SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General (Qld) v Fardon* [2013] QCA 64
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (appellant) **v** **ROBERT JOHN FARDON** (respondent)
FILE NO/S:	Appeal No 1340 of 2013 SC No 5346 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	28 March 2013
DELIVERED AT:	Brisbane
HEARING DATE:	27 February 2013
JUDGES:	Muir and Gotterson JJA and Atkinson J Separate reasons for judgment of each member of the Court, Muir and Gotterson JJA concurring as to the orders made, Atkinson J dissenting
ORDERS:	**1. Appeal allowed.** **2. Orders 2 and 3 made on 13 February 2013 be set aside.** **3. The matter be remitted to the trial division for re-hearing.**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the respondent had a history of sexual offending – where the respondent was detained in custody for an indefinite term for care, control or treatment – where the appellant applied for a periodic review of the continuing detention order under s 27 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) – where the primary judge ordered that the continuing detention order be rescinded and that the respondent be released from custody subject to a supervision order – where the respondent had established a rapport with his treating psychologist – where the respondent expressed an intention to comply with the supervision order and cooperate with

Queensland Corrective Services – where the psychiatrists maintained that the risk of reoffending was moderately high – where the respondent's relapse prevention plan was materially deficient – whether it was reasonably open for the primary judge to conclude that a supervision order would ensure the adequate protection of the community

APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – WHEN APPEAL LIES – ERROR OF LAW – PARTICULAR CASES INVOLVING ERROR OF LAW – FAILURE TO GIVE REASONS FOR DECISION – ADEQUACY OF REASONS – where s 27 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) requires 'detailed reasons' for making a supervision order – where the primary judge considered that there was no material difference between the evidence of the psychiatrists – where the primary judge's reasons did not discuss inconsistencies in the evidence and whether the evidence of one psychiatrist was to be preferred over the other – where the primary judge did not explain why the cumulative weight of the matters on which she placed reliance overwhelmed the matters relied on by the appellant – whether reasons were adequate

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 11, s 13(2), s 13(4), s 13(4)(c), s 13(4)(h), s 13(5)(a), s 16(1), s 17, s 22, s 22(2), s 27, s 29, s 30, s 30(4)(a), s 30(4)(b), s 30(4)(b)(i), s 43, s 43(1)(b), s 43(2)(a)

A-G (Qld) v Fardon [2007] QSC 299, cited
A-G (Qld) v Fardon [2006] QCA 512, cited
A-G for the State of Qld v Fardon [2011] QSC 18, cited
Attorney-General (Qld) v Francis [2007] 1 Qd R 396; [2006] QCA 324, cited
Attorney-General for the State of Queensland v Fardon [2013] QSC 12, related
Attorney-General for the State of Queensland v Fardon [2011] QCA 155, cited
Attorney-General for the State of Queensland v Fardon [2011] QCA 111, cited
Attorney-General for the State of Queensland v Fardon [2006] QSC 336, cited
Attorney-General for the State of Queensland v Fardon [2006] QSC 275, cited
Attorney-General for the State of Queensland v Fardon (No 2) [2011] QSC 128, cited
Drew v Makita (Australia) Pty Ltd [2009] 2 Qd R 219; [2009] QCA 66, cited
House v The King (1936) 55 CLR 499; [1936] HCA 40, cited
Norbis v Norbis (1986) 161 CLR 513; [1986] HCA 17, cited
R v Fardon [2010] QCA 317, cited
Soulemezis v Dudley (Holdings) Pty Ltd (1987) 10 NSWLR 247, cited

COUNSEL: W Sofronoff QC SG, with J Horton, for the appellant
D O'Gorman SC, with R Dalby, for the respondent

SOLICITORS: Crown Law for the appellant
Patrick Murphy Solicitors for the respondent

[1] **MUIR JA**: **Introduction** The respondent's serious past criminal history commenced with a conviction in 1967, when he was aged 18 years, for the attempted unlawful carnal knowledge of a girl aged under 10. In October 1980, the respondent pleaded guilty and was sentenced to 13 years imprisonment for raping and indecently dealing with a 12 year old girl on whom he inflicted serious injury. He also wounded her 15 year old sister who had come to her aid. On 4 October 1988, after being released on parole, he travelled without authority to Townsville and engaged in a prolonged violent assault on a woman. He was subsequently convicted of rape, sodomy and assault occasioning bodily harm and sentenced to 14 years imprisonment.

[2] An order was made on 6 November 2003 under s 13(5)(a) of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (the Act) that the respondent be detained in custody for an indefinite term for control, care or treatment.

[3] It is convenient to take the respondent's relevant history after the end of 2003 from the reasons of the Chief Justice in an appeal against an order of a judge of the Trial Division on 20 May 2011 that the respondent continue to be subject to a supervision order made on 8 November 2006 as amended by order on 19 October 2007:[1]

> "[5] … On 27 September 2006, A Lyons J ordered that the respondent be released subject to a supervision order containing 32 conditions[2].
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> [6] The respondent contravened the order made on 27 September 2006. There were three contraventions: on 4 May 2007, he attended a school on a pre-arranged visit to address year 11 students; on 11 July 2007, he aided a neighbour who was also subject to a supervision order to disobey a curfew restriction; and on 21 July 2007, after discharge from custody on 13 July 2007 following his arrest on 12 July, he travelled without authority to Townsville.
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> [7] The respondent was consequently, under the legislative scheme, returned to custody. On 19 October 2007, Margaret Wilson J ordered that he again be released on the supervision order, although subject to some further amendment[3].
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> [8] Then on 3 April 2008, the respondent was apprehended and detained following a complaint of rape made by a 61 year [old] intellectually disabled woman. The respondent was on 14 May 2010 convicted in the District Court of rape, but on

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1 *Attorney-General for the State of Queensland v Fardon* [2011] QCA 155.

2 *Attorney-General for the State of Queensland v Fardon* [2006] QSC 275. The 32 conditions were set out in her Honour's order of 8 November 2006: *Attorney-General for the State of Queensland v Fardon* [2006] QSC 336. The order was upheld on appeal: *A-G (Qld) v Fardon* [2006] QCA 512.

3 *A-G (Qld) v Fardon* [2007] QSC 299.

> 12 November 2010 the Court of Appeal quashed that conviction and entered a verdict of acquittal, on the basis 'that it was not open to the jury to be satisfied beyond a reasonable doubt' of the respondent's guilt[4].
>
> [9] On 25 November 2010 the respondent applied for the dismissal of the related contravention proceeding or for release on an interim basis until that proceeding could be determined. On 2 December 2010, directions were given for the preparation of a psychiatric assessment of the respondent. On 16 February 2011 A Lyons J refused to order interim release[5].
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> [10] The contraventions, which led to the primary proceeding founding [the appeal heard on 23 June 2011], arose from the circumstances of the association between the respondent and the intellectually disabled complainant involved in the rape allegation: first, a breach of condition (xvii) – the respondent visited licensed premises without the permission of his supervisor (he and the complainant spent time at a surf life saving club prior to going to the place where the sexual relations occurred); and second, a breach of condition (xviii) – the respondent went unsupervised to the residence of an intellectually disabled person.
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> …
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> [11] On 20 May 2011, Dick AJ ordered that the respondent be released from custody subject to an amended supervision order[6]. Her Honour found that the contraventions had occurred, and said she would not characterize them as 'mere minor or technical breaches'."

[4] On 1 July 2011, the Court of Appeal allowed the appeal, set aside the order made on 20 May 2011 and ordered, under s 22(2) of the Act, that the supervision order made on 19 October 2007 be rescinded and that the respondent be detained in custody for an indefinite term for care, control or treatment. The central reason for the Court's decision, expressed in the reasons of the Chief Justice, with which the other members of the Court agreed, was that the primary judge's conclusion that "with an appropriately amended supervision order in place, the community would be adequately protected were the respondent to be released from custody"[7] was not reasonably open on the unchallenged evidence of the two psychiatrists who gave evidence before the primary judge.

This proceeding

[5] The appellant applied for a review under s 27 of the Act of the respondent's continuing detention order. That application came before the primary judge on 15 October 2012. Reports of two psychiatrists, Dr Grant and Dr Beech, and of

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4 *R v Fardon* [2010] QCA 317 at para 65.
5 *A-G for the State of Qld v Fardon* [2011] QSC 18.
6 *Attorney-General for the State of Queensland v Fardon (No 2)* [2011] QSC 128.
7 *Attorney-General for the State of Queensland v Fardon* [2011] QCA 155 at [23].

a psychologist, Mr Smith, were tendered and each of them gave oral evidence and was cross-examined. Both psychiatrists had been appointed under s 29 of the Act to examine the respondent for the purposes of the review hearing. At the close of the evidence on 15 October, the primary judge suggested to the respondent's counsel that the respondent prepare a relapse prevention plan and that the respondent himself give evidence.

[6] The hearing resumed on 7 February 2013. Each of the psychiatrists and Mr Smith gave further evidence and were cross-examined. The respondent also gave evidence and was cross-examined. On 13 February 2013, the primary judge ordered that the respondent be released from custody subject to a supervision order.

[7] The appellant appeals against the orders made on 13 February on the following grounds.

Ground 1

[8] The primary judge's orders were contrary to, and unsupported by, the evidence in that her Honour preferred the respondent's release, subject to requirements of supervision, over his detention when all evidence established that the respondent:

(a) remains at a material risk of reoffending in a sexually violent manner;

(b) lacks any ability internally to regulate his behaviour;

(c) requires, in order that he not reoffend in a sexually violent manner, external controls to regulate his behaviour;

(d) has an entrenched and complex disorder (including psychopathy);

(e) continues to display a negative attitude to supervision (the only source of external control upon him);

and in circumstances where:

(a) the respondent's relapse prevention plan was unrealistic and materially lacking;

(b) the supervision order was imposed as the only means by which adequate protection of the community could be ensured;

(c) the primary judge failed to give any consideration to how the assessments of risk which the psychiatrists had prepared for the resumed hearing on 7 February 2013 bore upon the danger the respondent posed.

Ground 2

[9] The primary judge's orders are contrary to s 30(4)(a) and (b)(i) of the Act, in that adequate protection of the community from the danger of the kind the respondent poses cannot:

(a) be reasonably and practicably managed by a supervision order; and

(b) a supervision order does not ensure the adequate protection of the community,

in circumstances where all the evidence established that such an order would be the sole means by which the respondent might be prevented from reoffending in a sexually violent manner.

Ground 3

[10] The primary judge failed to give adequate reasons for preferring the respondent's release subject to supervision over his detention.

The psychiatric evidence

[11] As the focus of the appellant's arguments on appeal was on the respondent's psychiatric condition, his mental state and attitudes, and the risk of his reoffending, it is desirable to commence any consideration of the grounds of appeal with an analysis of the psychiatric evidence.

