

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Lawrence*
[2012] QSC 386

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
MARK RICHARD LAWRENCE
(respondent)

FILE NO: BS 7468 of 2007

DIVISION: Trial Division

PROCEEDING: Hearing

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 6 December 2012

DELIVERED AT: Brisbane

HEARING DATE: 26 November 2012

JUDGE: Daubney J

ORDER: **THE COURT affirms the decision of Fryberg J made on 3 October 2008, affirmed by the Court of Appeal on 2 December 2011, that the respondent is a serious danger to the community in the absence of an order pursuant to Division 3 Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* and ORDERS THAT:**

- 1. The respondent, Mark Richard Lawrence, continue to be subject to the continuing detention order made on 3 October 2008.**

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 convicted of multiple violent and sexual offences – where respondent has been subject to a continuing detention order since 2008 – where respondent diagnosed with anti-social personality disorder and sexual sadism – whether respondent “serious danger to the community” for purposes of *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) – whether respondent should continue to be subject to a continuing detention order

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld) s 3,

5, 13, 27, 29, 30

Mental Health Act 2000 (Qld) s46, s48, s108

A-G (Qld) v Lawrence [2011] QCA 347, cited
Attorney-General v Lawrence [2009] QCA 136, cited
Attorney-General for the State of Queensland v Lawrence
 [2008] QSC 230, cited
Attorney-General for the State of Queensland v Lawrence
 [2011] QSC 291, cited
Attorney-General for the State of Queensland & Anor v Sambo [2012] QCA 171, followed
Fardon v Attorney-General (Qld) (2004) 78 ALJR 1519;
 [2004] HCA 46, cited
Lawrence v Attorney-General for the State of Queensland
 [2009] HCATrans 244, cited
Lawrence v Attorney General for the State of Queensland
 [2012] HCA Trans 24, cited

COUNSEL: J B Rolls for the applicant
 S M Ryan for the respondent

SOLICITORS: G R Cooper, Crown Solicitor for the applicant
 Legal Aid Queensland for the respondent

- [1] On 3 October 2008, Fryberg J ordered that the respondent be detained in custody for an indefinite term for control, pursuant to Division 3 of the *Dangerous Prisoner (Sexual Offenders) Act 2003* (Qld) (“the Act”).¹
- [2] The respondent appealed against the making of that order. That appeal was dismissed on 22 May 2009².
- [3] On 2 October 2009, the respondent made an application in the High Court of Australia for special leave to appeal against the decision of the Queensland Court of Appeal. The application for special leave was dismissed³.
- [4] On 4 October 2011, on an application by the Attorney General for review of the continuing detention of the respondent, it was determined that the respondent was a serious danger to the community in the absence of a division 3 order, and it was ordered that the respondent ought be released upon the, “*imposition of appropriate conditions*”⁴.
- [5] The Attorney General appealed against the making of that order. On 2 December 2011, the Court of Appeal ordered that the appeal be allowed, the orders at first instance be set aside, the decision of Fryberg J that the respondent is a serious danger to the community in the absence of an order under division 3 of the Act be affirmed,

¹ *Attorney-General for the State of Queensland v Lawrence* [2008] QSC 230

² *Attorney-General v Lawrence* [2009] QCA 136

³ *Lawrence v Attorney-General for the State of Queensland* [2009] HCATrans 244

⁴ *Attorney-General for the State of Queensland v Lawrence* [2011] QSC 291

and that the respondent continue to be subject to the continuing detention order made by Fryberg J.⁵

- [6] On 5 October 2012, the respondent applied to the High Court for special leave to appeal against that decision of the Court of Appeal. The application for special leave was refused⁶.
- [7] This is the next application for review by the Attorney-General pursuant to s 27 of the Act.

Statutory Scheme

- [8] The objects of the Act (s 3) are to provide for continued detention or supervision of a particular class of prisoner and to provide continuing control, care or treatment of a particular class of prisoner to facilitate their rehabilitation.
- [9] 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 if released without appropriate supervision. The Act makes provision for the Supreme Court to hear applications for orders under the Act, and s 5 of the Act places the responsibility for making the necessary applications on the Attorney-General.
- [10] Once an order has been made under Division 3 of the Act then the Attorney-General must make an application for a review to be carried out. In that regard, s 27 of the Act provides:

“27 Review — periodic

- (1) If the court makes a continuing detention order, it must review the order at the intervals provided for under this section.
- (1A) The hearing for the first review and all submissions for the hearing must be completed within 2 years after the day the order first had effect.
- (1B) There must be subsequent annual reviews while the order continues to have effect.
- (1C) Each annual review must start within 12 months after the completion of the hearing for the last review under this section.
- (2) The Attorney-General must make any application that is required to be made to cause the reviews to be carried out.”

⁵ *A-G (Qld) v Lawrence* [2011] QCA 347 Muir, Fraser and White JJA 2/12/2011

⁶ *Lawrence v Attorney General for the State of Queensland* [2012] HCA Trans 24

[11] The application for review is governed by s 30 of the Act:

“30 Review hearing

- (1) This section applies if, on the hearing of a review under section 27 or 28 and having regard to the required matters, the court affirms a decision that the prisoner is a serious danger to the community in the absence of a division 3 order.
- (2) On the hearing of the review, the court may affirm the decision 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 affirm the decision.
- (3) If the court affirms the decision, the court may order that the prisoner —
 - (a) continue to be subject to the continuing detention order;
 - or
 - (b) be released from custody subject to a supervision order.
- (4) In deciding whether to make an order under subsection (3)(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.
- (5) If the court does not make the order under subsection (3)(a), the court must rescind the continuing detention order.
- (6) In this section —

required matters means all of the following —

 - (a) the matters mentioned in section 13(4);

(b) any report produced under section 28A.”

- [12] Arrangements must be made for the respondent to be examined by two psychiatrists.⁷
- [13] Section 13(2) of the Act provides that a prisoner is a serious danger to the community if there is an unacceptable risk that the prisoner will commit a serious sexual offence if released from custody or if released from custody without a supervision order being made.
- [14] The expression "*unacceptable risk*" is not defined in the Act. It is incapable of precise definition but is an expression which requires the striking of a balance.⁸ The relevant risk is the risk of the commission of a serious sexual offence i.e. an offence of a sexual nature involving violence or against children. Risk means the possibility, chance or likelihood of the commission of such an offence. An "*unacceptable risk*" is a risk which does not ensure adequate protection of the community. This phrase was considered in *Attorney-General for the State of Queensland v Francis*⁹:
- “[39] Insofar as his Honour was concerned that, if the appellant began to use alcohol or drugs, he might abscond, the risk of a prisoner absconding is involved in every order under s 13(5)(b). The Act does not contemplate that arrangements to prevent such a risk must be "watertight"; otherwise orders under s 13(5)(b) would never be made. 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.”
- [15] The means of avoiding that risk is a continuing detention order or a supervision order.
- [16] If the court, on the review hearing, affirms a decision that the prisoner is a serious danger to the community in the absence of a Division 3 Order then the discretion granted by s30(3) is enlivened.
- [17] Section 30 of the Act permits the court to affirm the decision if it is satisfied:
- i. by acceptable, cogent evidence; and
 - ii. to a high degree of probability, that the evidence is of sufficient weight to affirm the decision that the prisoner is a serious danger to the community in the absence of a Division 3 order.

