was moderate to high;

(iv) on the Sexual Offender Risk Appraisal Scale (SORAG) he had a raw score of 42, which placed him in category 9 – ie as having a 100% risk of sexually violent recidivism at seven and 10 years.

[92] Dr Sundin said –

> "While on the face of it, the offences in 2007/2009 certainly are not in the realm of the most serious sexual offences, they represent an escalation in a continuing pattern suggestive of ongoing sexual deviancy associated with general anti-social behaviour, impulsivity, and a general lack of recognition of the adverse impact that his behaviour has upon others.
>
> When I interviewed Mr Tilbrook, he was continuing to minimise the severity of his offences and their potentially adverse impact, perceived himself as an unfairly punished victim of the system who had struggled with parole and would struggle even more with any form of sexual offender supervision order. He has not participated in a Sexual Offenders' Treatment

Programme, telling me that he has been advised by prison authorities that there was insufficient time prior to his release date for this to be made available and insisting that he did not belong in this category. Certainly, in the material from the professional management files, I found evidence consistent with Mr Tilbrook being quite ambivalent about participation in such a programme. While he voices preparedness to participate in such programme to some interviewers, he repeatedly states that he is not a serious sex offender and should not be classed with those in the programme. Certainly, that was how he characterised himself to me and indicated to me that participation in such a programme was not appropriate for him.

I note however that he does not appear to have directly refused to participate in the Inclusion Sexual Offenders' Programme and certainly has not dropped out of any sex offender programme. The latter would be of significance as it would be considered to have increased his risk for future re-offending.

Overall I would quantify this man's risk of future recidivism in the moderate to high category. On a purely statistical analysis, he rates as at high risk. I have moderated this somewhat based on some of the more hopeful findings made by other assessors.

In my opinion, it is vital that this young man participate in the Inclusion Sexual Offenders' Programme. He needs to be challenged to alter his view of himself with regard to his acts of and motivations for sexual offending. He needs to understand the triggers for his behaviour and to develop a realistic relapse prevention plan.
…

As things currently stand, I would respectfully recommend to the Court that Mr Tilbrook poses a sufficient risk to the community that he cannot be released into the community without a supervision order. I would concur with the observations made by Dr McVie that any supervision order will be difficult to maintain and monitor with Mr Tilbrook given his level of impulsivity. It would be my recommendation that he complete the Inclusion Sexual Offenders' Programme prior to being placed in the community on a supervision order.

In my opinion, only participation in the programme and then being placed under supervision will adequately mitigate the risks to the community posed by this young man.
…

Were the Court minded to place Mr Tilbrook on a supervision order then I would recommend that such an order would need to require components that address his issues with alcohol and illicit substance abuse, his vulnerability to relapse into these substances in the face of interpersonal stressors and his need for ongoing psychological counselling to help him to better identify his risk factors and to develop a realistic relapse prevention plan.

I would recommend that he needs to return to the care of a psychiatrist or clinical psychologist. I note that he has been treated by Dr Harden in the past and if it were at all possible returning Mr Tilbrook to Dr Harden's care would appear to have some substantial value. I would recommend that he

> be required to participate in a Sexual Offenders' Maintenance Programme within the community (this may not be an option if he has not undertaken a treatment programme) and attend a drug and alcohol relapse prevention programme within the community."

[93] In her oral evidence Dr Sundin assessed the risk of sexual recidivism as high. She said that the likely victims were adult females, and that the offending could include rape.

Is the respondent a serious danger to the community in the absence of a division 3 order?

[94] By s 13(7) of the *Dangerous Prisoners (Sexual Offenders) Act* the Attorney-General bears the onus of proving that the respondent is a serious danger to the community in the absence of a division 3 order. By s 13(2) a prisoner is serious danger to the community if there is an unacceptable risk that he will commit a serious sexual offence if released from custody or if released from custody without a supervision order being made. As PD McMurdo J said in *A-G (Qld) v Sutherland* [2006] QSC 268 at [30], the determination of what level of risk is unacceptable is a matter for judicial determination, requiring a value judgment as to what risk should be accepted against the serious alternative of the deprivation of a person's liberty.

[95] The respondent's history shows a pattern of diverse sexual deviancy. As a juvenile he was dealt with for two counts of indecent treatment of a child under 12. He is presently serving a period of imprisonment for three serious sexual offences. On his own accounts, his aberrant sexual behaviour has been considerably more extensive than what is recorded in his criminal history. And it has been escalating in frequency and severity.

[96] He is a young man with below average or borderline intelligence and cognitive problems, as well as an anti-social personality disorder. His lack of insight into his offending is underscored by his avowed unwillingness to be subject to a supervision order or to wear an anklet.

[97] I am satisfied to the standard required by s 13(3) that there is an unacceptable risk the respondent will commit a serious sexual offence if he is released into the community or released without a supervision order being made. The likely victim of such reoffending is an adult woman, previously unknown to him, in a public place.

[98] I am satisfied that a supervision order would afford inadequate protection to the community.

[99] The respondent should complete an intensive sexual offenders program in a custodial setting before consideration is given to his released from detention. That could be expected to assist him to understand his offending behaviour and to identify the triggers for it, and to help him desist from reoffending. The recorded results of his participation in such a course would likely constitute a useful resource for those who might ultimately have to supervise him in the community.

Disposition

[100] In the circumstances there should be an order for the continuing detention of the respondent.

[101] Under s 27 of the Act, the first review of such an order must be completed within two years. The Attorney-General must make any application necessary to cause the review to be carried out. There is no provision by which the respondent can seek a review.

[102] The respondent is about to complete a period of imprisonment of three years. On the assumption he undertakes the ISOP in July this year, and an Exit Report is then prepared, it would be desirable that the order be reviewed by the end of the first quarter of 2013.

Order:

Upon being satisfied to the requisite standard that the respondent is a serious danger to the community in the absence of an order pursuant to Part 2 Division 3 of the Dangerous Prisoners (Sexual Offenders) Act 2003, the court orders that the respondent be detained in custody for an indefinite term for control, care or treatment.