Dr Grant's evidence

[12] In his risk assessment report of 28 April 2012, Dr Grant gave the following opinions:

> "There has been no significant change in [the respondent], his attitudes or his situation since my last report of 17 January 2011. His diagnosis is one of Antisocial Personality Disorder (Psychopathic) with a past history of severe alcohol and drug abuse, in remission for many years in prison, and a history of some intermittent anxiety symptoms in the past and to some extent in the present (but not sufficient to receive any current treatment). As I have indicated in previous reports I regard [the respondent's] sexual offending history as a facet of his psychopathic personality disorder rather than representing a specific sexual paraphilia.
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> [The respondent] is now 63 years old and as he has entered middle age and moves towards older age some of the more overt aspects of his personality disorder have been less evident. He has not been breached in prison for years, his alcohol and drug abuse has ceased and he is not overtly aggressive. However, his attitudes and beliefs still reflect his underlying personality disorder.
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> …
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> [The respondent] expresses a current very low interest in sexual behaviour and denies any significant current sexual drive. However, when he was released from prison on a supervision order he was sexually quite active and I believe if he was released again it is quite likely that his sexual interests would once again be increased from the present very low level.
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> [The respondent] continues to have very negative attitudes towards any Sexual Offender Treatment Program and would steadfastly refuse to undergo any group programs, at least without some initial period of individual psychotherapy to help him adjust to the stresses that would be involved. As I previously indicated, I do not believe that [the respondent] has a specific sexual paraphilia and from that point of view a Sexual Offender Treatment Program is not necessarily indicated. However, even in the absence of a paraphilia, a treatment program can assist an individual to understand previous sexual offending as part of their overall personality disorder and might help them to avoid such offending in the future. A treatment program might therefore be of some assistance in reducing risk of sexual offending in the community but it is not specifically indicated in terms of managing paraphilic behaviour.

> **Given that very little has changed in regard to [the respondent's] condition or his attitudes since the last review in 2011, it remains the case, in my opinion, that [the respondent's] management on a supervision order in the community would be very challenging. I believe that he would require a great deal of assistance and support in making the transition from complete institutionalisation to a more independent life in the community and there would be a high risk of breaches of a supervision order because of his entrenched negative attitudes. In the past he has demonstrated scant regard for the requirements [of] a supervision order and his negative attitudes continue to be very strong and would undermine confidence that a supervision order would be successful in assisting his rehabilitation.**
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> …
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> One of the major barriers for [the respondent] in terms of any treatment or successful transfer to the community is his apparent lack of motivation. It will be difficult to institute any supportive treatments or facilitate change without his very active cooperation and motivation to achieve progress. At present that motivation appears to be lacking and that leads to considerable pessimism about [the respondent's] safe management in the community. Some extended individual therapy within the prison environment might be one way of further assessing his motivation and encouraging a change in attitudes that might make change more likely and successful transition into the community more possible. Any such counseling (sic) would need to be provided by someone with psychotherapeutic experience and an understanding of people with psychopathic personality disorder." (Emphasis added)

[13] In evidence-in-chief on 15 October 2012, asked somewhat enigmatically how his "overall assessment of risk in respect of sexual re-offending" was to be read, he responded:

> "… I **think that** [the respondent's] **personality structure** and his **attitudes and so on would lead him into possible re-offending quite readily and it would depend on his personal circumstances whether that took a sexual turn or whether it was involved in other sort of violent or criminal activities, but I think there is a significant risk of either kind of re-offending**." (Emphasis added)

[14] Dr Grant was then asked the bearing of the respondent's age on his risk of reoffending. He said:

> "… **I consider that the risk primarily arises from psychopathic personality disorder and substance abuse**, and psychopathic personality tends to settle somewhat as a person gets older, particularly into their 40s, 50s and he is now in his 60s. One would expect to see some amelioration of the worst aspects, particularly the degree of violence." (Emphasis added)

[15] Dr Grant then observed that over the years the respondent had become "much less overtly aggressive, [and] has … breached not at all in recent times". He said that he

was not aware of any substance abuse in prison by the respondent of recent times and observed that "there is that maturation happening".

[16] Asked if he saw evidence of attitude change, he responded:

> "Not really. Certainly [the respondent] is full of bitterness, resentment, even hatred towards authorities, corrections, sees his whole situation as very unjust, sees the indefinite detention legislation as, DPSO legislation being very unjust and, you know, has involved the United Nations and so on and so on, and so he's really imbued with very negative attitudes towards the system and sees the whole thing as very unjust for himself. Those attitudes haven't changed. His hostility to QCS [Queensland Corrective Services] hasn't changed. His hostility to the idea of being supervised hasn't changed, but he's become less overt in his aggressive approach to other people. In fact, I think as he's aged, if anything, what has happened is that he no longer feels able to defend himself."

[17] Dr Grant was asked about the bearing of assistance with practical matters relating to his transition from prison to the community on the risk of reoffending. After commenting on the desirability of appropriate assistance, he said:

> "I think much more important are his attitudes towards QCS and supervision and society in general and the authorities. Those are the things that are going to produce a re- offence (sic) rather than the practical issues. The practical issues are scary for him but could be overcome with support. The other issues require some significant change in his attitude to motivation if he's going to be able to sort of cooperate with the supervision process to rehabilitate himself outside prison."

[18] The primary judge asked Dr Grant if he understood from Mr Smith's evidence that the respondent was at the "really early stage of treatment and counselling" but had not reached the stage of being "cooperative with the supervision process". Dr Grant responded:

> "Yes, I think [the respondent] very much sees his world as them and us, and 'them' includes prison authorities and Community Corrections and 'us' is anyone that might agree with him about them or that he thinks at least is on his side and not tainted by the other side, and so I think he sees Mr Smith as on his side and someone that he can talk to, which is very good, and that's the intention that he be seen in that way, **but I think it's a long road to go before he starts to see a possibility of some sort of reproachment and cooperation with the authorities**. They are going to have to supervise him when he gets out. I think it's a very long road to hoe and there may be lots of obstacles in the meantime. He may opt out of therapy at some stage if he sees Mr Smith as being too concerned about, you know, the supervision or whatever or in any way tainted by the system." (Emphasis added)

[19] Asked by the primary judge whether another "two months of counselling in prison with a view to working really hard on his attitude to the supervision process … [would] make a difference to his risk", Dr Grant said:

> "I doubt it, your Honour. **I think it's a much longer term process for him to be able to turn these attitudes around so that he would see the possibility of being an active - taking an active role in his own supervision, I think that's going to be a longer process … But I think it needs considerable time for [the respondent] to look positively at release into the community**. At the moment he is convinced he's not going to be released for a start and he has no plans or supports if he does leave prison." (Emphasis added)

[20] In cross-examination, Dr Grant was reminded of an opinion given by him in 2006 that the risk of the respondent's reoffending in a sexually violent way was relatively low. He said, in effect, that his opinion had changed because of breaches of the respondent's supervision requirements which indicated attitudinal problems that might increase the risk. These breaches were investigated by the respondent's counsel. The first breach resulted from going to a school to address students on how to avoid getting into trouble with the law in contravention of the terms of his supervision order. The visit to the school was at the invitation of the school's principal with the involvement of the Catholic Prison Ministry. Although not regarding the visit as, in itself, creating a risk to anyone, Dr Grant regarded the respondent's failure to obtain his supervisor's permission as defiance of the supervision order.

[21] Dr Grant identified the following other breaches of concern:

- absconding from supervision to go to Townsville where he was missing for a couple of days before caught;
- going into licensed premises, not necessarily drinking, but being exposed to the temptation of drinking; and
- not keeping supervisors informed of sexual relationships.

[22] Dr Grant said that the respondent "felt a sense of entitlement" and would work to get around supervision orders because he thought he should be allowed to do some of the prohibited things.

[23] The circumstances of the conduct which led to the respondent being convicted of the rape of an intellectually impaired woman, with whom he had a long term sexual relationship and who had approached him to resume the relationship after his release from prison, was discussed at some length. Dr Grant was concerned that the respondent was engaging in regular sexual activity with the woman without informing his supervisors and that, even though he may have stopped certain sexual activities when requested by the woman to do so, he probed and exceeded sexual boundaries beyond which the woman had "explicitly stated she didn't want to participate". He saw those matters as indicative of the respondent's "sense of entitlement and his rights being more important than other people's".

[24] Dr Grant was reminded that in 2006 one of his stated reasons for concluding that the likelihood of the respondent committing violent sexual offences was relatively low was his relationship with the woman. Dr Grant observed that, at the time, his

opinion was that the risk of reoffending was relatively low but would increase if the respondent again resumed the use of "alcohol and drugs and if his social situation and his supervision wasn't effective". Dr Grant accepted that when last subject to a supervision order the results of the respondent's breath tests had always been clear. He noted, however, that the respondent had been with people using alcohol and had helped them buy it, allowing his car to be used to smuggle alcohol into the Wacol precinct and driving his car to a bottle shop for that purpose.

[25] For the purpose of the adjourned hearing, Dr Grant prepared a further psychiatric risk assessment report, dated 12 January 2013, after consideration of a psychological progress report of Mr Smith, dated 7 January 2013, and Integrated Offender Management System case notes for the period 14 September 2012 to 7 January 2013. In the report, Dr Grant said that his previous opinions on the respondent's risk of reoffending if released into the community remained unchanged. He added:

> "I remain of the opinion that the risk in regard to re-offending in a sexual way and in a general violent way is high and that the completion of a sexual offender treatment program is indicated to assist with reducing the risk and with planning a satisfactory relapse prevention plan if he was to be released into the community. My opinion remains that [the respondent] could not be predictably safely managed in the community under a supervision order unless he first completes a sexual offender treatment program. [The respondent] would have a great deal of difficulty adapting to community life and I believe he is aware of that, and that he is consequently quite ambivalent about being released into the community."

[26] In evidence-in-chief on 7 February 2013, Dr Grant accepted that the respondent was engaging reasonably well with Mr Smith and that this was a "positive development". He observed, however, "[w]hether that translates into cooperation with Corrections and cooperation with supervision is more problematic … given his very entrenched negative attitudes and experiences in the past". He observed, in effect, that if released into the community the respondent "would be subject to a lot of restrictions and a lot of observations made on him … and his track record for cooperating with those requirements is very bad". He said that, when he last interviewed the respondent, his attitude towards Corrections was "extremely entrenched and very hostile and verging on paranoid".

[27] Under questioning from the primary judge, Dr Grant accepted that "the professionalism of the supervision and the systems … in place" under the Act were more sophisticated and effective than they had been in and before 2006. Because of this, Dr Grant thought that the respondent "might well find the system is different and more acceptable for him and might engage better because of that"; but, he thought that this would be "a big step, [as] he's very institutionalised, [and] … will find it very stressful in the community, and he will be subject to a different range of kind of stresses and demands on him outside than … in prison". He added, "We can see some improvement in engagement in prison but whether that will survive the extra sort of demands remains to be seen".

[28] Dr Grant accepted that the undertaking by the respondent of the Sexual Offender Treatment Program was not "an essential step before release" but maintained his

view that it would be useful. There was discussion about the respondent's willingness to participate in such a program if it was not conducted on a group basis obliging the respondent to attend with those with a sexual paraphilia for whom the treatment was essentially designed.

[29] Commenting on the respondent's relapse prevention plan, Dr Grant said:

> "What this does show is that [the respondent] has reasonable intellectual abilities, he's able to understand some of the broad issues and the factors that he has to deal with, he understands that past experiences such as sexual abuse and other things in the past have had a profound effect on him, and that he needs to try to change those things if possible, but - so that's good, but it's basically a list of problems rather than understanding - demonstrating an understanding of how he will achieve those, and some of those things that he's listed are very big asks of anybody, such as, you know, addressing childhood sexual abuse is a great big area for him, not dwelling on past events and circumstances is a huge area for him, all of these things, you know, 'Don't believe reinforced attitudes and behaviour', **they're all aspirations, if you like, a wish list, but they don't put any flesh on the bones of how you are going to achieve those things, and a lot of them represent huge challenges for anybody**." (Emphasis added)

[30] Dr Grant accepted the suggestion from the appellant's counsel that the plan did not go into details about how the respondent "will regulate his own behaviour when exposed to stressors" and that it was important that the respondent recognise "that in order to survive in the community without reoffending he's going to need a lot of help, a lot of supervision, and a lot of monitoring, both by himself and by others".