⁷ Section 29(1) of the Act

⁸ *Fardon v Attorney-General (Qld)* (2004) 78 ALJR 1519 at [22], [60] and [225]

⁹ [2006] QCA 324

- [18] Once that decision has been affirmed then the court is able, by s 30(3) of the Act, to order the respondent to be subject to continuing detention or be released from custody subject to a supervision order.¹⁰
- [19] In determining whether to make such an order the “paramount consideration” is to “ensure adequate protection of the community”.¹¹
- [20] If the court declines to order continuing detention then the court must rescind the continuing detention order.¹²
- [21] In determining whether the decision ought to be affirmed the matters mentioned in s 13(4) of the Act must be considered:

“13 Division 3 orders

- (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.”

¹⁰ Section 30(3)(a) and (b) of the Act

¹¹ Section 30(4) of the Act

¹² Section 30(5) of the Act

- [22] For the Court to make a Division 3 order, it must be satisfied that the prisoner is a serious danger to the community in the absence of such an order¹³. Subsection (2) defines what is a "*serious danger to the community*". There must be an unacceptable risk that the prisoner will commit a serious sexual offence if released at all, or if released without a supervision order.
- [23] The Schedule to the Act defines what a serious sexual offence is:
 "*serious sexual offence* means an offence of a sexual nature, whether committed in Queensland or outside Queensland—
 (a) involving violence; or
 (b) against children."
- [24] The offence must be of a sexual nature, with the added requirement that it either involve violence, or is an offence against children.
- [25] To be satisfied under s 13(1) and to affirm that decision that the prisoner would pose a serious danger to the community in the absence of an order, the Court must be satisfied by acceptable, cogent evidence, and to a high degree of probability, that the evidence is of sufficient weight to justify the decision.¹⁴

The Respondent's Background

- [26] The respondent's background was summarised by Chesterman JA in the first Court of Appeal judgment as follows:
- [5] The appellant is 48 years of age. He has been continuously in gaol since December 1983, more than 25 years.
- [6] His criminal history begins with an appearance in the Ipswich Children's Court on 9 May 1978 when he was charged with the aggravated assault on a male child under the age of 14 on 4 May 1978. The appellant was admonished and discharged. He next appeared on 2 November 1978 in the Ipswich Magistrates Court charged with another aggravated assault of a male child under the age of 14. He was sentenced to two years' probation. (The date given for the offence was 20 December 1978 which must be incorrect given the date of his appearance.) He appeared again in the Ipswich Magistrates Court on 23 February 1979, this time charged with the aggravated assault of a female child under the age of 17, the day before, 22 February. He was sentenced to three years' probation and ordered to undergo any psychiatric treatment which the probation officer might direct including treatment as an inmate of a psychiatric hospital. On 23 December 1980 he appeared for a third time in the Ipswich Magistrates Court. The charge this time was aggravated assault on a male child under the age of 14 on 21 December. He was fined \$75.

¹³ Section 30(1) of the Act

¹⁴ Section 30(2) of the Act

- [7] On 3 September 1981 he appeared before the Brisbane District Court charged with conspiracy to commit a crime and assault with intent to steal with the threatened use of violence whilst armed and in company. The offences were committed on 11 April 1981. At the time the appellant was an involuntary patient in Wolston Park Hospital from which he absconded with three other patients. They caught a taxi and decided to rob the driver. One of them held a knife to the driver's throat. He was not harmed and refused to give up his takings. The appellant was sentenced to four months' imprisonment and required to undergo a further three years' probation.
- [8] Having served the imprisonment he was returned to Wolston Park Hospital where, on 26 December 1983, he and another patient killed a fellow patient, a woman. On 7 February 1985 the appellant was sentenced to 15 years' imprisonment for manslaughter. That verdict rather than one for murder was returned on the basis of diminished responsibility. The appellant had compelling sexual fantasies about rape and murder. The young woman was killed as an enactment of the fantasies.
- [9] In August 1991 the appellant escaped from custody. He had been allowed to leave the gaol to attend a tennis competition and did not return. He was found after a few days and on 3 September 1991 sentenced to one year's imprisonment, cumulative upon the 15 years, for escaping lawful custody.
- [10] On 4 April 2002 in the Brisbane District Court he was convicted of rape and sexual assault with a circumstance of aggravation on 14 October 1999. It was a sodomitc attack on a fellow prisoner. He was sentenced to seven years' imprisonment for the rape and three years for the assault, to be served concurrently. An earlier conviction had been quashed and the appellant was retried in 2002. By the time he was convicted and sentenced the second time his previous sentences had expired. He was, however, kept in gaol and remanded in custody. That time, from 7 February 2001 until 4 April 2002, was declared to be time served under the sentence.
- [11] The term of imprisonment imposed for the manslaughter expired on 6 February 2000. The year's imprisonment for escaping expired 12 months later. The seven years imposed for rape expired on 7 February 2008. The appellant's confinement since then has been pursuant to the Act.¹⁵

- [27] Fryberg J had made the following finding, based on psychiatric evidence then before that court as follows:

¹⁵ Supra at 5 – 11.

“[34] There is abundant evidence to support the proposition that Mr Lawrence is a serious danger to the community if released without a Division 3 order being made, and there is no evidence to the contrary. The psychiatric evidence of high risk of his committing another serious sexual offence if released into the community unconditionally is overwhelming. Having regard to his antisocial personality disorder and sexual sadism, and his past offending, I am satisfied that risk is unacceptable. I find that he is such a danger.”¹⁶

[28] That finding was not challenged on appeal¹⁷.

[29] At the original hearing before Fryberg J, a question arose as to the conditions under which that risk can be managed. His Honour observed:

“[35] The Attorney-General seeks a continuing detention order. Mr Lawrence does not oppose a supervision order and has instructed his lawyers that he wishes to have an appropriately structured order to facilitate his reintegration into the community. Neither party submits that I should make no order. Having regard to the fact that the discretion under s 13(5) of the Act only arises once the court is satisfied that the prisoner is a serious danger to the community in the absence of an order (ie that there is an unacceptable risk that the prisoner will commit a serious sexual offence), it is difficult to envisage circumstances in which no order would be made. In my judgment it remains an open question whether the s 13(5) discretion extends to making no order.

The party's submissions

[36] The Attorney-General accepted, I think rightly, that the starting position ought to be that a supervision order ought to be made in preference to a continuing detention order unless there is reason to do otherwise. However I do not think that this is the same as saying that the Attorney-General has the onus of proving that a supervision order would still result in the prisoner being a serious danger to the community in the sense of an unacceptable risk that he would commit a serious sexual offence. I reject Mr Lawrence's submission to that effect. Nor is it the same as saying that the Attorney-General has the onus of proving that any supervision order is unreasonable, ie that it is impossible to devise a practicable supervision order, if he is to obtain a continuing detention order. I reject Mr Lawrence's submission to that effect. In my judgment s 13(5) confers a discretion to be exercised having regard to all of the evidence. In that context it is

¹⁶ [2008] QSC 230

¹⁷ Supra at para 14.

unhelpful to talk in terms of onus of proof or standard of proof.”

[30] Fryberg J concluded –

“[69] Mr Lawrence presents an extreme and difficult case. The risk that he will reoffend if not adequately supervised and controlled on his release from prison is high. The evidence before me is insufficiently detailed and precise to permit the confident formulation of requirements for a supervision order, particularly requirements relating to supervision, accommodation and employment. In the absence of such requirements a supervision order would not ensure adequate protection of the community.”

[70] In my judgement that is sufficient reason to make a continuing detention order. The starting position of a supervision order has been displaced.

[31] As appears from what follows, little has changed with respect to the respondent’s psychiatric state since Fryberg J made the original orders.

[32] On second appeal, the Court of Appeal¹⁸ outlined the psychiatric evidence which had been presented on the first review in October 2011:

“[7] All three psychiatrists diagnosed the respondent as suffering from paraphilia (sexual sadism) and antisocial personality disorder. In his principal report dated 21 October 2009, Professor Nurcombe gave the following histories and opinions of the respondent:

‘36. By the time he was sixteen years of age, he was entertaining fantasies of raping and killing people. The targets of his fantasies were indiscriminate, and acted out toward young people and adults of both sexes; but he preferred scantily dressed young women.

...

37. [The respondent] has some of the characteristics of Psychopathic Personality: shallow affect; limited capacity for remorse and empathy; poor behavioural controls; early behaviour problems; lack of realistic and long-term goals; failure to accept responsibility for his own actions; juvenile delinquency; and revocation of conditional release. What he lacks is the glibness, superficial charm and grandiosity characteristic of Psychopathic Personality Disorder. He has struggled to improve his capacity for remorse, deepen his affect, improve his capacity for empathy, and enhance his

¹⁸ [2011] QCA 247.

behavioural controls. Given the limitations of his personality and low average intelligence, he has worked hard to make these changes.

...

38. If [the respondent] were to reoffend, the reoffending would be likely to involve the sadistic rape or sexual assault of male or female adults or children. His targets would be indiscriminate, but probably preferentially toward young females. The physical and psychological harm to victims would be great. There is a chance that a re-offence could escalate to a life-threatening level. In contrast to my previous opinion, I do not think that the risk of reoffending is imminent. However, the risk of violence is chronic, and particularly likely to occur if he experiences rejection, loneliness or boredom. [The respondent] has made genuine attempts to change the psychological basis of these offences, particularly by suppressing sadistic sexual fantasy and struggling hard to enhance his limited capacity for remorse and empathy; however it is likely that sadistic urges are dormant rather than defunct.'

- [8] In his oral evidence, Professor Nurcombe explained his diagnosis in this way:

'... paraphilia refers to a sexual disorder in which the individual gains pleasure from sexual activity that is really outside the normal behaviour which would be part of reproductive behaviour and that's paraphilia but sexual sadism refers to the fact that the individual gains sexual satisfaction from harming or hurting other people. And is that a paraphilia, sexual sadism?--Yes.'

- [9] His explanation of antisocial personality disorder was:

'... that is a condition ... the rudiments [of] which are apparent in childhood and adolescence which continues into a adulthood and it involves a long and persistent history of rule breaking and failure to follow conventional rules, tendency to break those rules in the sexual area or in terms of acquisition of other people's property.'

- [10] Professor Nurcombe said with reference to the amenability to treatment of paraphilia (sexual sadism):

'I know of no scientific evidence that treatment for that condition works but it's never really been fully examined because, as I say, many sexual sadists do not disclose or are unwilling to discuss the offence or receive treatment for

it...Unlike, I should say, [the respondent] who has been very open about his sexual sadism and his background.’

[11] In his opinion there was no scientific evidence that antiandrogenic medication would ameliorate the respondent's condition. Asked about the role of sexual fantasies in the manifestation of sexual sadism, he responded:

“... prior to the offence or the recidivism the individual has insistent and compulsive fantasies about hurting somebody else.”

[12] Professor Nurcombe conducted risk analysis tests on the respondent, including Static 99 Revised and Stable 2000. His scoring of the respondent on the former test associated ‘him with a group of prisoners whose likelihood of reoffending in 5, 10 and 15 years [was] at least .39, .45, and .52 respectively.’ He said that this indicated a high likelihood of sexual reoffending.

[13] Dr Nurcombe reported:

‘44. If the STATIC 99 and STABLE scores are combined, he can be classified with a group of prisoners whose overall risk of sexual reoffending is **moderate**.

...

50. If static, historical risk factors alone are considered, [the respondent] must be regarded as at **high** risk of violent sexual reoffending. If so, the risk to the community would be very great. When recent dynamic factors are considered, he is at **moderate** risk of reoffending. How much reliance can be placed on improvements professed by the offender, and how much improvement would be possible in treatment given [the respondent's] personality, his difficulty coping with concepts of relapse prevention, and his low average intelligence? Questions have been raised whether offenders high in psychopathic traits are capable of benefiting from sex offender treatment. Although I think that [the respondent] has been genuine in his attempts to address his problems, reason suggests the need for caution.