[31] Asked if he saw anything in Mr Smith's most recent report which caused him to change the views he had expressed in his first report, he replied:

> "… he's established some rapport there. He may be cooperating with that therapy and it may be that [there are] some improvements in his behaviour with other people, and they're positive things, **but I think overall the issues and problems are such that I wouldn't change my assessment of risk and I would continue to believe that the challenges of getting out of prison and being on a supervision order will be very difficult for him and for his supervisors**." (Emphasis added)

[32] In response to the primary judge's observation that Dr Beech "seems to be a tad more optimistic", he said, "Probably, your Honour. I would take it he might be a tad more optimistic, and, you know, he may be right, but – I hope he's right".

Dr Beech's evidence

[33] In summarising his opinions in his report of 1 August 2012, Dr Beech said:

> "Over the years there has been some settling in his behaviour and the more recent reports do not point to the earlier dyscontrol he displayed. He does not now seem to resort to violence easily. He

> voices some insight into his behaviour and he can articulate some empathy, but it is difficult to believe that this is emotionally and affectively genuine. Importantly he still maintains an antagonistic attitude to supervision.
>
> He has many of the significant risk factors for further sexual violence. There is a repeated history of sexual violence notable for the level of physical coercion and the use of violence to progress to rape. He has high psychopathic traits. He is restless and prone to impulsivity still.
>
> To some extent his advancing age is a mitigating factor but in my opinion his behaviours on release indicate, despite his assertions, that he is still a virile man who will pursue sexual relations on release.
>
> In my opinion, the risk of further sexual violence is in the moderately high range still. That is, more than the average sexual offender but not in the range of those at highest risk.
>
> I agree with others that the risk of other illegal or antisocial behaviours is higher."

[34] Referring to a supervision order with strict reporting and monitoring conditions accompanied by access to counselling, logistic support and access to community resources to help the respondent adapt to the community, Dr Beech observed:

> "**The greatest impediment to this risk mitigation is that I do not think that I can say with any confidence that [the respondent] will comply with a supervision order that would contain the necessary conditions. He has shown often his contempt for corrective services officers, he has continued to breach the order in the community, and even now he voices his antagonism. I think that this is only likely to get worse once he is released and he has to face the stresses of daily living**." (Emphasis added)

[35] In his oral evidence on 15 October 2012, asked if any part of the respondent's treatment to date caused him to conclude that it was more likely than he stated in his report that the respondent would comply with supervision, he answered, "I think it remains the same at the moment. It's a start but it's an important start". He referred to Mr Smith's treatment as being in its "early stages".

[36] After referring to the respondent's antagonistic attitudes to Corrective Services Officers and the matters which would need to change to warrant the risk of releasing the respondent into the community, Dr Beech said:

> "At the moment I think if he were released, those attitudes are just going to come quickly to the surface and notwithstanding what Mr Smith might be able to advise him, I think that he will simply breach and they will be minor breaches but they will build up. It will lead to increasing antagonism and conflict and eventually - this is my worst scenario - he will then have enough and he will abscond.
>
> …

> I think the most likely one is that he will struggle with breaches and he'll - until he slowly adapts but I think the struggles just at the moment will increase. There will be more antagonism and eventually it will become too much for him. I think he will seek out relationships for a sexual purpose and I think it's in that context that he will use some form of coercion, not necessarily violence, not necessarily physical violence but some form of coercion. The difficulty will be that if he absconds, then he will, notwithstanding all the constraints he [puts on] himself, he will return to drugs and alcohol, probably alcohol, and it's in that state that he won't stop when he is told to stop."

[37] Dr Beech agreed that "in recent years there have been some good indicators of a settling in [the respondent's] behaviour" within the prison setting. He accepted that he would "feel comfortable with a supervision order of the type" to which the respondent was originally subjected, observing:

> "… I suppose the stringency comes in also in the way it is enforced because I think he does push the limits, push the limits in silly ways, in annoying ways but every time he pushes it, I think it adds to his sense of entitlement that he can keep getting away with these things. Not only stringently monitored but he should be brought to account."

[38] Dr Beech later said that attitude to supervision was a strong prognostic factor for the risk of reoffending.

[39] Referred in cross-examination to the relationship with the woman involved in his recent trial and appeal, Dr Beech said that, in his opinion, the respondent was "prone to using some kind of psychological coercion" but that he did not think, in a relationship, that there would be a risk of the brutality shown in the earlier offending. The cross-examination concluded with the following exchange:

> "Doctor, would you agree with this proposition: in view of what you have heard from Mr Smith this morning, there may well be light at the end of the tunnel in relation to [the respondent]?-- That's correct.
>
> And sessions with Mr Smith should continue and you would agree with that?-- Yes.
>
> And there would be some benefit in reevaluating how that has gone in, say, three or four months' time?-- Yes.
>
> With a view of his release in, say, four to six months' time?-- Yes, and at the same time that his rehabilitation includes learning how to manage things in the community.
>
> Yes, this putting in place steps to assist him upon his full release?-- That's correct."

[40] In his report of 1 February 2013, in which Dr Beech considered Mr Smith's psychological progress report of 7 January 2013 and the Integrated Offender Management System case notes for the period 14 September 2012 to 7 January 2013, Dr Beech said:

> "As I stated in my report of August last year, I believe that [the respondent] has an [a]ntisocial personality disorder with psychopathic traits [and he] has in the past held attitudes that

> condoned violence. Over the years there has been some settling of his behaviour, but he has held an entrenched antipathy towards QCS staff and supervision which has become apparent during his releases under a DPSOA supervision order.
>
> He has remained a virile man with ongoing problems with rules and conditions that lessen the risk reducing factors of age and maturity. **In my opinion this means that his risk of re-offending in a sexually violent way is moderately high. This risk would ordinarily have been reduced by a sexual offender program, supervision, and community re-integration. However, [the respondent] has up until now eschewed treatment, has not abided by the conditions of a supervision order, and has been stressed on release**.
>
> In his favour though, he has not returned to drugs and alcohol when in the community (which were likely potent factors in his earlier sexual offences), and he has now engaged in some form of supportive psychological counselling. In my opinion, the latter is now a significant risk-reducing factor that makes it more likely that he will remain engaged with treatment if released, and from there he will be more likely to use this support to develop strategies to assist him in dealing with the stresses of community living.
>
> **It also makes it more likely that he will listen to advice and not persist with the self-defeating antagonism towards supervision, QCS, and the limits that are placed on by a supervision order. It is likely that he will still struggle with supervision, but it is now more likely that he will use the support available to him to manage this with better insight and fewer material breaches. This in turn means that it is more likely that he will abide by the conditions which act to reduce the risk of his re-offending**." (Emphasis added)

[41] In his evidence-in-chief on 7 February 2013, Dr Beech expressed the view that the risk of reoffending depended on whether the respondent could abide by a supervision order in the community. Asked whether, having regard to the respondent's maturity and his better engagement with treatment, he regarded flight as a continuing risk, Dr Beech answered:

> "As a continuing risk, but I think over time it's a lessening risk. If you look at his most recent time in the community, he didn't flee, that I could see. Even when things were becoming more difficult, he didn't - his breaches were about not disclosing what he was doing, whom he was seeing. I think going to licensed premises and associating with, you know, a woman. I think he faced a number of frustrations on restrictions on the order but he complied, from what I can see, very regularly with the reporting conditions and his accommodation."

[42] In considering the relapse prevention plan, Dr Beech remarked on its positive features including the fact that there had been a statement for the first time by the respondent that he would cooperate and abide by conditions. He also found deficiencies in the plan, observing:

> "I think the difficulty with what he's got here is that there are a lot of things that he's written and probably over-written a number of things but there is a theme [coming] through that he needs to change his attitudes, his beliefs and his responses. What I would also then look for from there is some commitment to making that change, and I think if you look through this plan, if you look through his affidavit, he has said overtly, from what I can see the real first time that he will cooperate, he will abide by conditions, he will do these things. So there's some - a commitment on his behalf. I would look for then progress and this is where I think his relapse prevention plan falls over is that in terms of progress, there's not a lot of concrete steps that he's put in place. He's not said how he will address the large range of triggers that he might face. He's not said how he will address all the stresses that will have come about and so he's not said what he will do instead of the antagonism, the belligerence, the noncompliance that he resorted to in the past."

[43] Dr Beech went on to note that some of these matters were addressed, through the identification of persons, such as Mr Smith, whom he would continue to see and his likely accommodation. He remarked that there was still an "ongoing sense of aggrievement and entitlement, that these things should be given to him". He said that was, in his view, "a longstanding personality construct" which "probably won't shift for a long, long time". He accepted that he took a more optimistic view towards such matters than Dr Grant. Asked to express a view about how likely it was that the respondent would comply with a supervision order and not otherwise reoffend, he said:

> "I think he's more likely but I'm not sure to what extent I can say how likely. Now, more likely though, when I look at his last time in the community, he complied with a lot of the conditions but it was about disclosure and I think it was about, I think, someone not, I guess, indirect restrictions that were placed on him. Like he wanted to build a garden, they said you can't have a garden, he did that anyway, those type of things. I think that he is more likely - he cooperated a lot with the supervision order, apart from those parts about disclosure. I think now he's more likely to be upfront and cooperate, rather than take an openly antagonistic view."

[44] The following exchange occurred in cross-examination:

> "… the problem is not the nature of the supervision order, in my mind. The problem is his ability to cooperate with Corrective Services staff, so that he can be maintained on a supervision order.
>
> But electronic monitoring, blood testing, urine testing, breath-testing?-- Yes.
>
> Would allow Corrective Services to ensure that he is, in fact, as far as reasonably practical, adhering to those requirements?-- That's correct."

Mr Smith's evidence

[45] Mr Smith was the respondent's treating psychologist. It was not part of his role to make a risk assessment for the purposes of the Act. By the time of his report dated

28 September 2012, he had conducted eight sessions with the respondent. Mr Smith reported that the respondent had a positive attitude and had expressed a willingness to continue with psychological treatment. In his report, he observed of the respondent:

> "He presents as reflective and insightful about his past behaviour, however also shows evidence of significant negative attitudes toward Police and Corrective Services, which present an obstacle to his progress in custody. Overall however he appears to be motivated to discuss his trauma history in order to better understand what vulnerabilities and risks continue to exist."

[46] In his evidence-in-chief on 15 October 2012, Mr Smith said that he was in the "fairly early stages" of his therapeutic program.

[47] Asked by the primary judge whether the respondent was at the stage "that he can cooperate with the Corrective Services in relation to a supervision order", Mr Smith replied:

> "… all I can really comment on is that he is willing to continue to engage in the therapeutic process that we are in. He recognises the value of it. I feel that it will be of benefit to assisting him to comply with the conditions of any future treatment or supervision orders in terms of actually commenting on his capacity to cooperate. I think that the focus of my work with him has been more around his support needs and supporting him to function in the community and that that would improve his capacity to cooperate."