51. There is no purpose other than for control to retain him in prison. If the following supervisory conditions could be instituted, I consider the overall risk of reoffending would be **moderate** or lower:

- Supervised accommodation
- Close probationary supervision
- Assistance with obtaining employment
- Continued counselling following release

- Participation in the Sexual Offender Maintenance Program
- Antiandrogenic treatment under psychiatric supervision
- A curfew with electronic monitoring the maintenance of distance from places where children congregate, schools, and families with young Children.'

[14] In her report dated 2 November 2009, Dr Lawrence set out the following history:

‘5.1 **Professor Barry Nurcombe (Ref: Item C BN-3)** in his report dated 4 December 2006 and **Dr Michael Beech (Ref: Item E)** in his report dated 27 December 2007 were given a personal history that he had no knowledge of his biological mother and that he was raised by his grandmother from birth to about age 7, having no contact with biological parents during that time. He reported a kind, loving, caring, good grandmother. He appears to have been a loner, not mixing much with other children.

5.1.1 He said that when his grandmother died and he was alone, he spent days fending for himself in the bush before being found by authorities and placed in Stuart House in Sydney, where he remained, he says, until the age of 14. He describes being bashed and raped by both staff and other inmates, treated violently, neglectfully, receiving little or no schooling and being so disturbed as to attempt suicide by intending to jump off a cliff, though someone grabbed him.

5.1.2 He said that his father claimed him at age 14 and he then spent the rest of his adolescence in the care of his father and stepmother and that he had some 6 or 7 stepsiblings. Both father and stepmother are now dead and he has no contact with any of the siblings.

5.1.3 I note that Dr Beech comments (p. 22) that there is some discrepancy in the accounts of [the respondent's] personal history, particularly related to his upbringing by his father and stepmother. Dr Beech recounts (p. 114-118) psychiatric and psychological reports covering the period to 1984, subsequent to the killing of the female co-patient in Wolston Park. These reports indicate the likelihood of earlier sexual offending as a juvenile, not documented in the adult criminal file. For instance, reports that at the age of 15, he took a large carving knife to a public park and looked for someone to kill. He reports seeing a group of women playing netball and waiting nearby with the intention of killing one of them. He was apprehended by the Police who took him home. He reports assaulting and attempting to rape a girl at school some months after that episode.

5.1.4 At 17 years of age, he reportedly took out his frustrations on a young boy he had seen at a railway station. At age 19, it was reported that he told a Psychologist that he chose to sexually assault children because they are vulnerable, can't fight back and it is exciting to sexually assault them so that he does so when possible. He also masturbated to fantasies which included sexual intercourse with young, usually male, children and also fantasies of rape and killing.

5.1.5 His stepmother confirmed the history during a home assessment report. There are also reports that his parents had been worried about his sexual disinhibition since the age of 15. He was described as stubborn and defiant towards his parents, especially as he grew older. He deceived them and lied openly from an early age. Their efforts to deal with this had had little effect. They were considered to be thoughtful people who admitted that they were unsure of how to handle his problems. They worked together to try to decide the best way but felt unsure of how to handle him.'

[15] A little later in her report Dr Lawrence set out the following history obtained by her from the respondent:

'5.3.1 I obtained the following story. "He was the only child of his father and a natural mother whom he believes left him with his grandmother at the age of 3 months. He says that he was subsequently collected by his father after he married his stepmother. He thinks that this was "pre-school age," though reports indicate that it was about 12 months of age. He was then reared as their own child by the father and stepmother. He had a stepbrother and 6 half-brothers and sisters.

5.3.2 By 1973, at the age of 12, he had only reached Grade 4 in normal school and thereafter was transferred for 3 years, from 1973 to 1976, to Ipswich Opportunity School.

5.3.3 From 1976 till he was admitted to Barrett Psychiatric Centre under Section 18 of the Mental Health Act, at the age of 17½ in February 1979, he had a job in a Butter Factory at Ipswich. During this time he was convicted of 3 offences of a sexual kind.

5.3.4 Since 23 February 1979, he had been virtually constantly either legally detained in Wolston Park Hospital or the Security Patients' Hospital under the Mental Health Acts or in prison in Brisbane. However, in the period from early November 1979 until 26 December 1980, he was apparently on leave from the hospital, being returned from leave after further charges of a sexual nature involving children.

...

5.3.6 Sometime between 1974 and 1976 and thus before the age of 15, there is a report of his attempted rape of a young girl at the Opportunity School he attended.

5.3.7 At the age of 15½ to 16, there are reports of sexual approaches to younger siblings in his family.

5.3.8 He told me that he tried to kill his sister M aged 12, one night – he had a teatowel over her mouth. He went into her bedroom, having turned off the power in the house so that she would not see him as he did it. She woke and screamed and his parents came in and he was **returned** to Wolston Park Hospital at that stage. His sister L confirmed that there was an incident like this known to the family.

...

5.3.16 [The respondent] reports that he ... continues to have the sexual fantasies always with a good deal of violence. He reports that a female Psychologist who had attempted some work with his sexual deviations with him, was the subject of one of his fantasies. He also reports that a female Charge Nurse at Wolston Park Hospital has figured in another fantasy which involves, not only his possible rape and murder of her, but that he dismembers and cooks her up in his oven. He says that such a fantasy occurred quite recently during his time in prison.'

[16] Paragraphs 5.3.1 to 5.3.16 appear to have been extracted by Dr Lawrence from her report dated 31 January 1985.

[17] Dr Lawrence concluded this historical account with the observation:

'In summary, the current accounts of his personal background and childhood and family upbringing are grossly incorrect and unreliable.'

[18] The report then discussed the content of other psychiatric reports:

'5.5 [Dr Beech, Psychiatrist] reports on **Dr Christopher Alroe, Psychiatrist**, in 1992 who reported on [the respondent's] account of his actions in regards to the unlawful killing but commented that the accounts could be given little credence because he distorted the truth and lied on every occasion.

5.6 **Dr Robert Moyle, Psychiatrist**, in 1995, reported that [the respondent] disclosed assaults on people of both sexes aged from 3 to 13. He indicated sexual arousal by both girls and boys, including adolescents of both sexes. He also reported sexually sadistic fantasies including fantasies of cutting his

victims throats (as he had slashed the throat of his actual female victim).

5.7 [The respondent] had been placed on a sexually suppressant drug in prison about 1992 because of his reports of extreme difficulty controlling sexual impulses. It was considered this was a threat to the female staff.'

[19] Dealing with the jail rape offences, Dr Lawrence explained in paragraphs 13.1 to 13.4 of her report, that although the respondent had pleaded guilty to the offence of rape he maintained his innocence.