[48] Mr Smith prepared a further report dated 7 January 2013 in order to provide the Court with a summary of the respondent's "progress in treatment, the development of support planning and also an assessment of outstanding treatment needs". In the report, Mr Smith said:

> "[The respondent] continues to discuss his distressing previous experience of a Supervision Order, and struggles to accept the assistance of Correctional staff through the process toward possible release on a new Order; reporting an expectation that he will be betrayed or somehow 'set up to fail', or that he will simply not be provided with an adequate level of support. His attitude towards Correctional staff involved in his case appears to be improving however, and he is actively engaging in planning by writing documents detailing: stress and anxiety provoking issues he requires support with in the community; strategies for avoiding relapse into substance use; emotional triggers; and ideas for integrating support networks.
>
> …
>
> [The respondent's] insight into the historical, intra-psychic and situational factors behind his offending behaviour, and his general antisocial tendencies, remains good. His judgement around issues such as the risks he would struggle with in the community is quite sound, however he continues to display a significant negative bias

> towards Corrective Services, borne largely out of spending such a long period as a prisoner, and long-term indoctrination into prison culture. I should note that in spite of this he has more recently expressed a willingness to work with available supports, and I understand that his cooperation with support staff from the HROMU [High Risk Offender Management Unit] and Wolston Correctional Centre has improved. He always maintains attention and concentration throughout our interviews, and displays good recall for past events.
>
> …
>
> [The respondent] continues to engage well in sessions, and reports a greater degree of trust and comfort around disclosing personal and historical information. I would therefore consider that his engagement has improved, and he appears to be more relaxed in his general presentation. In addition to this, he has become progressively more accepting of any suggestions, challenges to his perceptions, and recommendations, from myself. Similarly, he has engaged with gradually increasing willingness, in discussions of early trauma and negative formative experiences, in particular the violence he experienced from his father, as a boxer and as a motorcycle gang member.
>
> …
>
> [The respondent] continues to remain engaged, and indicates a willingness to continue sessions for the foreseeable future. He has engaged with increasing depth in a process of therapeutic intervention around his PTSD symptoms, and has even completed 'homework' documents detailing specific triggers and emotions, as well as strategies for improving support in the community and preventing relapse into substance use and offending behaviour. Whilst he continues to display an overall negative attitude to Corrective Services and his current legal predicament, he appears to be engaging better with support staff and reports an improved ability to manage his responses and reactions to prison life."

[49] In his oral evidence on 7 February 2013, Mr Smith commented on his awareness that the respondent's behaviour within the correctional centre had not been a matter of concern for some time. He noted that the respondent had been "engaging with his Case Manager" and another Corrective Services officer to "an improved degree". He said, in respect of the organisation of support plans by another Corrective Services officer, the respondent's "attitude has changed from one of extreme scepticism at the start [to] being much more open to accepting the assistance". He concluded that the respondent was willing to take the steps he needed to take to abide by the conditions imposed on him, recognising that the consequences of not doing so would be his continued incarceration.

[50] Confronted with observations by the primary judge that the relapse prevention plan was "superficial" and did not deal with practical strategies for relapse prevention, Mr Smith said:

> "… those are really essential things in a relapse prevention plan, especially where substance use is a really significant factor. Developing a plan that is more detailed based on using this as a starting point and incorporating those sorts of contingency plans and strategies is certainly the next step in my engagement with [the respondent]."

[51] Mr Smith had been questioned at some length in evidence-in-chief about his diagnosis of post-traumatic stress disorder. He did not resile from the diagnosis even though it was not supported by either of the psychiatrists. He said that it was supported by colleagues who had a greater degree of clinical and forensic experience than him.

[52] Dr Grant had said in his oral evidence on 15 October 2012 that if the respondent had post-traumatic stress disorder it would be "a further complicating element to his diagnostic picture and would probably increase the risk of substance abuse, violent behaviour and potentially sexual assault as well". Dr Beech did not consider that the risk of the respondent's reoffending would be increased even if, contrary to his opinion, the respondent had post-traumatic stress disorder. He said, "Where the risk is, is that whether it's post-traumatic stress disorder or psychopathy or his personality structure, is whether he can abide by a supervision order in the community".

The primary judge's reasons

[53] After briefly discussing the history of the respondent's offending and of the proceedings under the Act, the primary judge referred to, and in some cases quoted, relevant parts of the first reports of Dr Grant and Dr Beech.[8] The primary judge referred to the respondent's expressions of anger and frustration at the Act and the failures of QCS to provide him with appropriate assistance in custody or when he had been previously released under a supervision order. Her Honour quoted the part of Dr Grant's report in which he concluded that: the respondent's management on a supervision order in the community would be very challenging; there would be a high risk of breaches; and there would be a "moderate to high risk of reoffending". Her Honour noted Dr Beech's opinion that there was a "moderate-high risk of re-offending".[9] Her Honour quoted a passage from Dr Beech's first report which included Dr Beech's opinions that the respondent: "maintains an antagonistic attitude to supervision";[10] had "many of the significant risk factors for further sexual violence";[11] was restless and prone to impulsivity; and was a virile man who would pursue sexual relations on release. Reference was also made to Mr Smith's report.

[54] In paragraphs [11] and [12] of her reasons, her Honour dealt briefly with the hearing on 15 October 2012. Her Honour recorded that:

- both Dr Grant and Dr Beech considered it positive that the respondent had commenced individual counselling with Mr Smith;
- both Dr Grant and Dr Beech considered it too early to express an opinion on whether such counselling would improve the respondent's motivation and attitude towards supervision;

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8 Paragraphs [4]–[10] inclusive of her reasons.
9 Reasons at [7].
10 Reasons at [8].
11 Reasons at [8].

- Dr Grant was of the opinion that the respondent had a strong sense of entitlement, which was a matter of concern; and
- it was common ground that the risk of violent sexual reoffending by the respondent under a supervision order would be affected by whether the respondent could genuinely comply with the requirements of such an order.

[55] The further reports of Mr Smith and the psychiatrists were discussed in paragraphs [13] to [17] inclusive. The primary judge observed that "[t]he primary focus of the weekly treatment sessions was for [the respondent] to progress towards possible release on a supervision order".[12] Reference was made to Mr Smith's diagnosis of post-traumatic stress disorder. She noted that Mr Smith reported that the respondent's "engagement in treatment sessions has improved and that he is willing to continue sessions for the foreseeable future".[13]

[56] The primary judge observed that, in his second report, Dr Grant had not changed his opinions regarding the risk of reoffending. She noted his opinion that if the respondent had significant post-traumatic stress disorder, the risk of reoffending would be increased rather than decreased. She quoted from that part of Dr Grant's opinion in which he said that:[14]

> "My opinion remains that [the respondent] could not be predictably safely managed in the community under a supervision order unless he first completes a sexual offender treatment program. [The respondent] would have a great deal of difficulty adapting to community life …"

[57] The primary judge set out the four concluding paragraphs of Dr Beech's second report, which are quoted in paragraph [40] hereof, and observed that Dr Beech's conclusion in his second report "is slightly more favourable to [the respondent] than Dr Grant's opinion".[15]

[58] Paragraphs [18] to [26] inclusive deal with the hearing on 7 February 2013. Paragraph [18] refers to the respondent's affidavit and to the respondent's statement in it that he was "prepared to abide by all conditions" in any supervision order. Paragraph [19] describes some of the content of the relapse prevention plan. In paragraph [20] it is observed that, although the respondent declined to undertake a transitions program when that was offered by QCS, he later sought some assistance from the transitions coordinator. In paragraph [21] reference is made to Mr Smith's opinion that the respondent's "overall negative attitude to QCS" did not negate his expressed willingness to cooperate with QCS in respect of the supervision order. Reference was made also to Mr Smith's view that the respondent's improved engagement with QCS officers was a good sign for the respondent's expressed intention to build constructive working relationships with those to whom he would report under a supervision order.

[59] Paragraphs [22] and [23] discuss the expert witnesses' views on the post-traumatic stress disorder question and in paragraph [24] it is noted that, although Dr Grant advised that the respondent should undertake a Sex Offender Treatment Program

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12 Reasons at [13].
13 Reasons at [14].
14 Reasons at [16].
15 Reasons at [17].

before release under a supervision order, his opinion in oral evidence was that such a program would be useful, but not essential. Dr Grant's view that the systems and requirements developed by QCS for administering supervision orders had become more sophisticated and effective since 2006 was mentioned.

[60] Paragraph [26] refers to Dr Beech's opinion that there are signs that the respondent is showing an understanding of what he needs to do under the supervision order to avoid reoffending and a commitment to make the changes in his attitude to achieve compliance with the supervision order. Reference is made also to Dr Beech's noting of the improvement in the respondent's behaviour in prison and that his engagement with Mr Smith was a positive sign of cooperation under a supervision order.

[61] In paragraphs [27] and [28], the primary judge discusses the onus of proof. In paragraphs [29] to [40] inclusive, the primary judge gives consideration to whether a supervision order should be made. In paragraph [29] the primary judge accepts the evidence of Dr Grant and Dr Beech and states that she is satisfied that the respondent's "moderately high to high risk of sexual reoffending is an unacceptable risk in terms of s 13(2) of the Act". The requirements of s 30(4)(a) and s 30(4)(b) are discussed in paragraph [30]. Paragraphs [31], [32] and [33] record the arguments of counsel for the appellant to the effect that:

- there has been insufficient benefit from Mr Smith's treatment, the relapse prevention plan and the limited steps taken in preparation for release to mitigate the danger to the community should the respondent be released under supervision;
- the strong antipathy that the respondent continues to express in relation to QCS is a significant impediment to the respondent's cooperation;
- the supervision order will provide adequate protection of the community only if the respondent is himself capable of regulating his own behaviour in conjunction with the external regulation of the supervision order and the evidence does not suggest that such regulation will exist or continue under the anxiety and stressors which will arise on release under a supervision order; and
- Dr Grant's opinion should be preferred to that of Dr Beech on the question of the likelihood of compliance with a supervision order.

[62] Paragraph [34] states that balanced against the appellant's arguments are:

- the respondent's increasing age;
- the constructive therapeutic relationship with Mr Smith;
- improved relationships in recent times with QCS employees; and
- some acknowledgment of risk factors and the commencement of preparation of strategies for dealing with risk factors, emotional triggers and anxiety systems.

[63] In paragraph [35] reference is made to the respondent's expressed intention to comply with the supervision order and to cooperate with QCS. The relevance of past conduct and changes in attitudes and circumstances that caused the previous supervision regime to fail is mentioned and it is said that the way in which the respondent engaged in the subject review application "gives some support for his positive motivation to comply with a supervision order".

[64] Reference is made in paragraph [37] to matters which should be contained in a supervision order if one is made. It is observed in paragraph [38] that the appellant did not suggest that any appropriate provisions of a supervision order could not be "reasonably and practicably managed by QCS". Paragraph [39] is concerned with an appropriate term for a supervision order if one is made. The primary judge's reasoning for why a supervision order should be made culminates in paragraph [40] where it is said:

> "Ultimately the aspects of Dr Grant's opinion on which the [appellant] placed weight were qualified by Dr Grant's oral evidence and the differences between the opinions of Dr Grant and Dr Beech were not that significant. For the reasons identified in Dr Beech's evidence that support the increasing likelihood of [the respondent's] compliance with the requirements of a supervision order because of his motivation and improving capacity to do so and my conclusion about [the respondent's] positive motivation to comply with a supervision order, the [appellant] has failed to discharge the onus of satisfying the court that the adequate protection of the community from the risk of sexual reoffending by [the respondent] cannot be reasonably and practicably managed by a supervision order on appropriately stringent terms."

Observations on the matters relied on the primary judge in concluding that a supervision order should be made

[65] The respondent's increasing age, although plainly relevant, had its limitations as a risk reducing factor. Dr Grant was of the opinion that, as the respondent was now in his 60's, "[o]ne would expect to see some amelioration of the worst aspects, particularly the degree of violence". He retained the opinion, however, that the risk of reoffending remained high. Dr Beech also considered that the likelihood of the respondent's resorting to violence had diminished, but he remarked that the respondent had strong psychopathic traits and that psychopathic rapists are likely to continue to offend. He added that the respondent was "still a virile man who will pursue sexual relationship[s] on release".

[66] The constructive relationship with Mr Smith was considered a positive factor by the psychiatrists and Mr Smith, but they all regarded Mr Smith's therapy as being in its early stages. Dr Grant's opinion in respect of the relationship appears, in part, in paragraph [18] hereof. In his 12 January 2013 report, Dr Grant thought that Mr Smith appeared to "have established reasonable rapport with [the respondent]" and to be "making some progress in individual therapy in terms of clarifying issues and problems and attempting to assist [the respondent] with strategies to improve his situation over time". He stated, however, that his opinions "in regard to the risk for re-offending by [the respondent] if he was to be released into the community" were unchanged.

[67] The respondent's improved relationship with certain QCS employees was seen by both Dr Grant and Dr Beech as positive but Dr Grant sounded a note of caution about whether such improvements would translate into cooperation with supervision "given [the respondent's] very entrenched negative attitudes and experiences in the past". He observed in this regard, "We can see some improvement in engagement in prison but whether that will survive the extra sort of demands [facing the respondent on supervised release] remains to be seen".

[68] Acknowledgement of risk factors and the commencement of preparation of strategies were seen by both Dr Grant and Dr Beech to be a positive but limited advance which was part of a more protracted process. Some of their respective discussions of this and related matters are quoted at paragraphs [18], [19], [26], [29], [31] (Dr Grant) and [35], [42] and [43] (Dr Beech) hereof.

[69] Taking all of the matters in Mr Smith's report into consideration, Dr Grant expressed the opinion in paragraph [25] and [31] hereof.

[70] The next matter relied on was the respondent's expression of intention to comply with the supervision order and to cooperate with QCS. That, I rather think, was something of a formality. Intention, like the "positive motivation to comply with a supervision order",[16] although relevant, does not go very far towards ensuring cooperation and compliance when regard is had to the respondent's psychological condition. The respondent is of average intelligence and it would have been abundantly apparent to him that appropriate expressions of intention and motivation and acknowledgement of risk factors as well as preparation of the relapse prevention plan were desirable, if not necessary, if he was to obtain his release. The plan, as Mr Smith recognised in his oral evidence on 7 February 2013, was a work in progress.

[71] The "aspects of Dr Grant's opinion on which the [appellant] placed weight"[17] were not identified in paragraph [40] of the primary judge's reasons. Dr Grant's opinions, referred to in written submissions by junior counsel for the appellant, were that:

- if the respondent had post-traumatic stress disorder, the risk of recidivism was increased;
- the respondent's personality disorder and other emotional issues were long standing and difficult to treat;
- the respondent ought complete a Sexual Offender Treatment Program before release; and
- the respondent, even with Mr Smith's treatment, continued to "display an overall negative attitude to Corrective Services and his current legal predicament".

[72] In oral submissions at first instance junior counsel for the appellant contended, in effect, that Dr Grant's less optimistic opinions should be preferred to Dr Beech's more optimistic opinions and reliance was placed on Dr Grant's opinion that the respondent remained "a moderate to high risk of re-offending, with non-sexual re-offending being more likely than sexual re-offending".

[73] The primary judge did not identify the ways in which Dr Grant's opinions had been qualified by his oral evidence or the differences between the opinions of the two doctors which she regarded as "not that significant".[18]

[74] In his closing address on 7 February 2013, junior counsel for the appellant submitted that ultimately it's "merely a choice in this case of the preference of the

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16 Reasons at [35].
17 Reasons at [40].
18 Reasons at [40].

evidence between, in effect, Dr Grant and Dr Beech". It was submitted, in effect, that Dr Grant's evidence should be preferred because Dr Beech's optimism was not well founded.

[75] Both doctors gave reasoned opinions on the degree of likelihood of the respondent's reoffending and the nature of any such anticipated reoffending should the respondent be released under a supervision order. Dr Grant's opinions, which were unwavering, have just been referred to. I can detect no substantial qualification of them in his oral evidence. Dr Grant did see various signs which indicated a lessening, or possible lessening, of risk factors (age, improved conduct in prison, better engagement with some QCS staff members, an improved supervision and support system, a mellowing of his psychopathic and social personality traits and his engagement with Mr Smith), but his risk assessments were made with those matters in mind. A possible exception to this observation was Dr Grant's acceptance in his evidence-in-chief on 7 February 2013 that the undertaking of a Sexual Offender Treatment Program was not "absolutely essential" although "useful". In his second report, he said that the respondent "… could not be predictably safely managed in the community under a supervision order unless he first completes a sexual offender treatment program". I would not regard Dr Grant as basing his opinion as to reoffending principally, or even substantially, on whether the respondent had undertaken such a treatment program. Dr Grant expressed an opinion similar to the one given on 7 February 2013 in his oral evidence in October 2012. That was consistent also with Dr Grant's views in his first report.

[76] I would not regard Dr Grant's observation in relation to the primary judge's query that "Dr Beech seems to be a tad more optimistic than you?" as qualifying or weakening his opinions in any way. Dr Grant's reply, "Probably, your Honour. I would take it he might be a tad more optimistic, and, you know, he may be right, but - I hope he's right", demonstrated no more than his proper readiness to accept that many of the questions addressed by himself and Dr Beech were not ones which admitted of only one correct answer and that competent psychiatrists exercising due care and skill could arrive at conclusions which did not precisely coincide.

[77] In his first report, Dr Beech concluded that the risk of sexual violence was "in the moderately high range" but would be reduced by a stringent supervision order. Dr Beech, however, had no confidence that the respondent would comply with such an order. In his oral evidence on 15 October 2012, Dr Beech did not resile from his opinion that the risk of reoffending was moderately high. He did accept the proposition put to him by counsel for the respondent that "… there would some benefit in reevaluating how [his therapy sessions with Mr Smith had] gone in, say, three or four months' time … [w]ith a view of his release in, say, four to six months' time".

[78] Having considered the respondent's progress in so far as it could be determined by Mr Smith's second report and the Integrated Offender Management System case notes, Dr Beech expressed the opinions quoted in paragraph [40] hereof, which included the opinion that "his risk of re-offending in a sexually violent way is moderately high". He considered, however, that the respondent's engagement in counselling with Mr Smith made it more likely that the respondent would "remain engaged with treatment if released" which would in turn permit him to "develop strategies to assist him in dealing with the stresses" he would face. Although it was likely, in Dr Beech's view, that the respondent would "still struggle with supervision", it was more likely that he would use available support with the result

that he would commit fewer breaches and it would be "more likely that he [would] abide by the conditions which act to reduce the risk of his re-offending".

[79] It is not entirely clear, with respect, whether the risk reducing factors mentioned by Dr Beech after his statement of the degree of risk qualified that statement and, if they did, what degree of risk was thought to remain. In evidence-in-chief on 7 February 2013, junior counsel for the appellant sought clarification of Dr Beech's opinions in this regard. Dr Beech gave the explanation quoted in paragraph [43] hereof. It is clear, however, that, at first instance, the primary judge and counsel for both parties regarded Dr Beech as being more optimistic than Dr Grant concerning the risk of the respondent breaching the terms of any supervision order and reoffending.

Was there an appellable error?

[80] It is, I think, necessarily implicit in the first sentence of paragraph [40] of the reasons that what the primary judge regarded as qualifications in Dr Grant's oral evidence of the opinions expressed in his two reports, were seen by her Honour as having had the effect of removing any material differences between Dr Grant's evidence and Dr Beech's in so far as risk evaluation was concerned. That conclusion was not open on the evidence for the reasons discussed earlier and amounts to an appellable error.[19]

[81] The primary judge did not find, expressly or implicitly, that Dr Beech's evidence was to be preferred to Dr Grant's. Had she done so, it would have been necessary to give reasons for the finding. Some analysis and elucidation of the basis for each psychiatrist's opinion as to the likely risk and nature of reoffending would have been required. Failure to give such reasons would also have amounted to appellable error.[20] One matter which would have called for explanation was why the passing of three months; the continuation of the respondent's rapport with Mr Smith; the respondent's improved relationship with certain QCS officers as he worked towards his release; and the preparation of a materially deficient relapse prevention plan (described by the primary judge during Mr Smith's evidence on 7 February 2013 as "superficial" and which was regarded by Mr Smith as a "starting point") could have changed, or contributed significantly to a change in, the opinions of Dr Beech quoted or referred to in paragraphs [33] and [34] hereof.

[82] The primary judge listed the considerations which, it may be inferred, she regarded, as outweighing the matters relied on by the appellant, as requiring the conclusion that the making of a supervision order was not justified on the evidence. Her Honour, however, did not explain what it was about the cumulative weight of the matters on which she placed reliance that overwhelmed the matters relied on by the appellant and led to her ultimate conclusion. In the circumstances under consideration, such an explanation was required. As I have sought to explain, a number of the matters identified by the primary judge as supporting her ultimate conclusion were, in themselves, not particularly telling. Moreover, much seems to have depended on the respondent's preparing a relapse prevention plan, his giving of evidence and the continuation of his general good behaviour and rapport with Mr Smith over a period of a few months. Why this made a significant difference, having regard to the evidence in respect of those matters, required some

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19 *House v The King* (1936) 55 CLR 499 at 505.

20 *Drew v Makita (Australia) Pty Ltd* [2009] 2 Qd R 219.

explanation. Most importantly, however, there needed to be some consideration, as distinguished from a mere recording, of Dr Grant's opinions in the reasons and of why, notwithstanding those opinions, a supervision order was appropriate. It was not sufficient to state that "the aspects of Dr Grant's opinion on which the [appellant] placed weight were qualified by Dr Grant's oral evidence and the differences between the opinions of Dr Grant and Dr Beech were not that significant".[21] That did not engage with the appellant's argument that the outcome of the case depended on whether Dr Grant's or Dr Beech's evidence was accepted. More than the expression of a bald conclusion was required.

[83] The psychiatric evidence had a particular significance in the proceeding at first instance. The first reports of the psychiatrists were prepared under s 29 of the Act and the primary judge was required by s 13(4) of the Act to have regard to them. Those reports, the supplementary reports and the psychiatrists' oral evidence constituted the most cogent body of evidence before the primary judge as to the respondent's psychiatric condition, his propensity to commit serious sexual offences in the future[22] and of the risk that the respondent would commit another serious sexual offence if released into the community.[23]

[84] Section 17 of the Act requires a court making a continuing detention order, an interim detention order, a supervision order or an interim supervision order to "give detailed reasons for making the order". The purposes of this requirement include enabling the parties and the public to understand the judge's reasons for making such an order so as to provide "the foundation for the acceptability of the decision by the parties and by the public",[24] the facilitation of appeals and the creation of a record which may assist a prisoner and the appropriate authorities, including the Attorney-General, in further applications under the Act and generally in the prisoner's management, treatment and rehabilitation. There was an insufficiency of reasons both for the purposes of s 17 of the Act and under the general law. Another ground of appeal was thus made out.[25]

The respondent's arguments

[85] The respondent's arguments on appeal concentrated on the aspects of the evidence which supported the primary judge's ultimate findings. I acknowledge that many of the points made were valid. However, the fact that the ultimate findings by the primary judge may have been open on the evidence, depending on the assessment of the psychiatric evidence in particular, does not address the error of law identified above.