[20] In paragraph 14.1 of her report, Dr Lawrence noted that the respondent "asserted that he has had no [rape and sexual killing] fantasies for 3 years." Her report continued:

'14.2 He acknowledged masturbating currently but points out that the frequency of masturbation has decreased significantly. He said initially in prison he masturbated 6-7 times a day but this was now reduced to once a week. He said that the frequency had decreased after a period of being on the antiandrogen drugs, even though these had been stopped some years previously. He attributed the decreased masturbatory frequency to increasing age. He went on to say then that he also tends to avoid the fantasies; if he gets fantasies of rape and killing, he makes a conscious effort to distract himself and avoids following through with masturbation to those particular fantasies.' (emphasis added)

[21] Dr Lawrence queried a statement made to her by the respondent that he would prefer females to males as sexual partners, if any were available:

'15.3 Pointing out that, of his child victims, 3 had been male and only 1 female. **To this, he vigorously denied that the attacks on the children were sexual at all.** He said that they were aggravated assault, by which he means that he would "just push the child". He denies absolutely any sexual involvement with those children or sexual intent and sought to defend his statement and argue his case, on the grounds of the wording of the charges in the criminal history.'

15.4 He went further in his refutation of guilt about the children charges saying that they had happened because he was wanted to go back to hospital at that time. He claimed that he felt safer in hospital (Wolston Park). He claimed that he wanted to get away from his father who was raping him at home. He agrees that he did not, at the time, reveal or indicate any hint of sexual abuse from his father, saying that that was because he didn't open up to people at that time.

...
 19.8 **My overall assessment is that [the respondent], as assessed on actuarial scales, remains at a HIGH RISK of recidivism.**'

[22] "Actuarial scales" in paragraph 19.8 is a reference to a number of "Risk Assessment tools" including:

'...The **PCL-R Scale** for Psychopathy, the **HCR-20**, a recognised Risk Management Assessment Scale, the **VRAG** (Violence Risk Appraisal Guide) and **SORAG** (Sex Offender Risk Appraisal Guide), the **SVR 20** (Sexual Violence Risk-20) ... the **RSVP** (Risk for Sexual Violence Protocol) [and] ... [t]he **Static-99** ... a widely used basic score utilising past 'static' or historical factors to predict risk of re-offending.'

[23] Dr Lawrence rated the respondent a high risk of re-offending, applying the Violent Risk Appraisal guide (VRAG), the Sexual Violence Risk-20 (SVR-20) and the Static-99 test and a very high risk by applying the Sex Offender Risk Appraisal Guide (SORAG).

[24] In her concluding summary, Dr Lawrence stated:

'20.1 [The respondent] is a now 48 year old man who has spent the last 26 years in prison and had spent a number of years in adolescence and possibly childhood in institutions. He had prejudicial early circumstances but had always displayed behaviours which could earn the diagnosis of Conduct Disorder in childhood and adolescence and would probably have warranted a diagnosis of Psychopathic Personality using the PCLR Rating Scale, had it been available at that time. Certainly he was described, at the age of 23, as suffering from a Sociopathic Personality Disorder, or Antisocial Personality Disorder and certainly showed significant psychopathic traits in association with his Antisocial Personality Disorder.

...
 20.6 He has acknowledged sexual fantasy which he now claims have reduced in frequency and gives information suggesting that, even if he had occasional fantasies (which he denies), he does not obtain sexual satisfaction through masturbation in response to the fantasies. There is no way of obtaining objective corroborative evidence about these statements. Regrettably there is considerable evidence to indicate that [the respondent's] credibility is very questionable. There is evidence of current ongoing lying and denial in other previously corroborated

information so that relying on his uncorroborated statements is unwise.

20.7 [The respondent] has successfully completed Sex Offender Treatment Programmes during his incarceration including the High Intensity Sexual Offender Programme (HISOP) with exit reports indicating satisfactory participation. [The respondent] is able to recount and claims benefit of concepts imparted as a result of the HISOP programme. The manner in which these are recounted suggest an acquisition of jargon rather than a true acquisition of the underlying empathic and emotional understanding and acceptance of these concepts. Thus one cannot be assured that really significant change is likely to have occurred in this man's inner psychic life, particularly as it relates to his sexuality and sexual fantasies. (emphasis added)

20.8 He has also voluntarily received treatment with anti androgenic hormones during his period in prison. After a satisfactory period on treatment it seems that treating Psychiatrist at the time, Dr Robert Moyle, did not consider that there was sufficient benefit to warrant continuing treatment.

...

20.11 In my opinion the risk factors which would have to be addressed in order to reduce the risk to acceptable levels would involve:

- virtually constant close surveillance,
- intensive efforts at re-socialising

This man has not lived for any length of time as an independent person in a social community at any time in his adult life. He would therefore be exposed to a very large range of potential destabilising factors.

- He has no family or close personal supports and
- no ready access to reliable replacements other than of a professional kind.

20.12 Exposure to these destabilising factors is likely to increase the risk of a retreat into self gratification [and is] likely to mean the reactivation and possible acting on sexual sadistic fantasies of rape and killing. (emphasis added)

20.13 His past history also involves escape attempts and failure to comply with conditional release. Whilst it may be that maturity has mellowed his personality and he may have modified, in a positive way, his rebelliousness and non compliance (he has apparently functioned well in the structured environment of prison for nearly a decade). However the ongoing evidence of denial, his lack of empathy, the ongoing

presence, even at decreased frequency of his dangerous sadistic fantasies mean that a Supervision Order is unlikely to be constructed in a practical fashion sufficient to decrease the risk of re-offending. (emphasis added)

20.14 I consider [the respondent] to be a Dangerous Sexual Offender who, in my opinion, represents a **High Risk** of reoffending if released. I do not believe that a Supervision Order could be formulated with conditions that could manage the multiple and complex risk factors that this man presents.’