[86] Counsel for the respondent also referred to the primary judge's extensive recording of the psychiatric evidence. But, as I have explained, it was not sufficient in the circumstances under consideration for the primary judge to state the relevant evidence. It was necessary for the reasons to expose the judge's reasoning processes so as to enable readers to understand how the judge arrived at her conclusions. In particular, it was necessary for her Honour to deal with the psychiatric evidence in the manner discussed above. The respondent's argument did not confront these difficulties.

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21 Reasons at [40].

22 *Dangerous Prisoners (Sexual Offenders) Act* 2003, s 13(4)(c).

23 *Dangerous Prisoners (Sexual Offenders) Act* 2003, s 13(4)(h).

24 See e.g. *Soulemezis v Dudley (Holdings) Pty Ltd* (1987) 10 NSWLR 247 at 279.

25 *Soulemezis v Dudley (Holdings) Pty Ltd* (1987) 10 NSWLR 247; *Drew v Makita (Australia) Pty Ltd* [2009] 2 Qd R 219.

Conclusion

[87] Under s 43 of the Act, this Court "has all the powers and duties of the court that made the decision appealed from".[26] It may draw inferences of fact as long as such inferences are "not inconsistent with the findings of the court".[27]

[88] In *Attorney-General for the State of Queensland v Fardon*,[28] the Court was able to conclude on the evidence before it that it was not reasonably open for the primary judge to conclude that a supervision order would be "efficacious in constraining the respondent's behaviour by preventing the opportunity for the commission of sexual offences".[29] I am unable to reach this conclusion on the evidence before this Court. Minds may well differ as to whether the primary judge's ultimate conclusion was reasonably open on the evidence. As was remarked by this Court in *Attorney-General (Qld) v Francis*,[30] "… the primary judge's assessment 'call[s] for value judgments in respect of which there is room for reasonable differences of opinion, no particular opinion being uniquely right'[31]".

[89] Reasoning to the ultimate conclusion whether adequate protection of the community can be reasonably and practically managed by a supervision order necessarily involves the weighing of the evidence of the two psychiatrists, both written and oral, and of the other evidence which suggested the existence of a relevant risk on the one hand or its minimisation or removal on the other.

[90] That is an exercise which can best be undertaken by a judge of the trial division who will have the benefit of seeing and hearing the witnesses. I am assuming that on a further hearing there would be some further brief oral evidence or perhaps a supplementary report or reports and cross-examination.

[91] For the above reasons I would order that the appeal be allowed, orders 2 and 3 made on 13 February 2013 be set aside and that the matter be remitted to the trial division for re-hearing.

[92] **GOTTERSON JA:** I agree with the orders proposed by Muir JA and with the reasons given by his Honour.

[93] **ATKINSON J**: The Attorney-General appealed the decision made on 13 February 2013 by a Supreme Court judge to order the respondent's release from custody subject to a supervision order which contained 33 conditions on his release. Such an appeal is heard and determined under Part 4 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 ("DPSOA").

[94] The grounds of appeal on which the appellant focussed in his submissions were that:

(1) Her Honour failed to give any consideration to how the assessments of risk which the psychiatrists had prepared for the resumed hearing on 7 February 2013 bore upon the danger the respondent posed; and

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26 *Dangerous Prisoners (Sexual Offenders) Act* 2003, s 43(2)(a).
27 *Dangerous Prisoners (Sexual Offenders) Act* 2003, s 43(2)(b).
28 [2011] QCA 155.
29 *Attorney-General for the State of Queensland v Fardon* [2011] QCA 111 at [29].
30 [2007] 1 Qd R 396 at 402.
31 *Norbis v Norbis* (1986) 161 CLR 513 at 518.

(2) Her Honour failed to give adequate reasons for preferring the respondent's release subject to supervision over his detention.

[95] The criminal and incarceration history of the respondent is fully set out in the reasons of Muir JA and does not need to be repeated.

Appellant's submissions

[96] The appellant argued that the learned primary judge erred in failing to consider and give effect to the risk assessments of the psychiatrists, being assessments to which the DPSOA attaches particular importance; acting, to the exclusion of those assessments, on evidence about the rapport which the respondent had established over the previous six months or so with his treating psychologist, evidence which the appellant said was relevant but of little significance to the danger the respondent posed; and by acting contrary to ss 30(4)(a) and (b)(ii) of the DPSOA by failing to consider whether adequate protection of the community could be reasonably and practicably managed by a supervision order, a possibility which in any event was not supported by the evidence (which was that the respondent lacks any effective internal control on his own behaviour, such that the only measure which stood between him and adequate protection of the community was a supervision order).

[97] The appellant referred to the respondent's criminal and incarceration history and, particularly in oral submissions, in great detail to some of the evidence before the learned primary judge. The appellant submitted that to find, as the learned primary judge did, that the appellant had failed to discharge the onus of showing that a detention order was necessary to ensure the protection of the community was an error. The appellant suggested that there were two reasons for this error.

[98] The first reason was said to be because sole reliance would fall upon the supervision order as a buffer between the respondent and the community. It was submitted that this was contrary to s 30(4)(a) and s 30(4)(b)(i) of the DPSOA. The appellant submitted that those provisions recognised that a supervision order, while being one means by which adequate community protection might be ensured, must nevertheless be capable in a practical sense of managing the danger. It was submitted that where the respondent lacked any ability to control his impulses, it could not be concluded that practical management of community protection could take place by relying on a supervision order only.

[99] The second reason that her Honour's finding was said to be in error was that her Honour acted upon evidence the weight and significance of which could only be determined when considered together with the expert assessments, whose validity she accepted, of the severity of his disorder, the difficulty involved in treating it, and the lack of reality in his expressed intentions to be obedient to authority in the future. It was submitted that her Honour failed to give detailed reasons for making a supervision order as required by s 17 of the DPSOA because she made no reference to the risk assessment of the psychiatrists relied upon at the 7 February 2012 hearing and how they bore upon the danger the respondent posed.

Respondent's submissions

[100] The respondent submitted that the primary judge clearly had regard to the risk assessments of the psychiatrists. The respondent referred in detail to specific reference made by her Honour to the content of the psychiatrists' reports and to the

conclusion she reached particularly at [29] to [30] of her reasons. The respondent also submitted that there was other evidence supporting the orders made by the primary judge including that the respondent did not have a psychiatric condition, that the respondent had recently developed insight into the issues relating to his behaviour, that he had recently developed an important professional relationship with his treating psychologist, Mr Smith, that his attitude to correctional services staff had recently improved, that he was now aware of his need to utilise supportive networks if released on a supervision order, that he had recently exhibited willingness to assist himself, and his advancing years. Consequently the respondent submitted that the primary judge's orders were not contrary to, nor unsupported by, the evidence.

[101] Further the respondent submitted that the primary judge clearly assessed whether adequate protection of the community could be reasonably and practicably managed by a supervision order. The respondent submitted that of particular importance in that assessment was the evidence of a psychiatrist, Dr Beech, who set out what was required for an effective supervision order for the respondent which included its conditions and also his cooperation with corrective services staff and their capacity to ensure that he is adhering to those requirements through electronic monitoring, blood testing, urine testing and breath testing. The respondent submitted that it was significant that he had given sworn evidence to the effect that he was agreeable to be subject to the supervision order and that it contained strict conditions including abstention from alcohol and illicit drugs, a matter considered of some significance by the Court of Appeal.[32]

Discussion

Annual review

[102] This appeal concerns the hearing and determination of an application for the review of a continuing detention order which had been made in respect of the respondent on 1 July 2011 reported at [2011] QCA 155 (the "2011 decision"). That order was made by this court on appeal from a decision of a judge of the Supreme Court. The 2011 decision was made under s 22 of the DPSOA as the respondent at that time had been in contravention of a supervision order. In such a situation a person in the position of this respondent bears the onus of satisfying the court that, on the balance of probabilities, unless adequate protection of the community can be ensured by a supervision order amended to include any of the requirements presently in s 16(1) of the DPSOA, then the court must rescind the supervision order and make a continuing detention order. This is a heavy onus since it requires the court to be convinced by the prisoner that the protection of the community can be ensured by a supervision detention order. If not, the respondent must be detained under a continuing detention order.

[103] The application under consideration at first instance in this case was of quite a different kind. This was an application made under s 27 of the DPSOA. Section 27 is found in Part 3 of the DPSOA which deals with annual reviews. The purpose of Part 3 is to ensure that any continued detention order is subject to a regular review. Given the common law's abhorrence of preventive detention,[33] this is a crucial protection for society to ensure that the liberty of its citizens is not restricted in an

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[32] See *Attorney-General for the State of Queensland v Fardon* [2011] QCA 155 at [28].

[33] *Chester v The Queen* (1988) 165 CLR 611 at 618.

arbitrary way or for longer than necessary to achieve the objectives of the DPSOA which 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."

The Attorney-General is required by s 27(2) to make any application to cause such a review to be carried out.

[104] An annual review is determined according to s 30 of the DPSOA which provides:

> "**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."

[105] The reference to s 13(4) in s 30(6)(a) is a reference to the criteria to which the court is required to have regard in determining whether a respondent is a serious risk to the community. They are:

"(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;[34]

(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;

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[34] Any report prepared by the Chief Executive (Corrective Services) for the Attorney-General.

(i) the need to protect members of the community from that risk;

(j) any other relevant matter."

[106] The reference to s 11 in s 13(4)(a) is a reference to reports prepared by psychiatrists who have examined the respondent. Pursuant to s 11(2) of the DPSOA, each report must indicate:

"(a) the psychiatrist's assessment of the level of risk that the prisoner will commit another serious sexual offence —

(i) if released from custody; or

(ii) if released from custody without a supervision order being made; and

(b) the reasons for the psychiatrist's assessment."

[107] A "serious sexual offence" is defined in the Schedule to the DPSOA to mean:

"an offence of a sexual nature, whether committed in Queensland or outside Queensland —

(a) involving violence; or

(b) against children."

[108] The reference to "prisoner" in s 13(4) includes, because of s 43A of the DPSOA, not only those in custody under a sentence imposed by a court and those subject to a continuing or interim detention order, but also those subject to a supervision order or interim supervision order and even, in certain circumstances, persons released from custody having completed their sentence of imprisonment without any supervision order having been made.

[109] The reference in s 30(6)(b) to any report produced under s 28A is a reference to the same type of report as that referred to in s 8A, that is, a report prepared by the Chief Executive (Corrective Services) for the Attorney-General.

[110] Section 17 of the DPSOA requires a court which makes a continuing detention order, an interim detention order, a supervision order or an interim supervision order to give detailed reasons for making an order at the time the order is made.

Role of appellate court

[111] The role of an appellate court in reviewing the decision of a primary judge was set out in *A-G (Qld) v Francis*[35] where this court quoted from the High Court decision in *Norbis v Norbis*:[36]

"It is to be emphasised here that the primary judge's assessment 'call[s] for value judgments in respect of which there is room for reasonable differences of opinion, no particular opinion being uniquely right'. It follows that it would be wrong for:

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35 [2006] QCA 324 at [34].

36 (1986) 161 CLR 513 at 518-519.

> 'a court of appeal to set aside a judgment at first instance merely because there exists just such a difference of opinion between the judges on appeal and the judge at first instance. In conformity with the dictates of principled decision-making, it would be wrong to determine the parties' rights by reference to a mere preference for a different result over that favoured by the judge at first instance, in the absence of error on his part. According to our conception of the appellate process, the existence of an error, whether of law or fact, on the part of the court at first instance is an indispensable condition of a successful appeal.'" (citations omitted)

[112] The court in *Francis* set out the criteria to be used in evaluating risk and in determining whether a supervised release order or a continuing detention order is to be preferred, when they observed with reference to orders made under s 13 of the DPSOA:[37]

> "… 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."

The primary judge's reasons

[113] The learned primary judge applied the judgment of the court in *Francis* in determining that, unlike the situation where a person released on a supervision order has breached that supervision order, the onus lay on the Attorney-General to satisfy the court that continuing detention should be preferred over a supervision order if supervision was apt to ensure adequate protection.

[114] Her Honour gave detailed reasons for her decision that the Attorney-General had failed to discharge the onus of satisfying the court that adequate protection of the community from the risk of sexual reoffending by the respondent could not be reasonably managed by a supervision order on appropriately stringent terms.

[115] It is necessary to analyse the whole of her Honour's reasons to understand her process of reasoning and the matters she took into account. It would be artificial and misleading to consider the judge's conclusions without considering the structure and content of the reasons.

[116] The judge's reasons commence with the legal basis for the respondent's detention "for care, control or treatment" under the 2011 decision and then set out that the court was now considering an application under s 30 of the DPSOA that the order

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37 [2006] QCA 324 at [39].

that the respondent was a serious danger to the community in the absence of an order under the DPSOA be affirmed and that he continue to be subject to the detention order.

[117] The judge referred to the respondent's age - he is now 64 years old - his intelligence and that "it is common ground that he is not a pedophile [sic] and does not have a sexual paraphilia,[38] but that his sexual offending occurred in the context of his psychopathic personality disorder and was aggravated by alcohol and substance abuse." Her Honour then referred to his history of offending and orders made under the DPSOA including that he had been effectively detained under the DPSOA since 3 April 2008. Her Honour referred to the circumstances of, and reasons for, that detention.

[118] The judge then fairly set out the relevant effect of reports prepared by the psychiatrists, Dr Grant and Dr Beech, for the purpose of the hearing of the application on 15 October 2012. Dr Grant interviewed the respondent on 27 April 2012. Much of the interview was taken up with the respondent's expressions of anger and frustration at the DPSOA and the failures of Queensland Corrective Services ("QCS") to provide him appropriate assistance in custody or when he had been previously released under a supervision order. Dr Grant prepared a report on 28 April 2012 based on the interview and as an update on two previous reports prepared for the purposes of the DPSOA on 3 April 2006 and 17 January 2011. He relied on formal risk assessments which were done on the previous occasions.

[119] The judge referred to Dr Grant's diagnosis of the respondent's condition, that while a sexual offender treatment programme was not necessarily indicated because he did not have a specific sexual paraphilia, such a treatment program might nevertheless assist an individual to understand previous sexual offending as part of their overall personality disorder and might help them to avoid such offending in the future. Her Honour quoted Dr Grant's conclusion:

> "Given that very little has changed in regard to [the respondent's] condition or his attitudes since the last review in 2011, it remains the case, in my opinion, that [the respondent's] management on a supervision order in the community would be very challenging. I believe that he would require a great deal of assistance and support in making the transition from complete institutionalisation to a more independent life in the community and there would be a high risk of breaches of a supervision order because of his entrenched negative attitudes. In the past he has demonstrated scant regard for the requirements on a supervision order and his negative attitudes continue to be very strong and would undermine confidence that a supervision order would be successful in assisting his rehabilitation.
>
> If [the respondent] was to be released on a supervision order, I believe there would be a moderate to high risk of re-offending, with non-sexual re-offending being more likely than sexual re-offending. However, the risk of the latter would not be insignificant, particularly in the context of a relationship with a woman he might not sufficiently respect her rights or his responsibilities.

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[38] Defined in the *Oxford English Dictionary* as "sexual desires regarded as perverted or irregular."

> One of the major barriers for [the respondent] in terms of any treatment or successful transfer to the community is his apparent lack of motivation. It will be difficult to institute any supportive treatments or facilitate change without his very active cooperation and motivation to achieve progress. At present that motivation appears to be lacking and that leads to considerable pessimism about [the respondent's] safe management in the community. Some extended individual therapy within the prison environment might be one *way* of further assessing his motivation and encouraging a change in attitudes that might make change more likely and successful transition into the community more possible. Any such counseling would need to be provided by someone with psychotherapeutic experience and an understanding of people with psychopathic personality disorder."

[120] It is interesting to note that this opinion was given before the respondent was provided with individual counselling which, as will be seen, did in fact encourage just such a change in attitude. A second matter of note is that whilst Dr Grant expressed his pessimism about the respondent's safe management in the community absent such a change in attitude, he did not specifically directly address the question which the report is required to address, that is, the psychiatrist's assessment of the level of risk that the respondent will commit another "serious sexual offence" as defined in the DPSOA. He did inferentially indicate that there is little or no risk that the respondent would commit a sexual offence against children. He expressed the opinion that his risk of re-offending in general was high to moderate but that risk is not the relevant risk. He expressed the opinion that non-sexual reoffending was more likely than sexual re-offending, but once again that is not the relevant risk. In his report of 28 April 2012, Dr Grant did not express an opinion of the risk of the respondent committing an offence of a sexual nature involving violence. Her Honour did not, however, criticise Dr Grant's report on that basis.

[121] Her Honour's précis of Dr Grant's opinion was fair and accurate. It could not be suggested that she failed to understand his report or underestimate the problems raised by Dr Grant.

[122] The judgment of the learned trial judge then fairly set out the opinion of Dr Beech, the other psychiatrist who examined the respondent for the purposes of preparing a report under the DPSOA. That report was dated 1 August 2012. Her Honour recorded that Dr Beech assessed the respondent for about five hours on 4 May 2012. He used a number of risk assessment instruments and reached a similar conclusion to that of Dr Grant: that the respondent had an antisocial personality disorder (psychopathic). He had a significant alcohol and drug abuse problem which was now in remission. The conclusion of Dr Beech, quoted by her Honour, did address the level of risk that the respondent would commit a serious sexual offence:

> "Over the years there has been some settling in his behaviour and the more recent reports do not point to the earlier dyscontrol he displayed. He does not now seem to resort to violence easily. He voices some insight into his behaviour and he can articulate some empathy, but it is difficult to believe that this is emotionally and affectively genuine. Importantly he still maintains an antagonistic attitude to supervision.

> He has many of the significant risk factors for further sexual violence. There is a repeated history of sexual violence notable for the level of physical coercion and the use of violence to progress to rape. He has high psychopathic traits. He is restless and prone to impulsivity still.
>
> To some extent his advancing age is a mitigating factor but in my opinion his behaviours on release indicate, despite his assertions, that he is still a virile man who will pursue sexual relations on release.
>
> In my opinion, the risk of further sexual violence is in the moderately high range still. That is, more than the average sexual offender but not in the range of those at highest risk.
>
> I agree with others that the risk of other illegal or antisocial behaviours is higher."

[123] Dr Beech then referred to scenarios that were possible if the respondent were released on a supervision order. He identified the biggest risk was occasioned by his antagonism to supervision by corrective service officers. He expressed the opinion that "the risk of sexual violence would be reduced if [the respondent] were to be placed on a stringent supervision order with strict reporting and monitoring conditions, and if he were to be provided with access to counselling, logistic support, and access to community resources to help him adapt to the community."

[124] Dr Beech also expressed the opinion that there would need to be a strict requirement for abstinence and his accommodation would need to be stable. Supervision would entail his clear disclosure of his activities, associations and acquaintances. Counselling would entail problem-solving, vocational guidance, and eventually treatment or at least exploration of his trauma.

[125] The reasons for judgment then dealt with the next significant development, which was the engagement in June 2012 by QCS of a forensic psychologist, Nick Smith, to provide individual psychological treatment and counselling to the respondent. This engagement was presumably not known to Dr Beech when he prepared his report; but it fitted with the counselling and treatment which Dr Beech advised would be useful in assisting the respondent to adapt to the community on a supervision order. Mr Smith says in a report dated 28 September 2012 that he was engaged to provide treatment on an individual basis to discuss the respondent's childhood trauma issues after the respondent told the staff of the High Risk Offender Management Unit ("HROMU") that he would engage with treatment on a one-to-one basis rather than risk repetition of the experience he reported of having the confidentiality of his disclosures of his own childhood sexual abuse not being respected by other inmates when he had previously taken part in the group sex-offender treatment program. The respondent had described the traumatising effect of that information becoming "public knowledge" within the prison.

[126] The trial judge noted that Mr Smith had treated the respondent on eight occasions at the correctional centre between 27 June and 27 September 2012. He had prepared the progress report which was in evidence before the learned primary judge. Her Honour referred succinctly, but fairly, to the contents of that report, noting that Mr Smith was of the opinion that the respondent's self-report of significant anxiety

symptoms corresponded with those required for a diagnosis of post-traumatic stress disorder ("PTSD"); that the respondent had a significant negative attitude to QCS; that Mr Smith's initial treatment of the respondent focussed heavily on engagement and rapport building, with an increasing focus on rehabilitation goals, risk management and his post-traumatic stress symptoms; and that the respondent engaged "very well" in the treatment sessions and expressed his willingness to continue sessions with Mr Smith whether in custody or in the community.

[127] The reasons of the learned primary judge then set out what occurred on the date set down of the hearing of this annual review, 15 October 2012.

[128] Her Honour referred to the cross-examination at the hearing of Dr Grant, Dr Beech and Mr Smith, particularly in light of the new factor that the respondent had commenced individual counselling with Mr Smith. Mr Smith indicated that he was available and willing to continue treating the respondent whether he was detained or released into the community. In answer to questions from the judge, Mr Smith said that the respondent understood that he needed to take an active role in his own treatment and rehabilitation and Mr Smith was of the opinion that that would be of benefit in assisting him to comply with the conditions of any treatment or supervision orders and would improve his capacity to cooperate. However Mr Smith did say that the respondent's willingness to cooperate with him was not necessarily a good yard stick to measure his willingness to cooperate with QCS as he saw Mr Smith as an independent person.

[129] The judge referred to some of the negative aspects of Dr Beech's evidence with regard to the respondent and then summarised the position of both Dr Beech and Dr Grant that it was a positive development that the respondent had commenced individual counselling with Mr Smith but in summary that it was too early to express an opinion on whether that counselling would improve the respondent's motivation and attitude towards supervision.

[130] Her Honour noted that she therefore adjourned the review application to enable further counselling of the respondent by Mr Smith to take place, the preparation of updated reports from Mr Smith and the psychiatrists and for the respondent to have the opportunity to address the key questions of his motivation and his capacity to comply with any proposed supervision order. This was an entirely appropriate course to take given that counselling had commenced and was well underway but needed to continue in order to address what was, as her Honour noted, common ground that the risk of violent sexual re-offending by the respondent under a supervision order would be affected by whether he could genuinely comply with the requirements of a supervision order.

[131] Her Honour noted that the respondent had elected not to attend the hearing on 15 October 2012, had not sworn any affidavit for the purpose of that hearing and had not prepared a relapse prevention plan.