[25] In his report of 15 December 2010, Dr Morris stated:

‘Over the past 22 months he has had no sexual relations with other prisoners. He says that he has had offers of sexual activity but he has declined them. He has had no rape fantasies and no fantasies about violence. He no longer has his earlier deviant fantasies. If he sees something violent on television he switches it off or turns to another station to get away from this type of content. ... [The respondent] no longer acknowledges experiencing deviant sexual fantasies and denies having violent sexual fantasies. He has been able to avoid sexual contact with other male prisoners. He now masturbates using sexual fantasy content of an unobjectionable nature. He has participated in prison life in a positive way by undertaking regular weekly employment and having no breaches. There has been an improvement in his psychiatric condition. He has maintained contact with support systems, both personal and through chaplaincy and church contacts. He has realistic future plans if released from prison. There have been small improvements in the formal risk rating instruments that I have used. On the basis of all this information, there has been an improvement in his condition and his risk of return to violent sexual offending has declined. I would now rate his overall risk as in the moderate category. When describing his risk as moderate I use the term in a way that defines moderate as that the individual is at moderate or somewhat elevated risk for sexual violence. A moderate risk suggests that a risk management plan should be developed for the individual and that the plan should at least include a mechanism for systematic reassessment of risk. These descriptions of risk are taken from the SVR-20 documentation. My assessment of him as a moderate risk indicates that I believe he could be released from prison under an intense supervision plan.’ (emphasis added)

[26] Professor Morris used three risk assessment instruments in evaluating the respondent: the Hare Psychopathy Checklist Revised 2nd ed (PCL-R) which provides a general assessment of antisocial personality qualities; Historical Clinical Risk-20 (HCR-20) which assesses the risk of violent recidivism and Sexual Violent Risk-20 (SVR-20) which assesses the risk of

violent recidivism. Professor Morris concluded from the scores obtained that the respondent posed a moderate risk of violent recidivism and of sexually violent recidivism."

[33] Later, Muir JA observed:

"[51] In my view, the primary judge did err in concluding that the respondent's "statements about his current condition" should be accepted. In my respectful opinion, in reaching that conclusion the primary judge, although properly taking into account a number of objective matters referred to later, attached undue significance to the respondent's demeanour and his apparent frankness about his condition in the past. His Honour, in my respectful opinion, also gave insufficient weight to the matters relied on by Dr Lawrence in reaching her opinions as to the respondent's unreliability as an historian.

[52] I do not consider that historical frankness by the respondent to psychiatrists and psychologists about his condition bears significantly on whether his present evidence about his condition should be accepted. In his dealings with psychiatrists prior to the review application before the primary judge, the respondent would have been well aware that disclosure of the continued existence of sadistic sexual fantasies and urges would materially prejudice his prospects of success on the application. As I have said, there is a significant body of evidence which supports Dr Lawrence's opinions as to his unreliability as an historian."

[34] Muir JA also said:

"[74] For present purposes, a number of significant matters emerge from Professor Nurcombe's evidence. In his opinion, even if the relevant assertions of the respondent are to be taken at face value and he is no longer experiencing sadistic sexual urges or fantasies, the risk of the respondent re-offending remains chronic although such re-offending was not likely to be imminent. In Professor Nurcombe's opinion, if the changes reported by the respondent had not in fact taken place the risk of the respondent re-offending remained high. The finding of the primary judge that the respondent continued to have fantasies which he was able to control meant that, to a significant degree, the changes reported by the respondent to Professor Nurcombe, and which were significant in his risk assessment, had not in fact taken place.

[75] Professor Nurcombe lacked confidence in the effectiveness of supervision after release. If there was a high risk of re-offending he was of the view that providing the degree of

supervision required would be beyond the capacity of the system; virtually 24 our supervision would be required. Even if the risk of re-offending was regarded as moderate, Professor Nurcombe had no confidence in the efficacy of supervision because it is impossible to determine whether the changes claimed by the respondent had taken place.

[76] Another concern of Professor Nurcombe was whether the changes, if they existed, were “durable”. The examples he gave of matters which could trigger a reoccurrence of sadistic urges and fantasies were of a fairly commonplace nature and by no means unlikely to be encountered or experienced by the respondent on supervised release. He accepted that a properly crafted supervision order was more apt to ensure durability of change but commented that such an order “cannot ensure it.”

[77] When the foregoing matters are taken into account, there would not appear to be a great deal of difference, for practical purposes, between Dr Lawrence's opinions and those of Professor Nurcombe. Both considered the existence or re-occurrence of sadistic sexual urges and fantasies as a significant contributor to risk. Professor Nurcombe did not believe there was any way of determining whether the respondent was giving an accurate account of the changes in his urges and fantasies but plainly considered that if they had become dormant there was a substantial risk of re-activation on the respondent's release into the community. Dr Lawrence was satisfied on the evidence before her that little credence should be given to the respondent's account. She was also of the opinion that it was objectively unlikely that the sexual fantasies and urges had ceased entirely. Her evidence in this regard was unchallenged.

[81] In my respectful opinion, the appellant has demonstrated that the primary judge erred in failing to appreciate the basis on which Professor Nurcombe's opinion was expressed. A consideration of the primary judge's reasons suggests that his Honour attached considerable weight to Professor Nurcombe's opinions and that they were material to his evaluation of whether, having regard to the “paramount consideration” that the “adequate protection of the community” be ensured, a supervision order should be made. Consequently, the exercise of the primary judge's discretion miscarried in this respect also.”

[35] The clinical diagnosis of sexual sadism with an antisocial personality disorder remains. The risk that Mr Lawrence presents is moderate to high. The consequences of his release and any subsequent reoffending would be considerable; his targets would be “indiscriminate” and the physical and psychological harm to victims would be “great”. There is a chance that a further offence could “...escalate to a life threatening level”¹⁹.

¹⁹ See the report of Professor Barry Nurcombe dated 21 October 2009 at para 38.

Further psychiatric reports

- [36] Further psychiatric reports have been obtained for the purposes of the present review.
- [37] Dr Joan Lawrence prepared a further report dated 29 October 2012. The respondent declined the request for the interview by Dr Lawrence. Dr Lawrence was provided with additional material²⁰. Dr Lawrence concluded that, having regard to that additional material, "*...there is no evidence to suggest a change in his risk status*".
- [38] Dr Lawrence said:
 "In the absence of any personal interview, I must advise there is no evidence available to me to warrant any change in my previous opinion that Mark Lawrence remains at **HIGH RISK** of reoffending and in a potentially very serious manner. Release under a very close administrative provision order would not lower that risk significantly in my opinion."
- [39] Dr Donald Grant gave a report dated 6 August 2012, after conducting an assessment of the respondent on 3 August 2012.
- [40] Dr Grant diagnosed that the respondent suffers from the sexual paraphilia of sadism and an anti-social personality disorder with psychopathic traits almost reaching a threshold for a diagnosis of psychopathy. There was no evidence of any significant psychiatric disorder and no psychosis identified. Dr Grant noted:
 "Mr Lawrence describes experiencing quite extreme sadistic sexual fantasies from at least the age of 15 or earlier. He has acted on these fantasies a number of times in assaulting children of both sexes and adult females. These sexually sadistic fantasies reached their climax with two very serious offences of manslaughter and rape, both of which were motivated by sexually sadistic impulses consequent upon the fantasies.
- Mr Lawrence has demonstrated a range of other antisocial aspects to his personality and social functioning such as pathological lying, dishonesty offences, aggression and violent behaviour. However, he has not had significant drug and alcohol abuse. The general antisocial behaviour has been more contained in institutional environments, particularly in prison in latter years. There have been no breaches in the prison environment for about 12 years.
- ...
- The risk for future offending is chiefly in regard to sexual re-offending and in my opinion it is important to assess that risk from two major perspectives. The first perspective is the risk of Mr Lawrence acting once again on sadistic sexual fantasies and impulses, and the second perspective is that of the consequences of

²⁰ Set out at paras. 2.2.2 and 2.2.3 of her report.

any re-offending for victims and the community. The relative risks from those two perspectives may differ, but if they are taken together there is a better understanding of the overall dangerousness of an individual."

- [41] Dr Grant administered a number of actuarial instruments to assess the risk.
- [42] On the STATIC – 99, the respondent achieved a score of 9 placing him in the high risk group for future sexual offending. Dr Grant said that, statistically, the respondent is in a group which has a 39% chance of sexual recidivism after five years and 45% within ten years, increasing to 52% at 15 years.
- [43] On the Hare Psychopathy checklist, the respondent achieved a score of 29 out of 40 placing him close to the cut off point with significant psychopathic traits. A cut off score of 30 out of 40 is accepted as indicating a psychopathic personality disorder. Dr Grant said that some caution needs to be had when interpreting this instrument in view of the effects of 28 years of imprisonment.
- [44] On the HCR 20, the respondent achieved a score of 14 out of 20 on historical items, 5/10 on clinical items and 8/10 on risk management items with a total score of 27 out of 40. Such a score would be, in Dr Grant's view, such that the respondent would be at high risk of future violence, including both sexual and non-sexual violence.
- [45] On the risk for sexual violence protocol, this instrument indicated that there was a valid risk of severe sexual violence which would probably be infrequent but with the potential of great costs to victims.
- [46] Dr Grant noticed that the risk assessment instruments indicate a high risk when the static factors are measured. There could be some reduction of risk to more moderate levels when dynamic factors are taken into account. Dr Grants referred to the respondent's increasing age and degree of personality motivation combined with the effects of education, increased skills and better communication abilities together with some insight into past behavioural problems and improvement of self-esteem. These matters might reduce the risk to moderate.
- [47] Importantly, Dr Grant went on to say:
 "However, if one looks at the potential consequences of re-offending there is little indication that the factors that might have reduced the risk of behaviour have in fact had any significant effect on the risk of severe consequences to potential victims. Thus, while the chance of re-offending may be potentially avoided, if offending does occur the harm to the victims is potentially great – that is, rape or murder.

The risk for re-offending is most likely to be a consequence of increasing sadistic sexual fantasies and impulses. It is evidence from information given to me by Mr Lawrence that his sadistic fantasy life has not ceased, but is currently apparently under reasonable control in the environment in which he is placed and through strategies that he has learnt. These factors, combined with the effects of increasing age and personality maturation, along with a reduced sexual drive, have reduced the prominence of any sexual fantasies and impulses.

...

Mr Lawrence's risk of re-offending would be associated with increased fantasies that would likely occur in the context of him experiencing stress, social isolation, relationship problems or general anxiety and conflict."

[48] Dr Grant concluded:

"In my opinion, the release of Mr Lawrence into the community carries considerable risk. Whilst that risk may be manageable by a very comprehensive supervision order and intensive support, there is at least a moderate risk of re-offending and that re-offending could take on a very serious form with extreme harm to potential victims. Mr Lawrence's credibility and reliability as a reporter of his own emotions and behaviour has in the past not been very good. Positive engagement with a supervision order would require a great deal of commitment on his part, with openness and engagement in the process. Whilst the HISOP indicated that he was making progress in understanding, it remains fairly unpredictable as to Mr Lawrence's ability to take the lessons and strategies that he has learnt into a new life in the community. The changes that he has demonstrated may not endure in the face of the challenge to adapt and the loss of the prison structure and security.

...

Overall, my opinion is that there are too many concerns and uncertainties to recommend that Mr Lawrence could safely be released into the community at this stage, even with the benefit of a comprehensive supervision order. The particular difficulties raised in Mr Lawrence's case are that monitoring of his future progress will depend extremely heavily on his honest and open reporting of his sexual fantasy life and sexual impulses, rather than being able to rest on observations of his activities or contacts. There might then be a rapid transition from increased fantasies to very serious offending, which could not be accurately predicted or preventable. In this sense he differs from many other sex offenders where risk can be predicted by factors such as increased substance abuse or grooming of potential victims. In Mr Lawrence's case there may be no externally obvious changes between a rise in sadistic fantasies and him acting on these fantasies in a very violent way."

[49] The respondent was examined again by Professor Barry Nurcombe, who prepared a report dated 13 October 2012 subsequent to that examination. Professor Nurcombe gave a diagnosis of paraphilia of sexual sadism, possibly in remission and paedophilia no sexual preference non-exclusive, possibly also in remission and anti-social disorder with psychopathic traits.

- [50] Professor Nurcombe notes that, "...if historical factors alone are considered, the risk of sexual reoffending is *high*. If recent favourable changes are authentic and durable the risk of sexual offending is estimated as *moderate*".
- [51] Professor Nurcombe said the question was whether the respondent's sexual fantasies are defunct or whether they are suppressed and dormant but potentially activated by stress, or if they are active and concealed. Professor Nurcombe expressed the opinion that it is "more likely than not that Mr Lawrence's claimed improvement with regard to his sexually sadistic fantasies is authentic. The question is, however, whether it will endure in the face of what is likely to be severe stress to the community. This question I cannot answer".
- [52] Professor Nurcombe estimates the risk of sexually violent recidivism could reduce to moderate with certain supervisory conditions which he identified²¹. Professor Nurcombe concluded:

"48. This case is very complex and politically sensitive. I recommend the formation of a committee constituted by the treating psychologist and psychiatrist and representatives from Corrections and Crown Law. This committee should meet before Mr Lawrence's release and regularly thereafter to design and monitor a program that aims for a balance between protection of the community and rehabilitation of the offender."

- [53] A report by Dr Lars Madsen, Forensic Clinical Psychologist, dated 12 November 2012 was also put before me. Dr Madsen is a psychologist who has been engaged by Queensland Corrective Services to provide psychological treatment to the respondent. As at the date of the report, he had conducted seven sessions with the respondent. After describing the respondent's background, Dr Madsen said:

"7.4 To sum, Mr Lawrence depicted an extremely difficult early history characterised by high stress, instability, limited structure, poor supervision and ineffectual parenting. From a young age he was consistently exposed to sexual violence and general criminality, and himself the victim of emotional, physical and sexual abuse. He described detached and hostile relationships with his family and peers, and early on struggled with behaviour problems and a range of escalating delinquent behaviours and criminal activity. At a young age he was convicted of serious violent and sexual offences, and he has struggled to exist outside of custodial settings for even brief periods without offending in a serious manner."

- [54] Dr Madsen described the various diagnostic tools he had applied in making his assessment of the respondent, and the results of his testing. In terms of risk, Dr Madsen noted that, on actuarial tools, the respondent would score highly, noting that the respondent "possesses many of characteristics related to increased risk of recidivism". The dynamic factors present at the time of the respondent's offending were also analysed. Dr Madsen said that, at present, the respondent's "behaviour in prison seems to have stabilised somewhat", noting the respondent's reputation as a hard-working and reliable individual, his positive relationships with staff and other

²¹ At para 47 of his report.

inmates, and completion of the high intensity treatment program. Mr Madsen concluded:

“13.4 Mr Lawrence’s long history of persisting sadistic sexual interests represents a significant concern and ongoing risk factor to be monitored and managed. He denies having deviant fantasies and claims that he masturbates infrequently. On occasions when he does masturbate he reports that he will utilise “conventional” fantasies of consensual sexual activity. ... It is of course difficult to evaluate the veracity of Mr Lawrence’s claims regarding his interest without polygraphy or a PPG. The problem therefore exists that Mr Lawrence’s risk cannot be easily determined, and in a community context an escalation in his risk would not be obvious or necessarily situationally triggered (due to stress, not coping, etc). If Mr Lawrence were to offend again, he would likely intend to do so and engage in some planning.”

[55] Each of Dr Grant, Dr Lawrence, Professor Nurcombe and Dr Madsen gave evidence before me. In particular, the psychiatrists were asked for their further opinions in light of the report which had been received from Dr Madsen.

[56] Both Dr Grant and Dr Lawrence said, in effect, that Dr Madsen’s report had confirmed the views which each of them had previously expressed.

[57] Professor Nurcombe said that Mr Madsen’s report contained information about the respondent’s attitude towards his sexual problem which indicated a considerable naivety. Whilst Professor Nurcombe’s opinion as to the respondent’s moderate risk of sexually violent recidivism was not altered, he did say that it altered his views as to the supervisory conditions which should be imposed, particularly for the purpose of instituting antiandriogenic treatment. Professor Nurcombe expressed the view that the multi-agency committee he had suggested should spend the next three to six months formulating a plan for implementation, and that this be in place before consideration be given to the respondent’s release under supervision. Professor Nurcombe’s view was confirmed in the following exchange with me in the course of his evidence:

“HIS HONOUR: Professor, just so that I've got it straight in my mind, your suggestion in relation to this committee is that this committee be formed and that it formulate a program-----?-- Yes.

----- of rehabilitation treatment for this man?-- Correct.

But it's also your opinion that he should not be discharged until that committee has jointly formulated the appropriate rehabilitation plan for him?-- And the appropriate rehabilitation plan has been instituted-----

Has been instituted?-- -----for a period my estimate would be about six months.”

Determination of the review

- [58] The psychiatric and psychological evidence before me was acceptable and cogent. On the basis of that evidence, I am satisfied to a high degree of probability that the respondent remains a serious danger to the community in the absence of a Division 3 order.
- [59] I am also satisfied that the risk that the respondent will reoffend is high, and that the nature of the offence that the respondent is likely to commit is potentially life threatening. A Division 3 order would, to some extent, ameliorate that risk. Accordingly, it is appropriate for the decision of Fryberg J to be affirmed.
- [60] The next question is what order ought be made pursuant to s 30(3) of the Act, remembering that the paramount consideration is the need to ensure adequate protection to the community. The court must consider whether a protection of the community can be reasonably and practically managed by a supervision order.²²
- [61] It is clear, on the expert evidence, that this respondent cannot presently be reasonably and practically managed by a supervision order. The closest one comes on the evidence is found in the conditions suggested by Professor Nurcombe, but even that regime is premised on the establishment of a multi-agency working party which would need to devise a plan for implementation before consideration is given to the respondent's discharge. I should note, for completeness, that there is no power in the Court under the Act to require that such a working party be established; in particular, the Court does not have the power to order that the Chief Executive of Corrective Services establish such a working party.²³
- [62] It is also clear from the expert evidence that, whilst this is a difficult case, it is one which concerns a person who would present a significant risk to community if released at this point in time. It is appropriate to recall a previous observation by the Court of Appeal in relation to this respondent:

“[90] The appellant's contention that the assessment of measure that will “ensure adequate protection of the community” involves an equation with two factors, namely, “the likelihood of conduct which will endanger the community and the result of such conduct if it ensues” must be accepted. The general principle expressed in it has the imprimatur of this Court. In *A-G (Qld) v Beattie Keane JA, Holmes JA and Douglas J* agreeing, said:

‘For the appellant, it was argued that the expert description of the risk of the appellant's re-offending as “moderate” meant that the risk fell short of “unacceptable”. But this argument overlooks the point that whether or not a moderate risk is unacceptable must be gauged by taking into account the

²² Section 30(4) of the Act.

²³ *Attorney- General for the State of Queensland & Anor v Sambo* [2012] QCA 171

nature of the risk and the consequences of the risk materialising.”²⁴

- [63] It is clear enough that a reactivation of the respondent’s fantasies would not be immediately apparent to any person who would supervise him on release, and could be acted upon quickly with disastrous consequences. As Dr Grant observes, whether there are an amelioration of the sexual fantasies depend upon the respondent's honest and open reporting of his fantasy life. None of the psychiatrists identify any basis upon which an objective assessment can be undertaken which could determine whether or not the respondent is having sexual fantasies. No one knows when the respondent is having a fantasy - he does not talk about it to anyone else. No triggers and no identifiable class of victim can be identified. These factors alone make it clear that, in his present state, monitoring under a supervision order would not ensure adequate protection of the community. The only way that adequate protection of the community can be ensured is to detain the respondent.
- [64] In the circumstances, I am satisfied on the evidence that the respondent is not able to be managed by release on supervision.
- [65] Accordingly, I affirm the decision by Fryberg J that the respondent is a serious danger to the community in the absence of an order of division 3 of Dangerous Prisoners (Sexual Offenders) Act 2003 and further order that the respondent continue to be subject to the continuing detention order made by Fryberg J.