[132] The reasons of the learned primary judge then refer to the further reports which were prepared for the adjourned hearing of the application on 7 February 2012. Her Honour referred firstly to Mr Smith's supplementary report which was prepared on 7 January 2013. That report was relevant given the matters to which the court was required to have regard under s 13(4) including in (b), any psychological assessment relating to the respondent, (e), efforts by the respondent to address the cause or causes of his offending behaviour including whether he had participated in

rehabilitation programs, and (f), whether or not the respondent's participation in rehabilitation programs had had a positive effect upon him. The judge referred to the fact that Mr Smith had attended on the respondent on a further 11 occasions before preparing his report on 7 January 2013. Mr Smith said that the respondent had attended a total of 18 sessions by 7 January 2013. Her Honour referred to the focus of Mr Smith's weekly treatment sessions with the respondent being for the respondent to progress towards possible release on a supervision order. Her Honour noted that the respondent had completed two psychometric assessments particularly targeting PTSD symptoms. Her Honour summarised the respondent's response to those assessments. Her Honour also referred to Mr Smith's view that the respondent's engagement in treatment sessions had improved and that he was willing to continue sessions for the foreseeable future.

[133] Her Honour then referred to the supplementary or addendum reports prepared by the two psychiatrists, Dr Grant and Dr Beech. The addendum psychiatric risk assessment report by Dr Grant was dated 12 January 2013. It is quite a short report and the learned trial judge referred to the relevant conclusions. Dr Grant said that the new material did not change his previously expressed opinions in regard to the risk of reoffending by the respondent if he were to be released into the community. As her Honour noted, he observed that if it were in fact established that the respondent had a significant PTSD that would not decrease the risk but rather have the effect of increasing the risk as it would be likely to cause more "emotional dysregulation and the likelihood of violent behaviour in response to perceived threats and also increase the likelihood of self-medication with drugs or alcohol to relieve discomfort." Her Honour set out in full Dr Grant's conclusion:

> "I remain of the opinion that the risk in regard to re-offending in a sexual way and in a general violent way is high and that the completion of a sexual offender treatment program is indicated to assist with reducing the risk and with planning a satisfactory relapse prevention plan if he was to be released into the community. My opinion remains that [the respondent] could not be predictably safely managed in the community under a supervision order unless he first completes a sexual offender treatment program. [The respondent] would have a great deal of difficulty adapting to community life and I believe he is aware of that, and that he is consequently quite ambivalent about being released into the community."

[134] Her Honour then referred to Dr Beech's addendum report which again is quite short. Her Honour correctly analysed it as being slightly more favourable to the respondent than Dr Grant's opinion. Her Honour quoted in full Dr Beech's conclusions as follows:

> "As I stated in my report of August last year, I believe that [the respondent] has an Antisocial personality disorder with psychopathic traits who has in the past held attitudes that condoned violence. Over the years there has been some settling of his behaviour, but he has held an entrenched antipathy towards QCS staff and supervision which has become apparent during his releases under a DPSOA supervision order.
>
> He has remained a virile man with ongoing problems with rules and conditions that lessen the risk reducing factors of age and maturity.

> In my opinion this means that his risk of re-offending in a sexually violent way is moderately high. This risk would ordinarily have been reduced by a sexual offender program, supervision, and community re-integration. However, [the respondent] has up until now eschewed treatment, has not abided by the conditions of a supervision order, and has been stressed on release.
>
> In his favour though, he has not returned to drugs and alcohol when in the community (which were likely potent factors in his earlier sexual offences), and he has now engaged in some form of supportive psychological counselling. In my opinion, the latter is now a significant risk-reducing factor that makes it more likely that he will remain engaged with treatment if released, and from there he will be more likely to use this support to develop strategies to assist him in dealing with the stresses of community living.
>
> It also makes it more likely that he will listen to advice and not persist with the self-defeating antagonism towards supervision, QCS, and the limits that are placed on by a supervision order. It is likely that he will still struggle with supervision, but it is now more likely that he will use the support available to him to manage this with better insight and fewer material breaches. This in turn means that it is more likely that he will abide by the conditions which act to reduce the risk of his re-offending."

[135] It is apparent that Dr Beech's conclusions were more favourable to the respondent than Dr Grant's opinion and that Dr Beech's opinion, as can be demonstrated from the change in his conclusion in his report of 1 August 2012 to his report of 1 February 2013, had been strongly influenced by his positive view of the treatment and counselling provided by Mr Smith.

[136] Her Honour then referred in some detail to the hearing before her on 7 February 2013. Her Honour referred to the fact that (unlike the previous hearing) the respondent swore an affidavit for the purpose of the adjourned hearing. That affidavit of course served a number of purposes. Firstly it showed that the respondent had engaged in the process of the annual review, it meant that the respondent was obliged to reveal his own version of events and commitment or otherwise to a supervised released order and importantly it gave the opportunity for him to be cross-examined.

[137] Her Honour summarised the respondent's affidavit in which he referred to his treatment by Mr Smith and his expression of the view that the sessions he had had with Mr Smith had been of great benefit to him and that he wished to continue the sessions with Mr Smith whether in prison or in the community. He expressly said that if released on a supervision order he was prepared to abide by all conditions that were imposed upon him in that order. He expressed the belief that he now had greater motivation and preparedness to work with QCS as a direct result of the counselling he had had with Mr Smith. He said that if released on a supervision order he was prepared to cooperate with QCS.

[138] Her Honour referred to the fact that as result of his counselling sessions with Mr Smith the respondent had himself prepared a relapse prevention plan, a seven

page handwritten document which was made exhibit 1 at the hearing. As her Honour observed, the plan identified the risk factors that the respondent had to address of alcohol, drugs and aspects of his environment. Her Honour set out the general strategies he had identified for addressing those risks. Her Honour also referred to the extensive list of emotional triggers that the respondent had identified and that he had identified a number of strategies to deal with those emotional triggers. Her Honour correctly identified the weaknesses in the list of strategies in that it was less extensive than the list of emotional triggers and that some of the strategies were aspirational and realistically unattainable. Her Honour also referred to the list of proposed support networks identified by the respondent including ongoing counselling with Mr Smith and a proposal to rely on a chaplain from the prison ministry. This is also referred to in his affidavit wherein the respondent said he was willing to accept the services provided by the chaplain and cooperate with him as his support worker. The chaplain saw him in prison on a weekly basis and had taken him on social outings with the approval of QCS. The chaplain had confirmed to a QCS employee from HROMU his willingness to undertake the support role for the respondent. Her Honour then dealt with the reasons why Mr Fardon did not undertake a transition program and the assistance he did seek from the transitions co-ordinator in January 2013.

[139] Her Honour then dealt with the oral evidence given by Mr Smith who was called by the applicant at the hearing on 7 February 2013. Her Honour covered the two matters about which counsel for the applicant said he would be questioning Mr Smith. They were Mr Smith's counselling role with the respondent and the second was his diagnosis of post-traumatic stress disorder. So far as the former is concerned her Honour correctly summarised that Mr Smith confirmed that the respondent had continued to engage in an increasingly productive way during their counselling sessions and that his overall negative attitude to QCS did not negate his expressed willingness to cooperate with QCS in a supervision order. He also referred to the respondent's improved engagement with his case manager and with the psychologists who dealt with him from HROMU as being a good sign for the respondent's expressed intention to build constructive working relationships with those to whom he would report under a supervision order.

[140] In dealing with the question of whether or not the respondent suffered from PTSD, her Honour preferred the evidence of Dr Grant and Dr Beech, neither of whom made that diagnosis. She referred to the explanation given by Dr Grant that while he had never made the diagnosis of PTSD, he could understand that the respondent had a number of features which would occur in PTSD - that he had come from a very traumatic background; that he had been subject to violence and been himself violent; that he had been in the stressful environment of prison for a very long time and as an older man was no longer physically capable of defending himself and felt threatened and was abused by other prisoners making him increasingly isolated. He would not classify his anxiety disorder as PTSD. Her Honour referred to Dr Grant's addendum report that a diagnosis of PTSD might serve to increase the risk and then to his qualification of that in his oral evidence. When referring to the question of whether of not it increased the risk he said, "the fact it's been there all the time probably means that it doesn't actually increase the risk." Her Honour then referred to Dr Beech's oral evidence which she accurately summarised as that he was of the opinion that the trauma the respondent suffered from his childhood through his adolescence and in prison had "crystallised into his personality structure leading to

an antisocial personality disorder with marked psychopathic features which can be mistaken as a complex PTSD."

[141] In analysing the apparent inconsistency between the diagnosis made by Mr Smith and by Dr Grant and Dr Beech, her Honour observed that both doctors accept that the symptoms identified by the respondent to Mr Smith can be consistent with PTSD. However her Honour was persuaded by the doctors' opinions that it was too simplistic to conclude that he suffered from PTSD. She accepted the approach of Dr Grant and Dr Beech that it is the anxiety that the respondent exhibits and how he copes with that which is relevant to assessing his risk of offending, rather than any label given to those symptoms.

[142] The judge repeated her observation that Dr Grant had modified the opinion he had expressed in his report of 12 January 2013 about PTSD increasing the risk of offending by the respondent as Dr Grant acknowledged that the respondent's current symptoms were not new and had already formed part of the overall risk assessment that Dr Grant had made. Her Honour then referred to a second qualification Dr Grant made in his oral evidence. She referred to the fact that the respondent had consistently refused to undertake a group sex offender treatment program but was prepared to do one that was for him alone. She referred to Dr Grant's recommendations in his reports of 28 April 2012 and 12 January 2013 that the respondent should do a sex offender treatment program before being released under a supervision order and found that that was qualified by Dr Grant's oral evidence that whilst a sex offender treatment program would be useful it was not essential. Her Honour asked Dr Grant during his evidence about whether the sex offender treatment program was useful but not an essential step before release. He replied:

> "I think that's right. The attitudes - the opinion I gave in my report was along those lines, that he doesn't have a sexual paraphilia as such. I saw his sexual offending history as relating to his anti-social personality traits and intoxication with substances and so on. But I thought that a Sexual Offender Treatment Program would necessarily - while it wouldn't address paraphilic things such as paedophilia, which he doesn't have, it would help him in terms of understanding sexual attitudes, appropriate sexual behaviours and how to avoid situations where such behaviours might get out of control, et cetera, so it's not absolutely essential from a psychiatric point of view but would be, I think, a useful course for him to do in terms of regulating his future behaviour, particularly when it comes to sexual things."

[143] The third area of Dr Grant's oral evidence to which her Honour referred was also an area which qualified to some extent his written reports. Dr Grant expressed the opinion that the systems and support offered to people who were subject to supervised release under the DPSOA had developed and become more sophisticated and more effective and that the respondent might well find the system was different and more acceptable for him and might engage better because of that. Dr Grant also said that the respondent expressed a lot of anxiety about how he would adjust and also whether he would be hounded by the media and so on when he got out and how that would affect him but agreed that because the transition was from prison to the Wacol precinct that should alleviate much of that anxiety. This is because, as the evidence shows, the respondent if released on a supervised order would not then be living in the community but within the QCS Wacol precinct.

[144] With regard to the respondent's relapse prevention plan, the primary judge referred to Dr Beech's evidence. She summarised the views of Dr Beech as to the positive and negative aspects of the relapse prevention plan when read in conjunction with the respondent's affidavit. Her Honour referred to Dr Beech's noting of the improvement of the respondent's behaviour in prison and his engagement in counselling with Mr Smith as positive signs that the respondent would cooperate under a supervision order.

[145] The learned trial judge then analysed the onus of proof which applied to the annual review before her and the different onus which applied to the 2011 decision. For the reasons earlier set out, I agree that the onus lies on the applicant on an annual review to satisfy the court, on the balance of probabilities, that the adequate protection of the community cannot be reasonably and practicably managed by a supervision order.

[146] Taking all of the foregoing into account, her Honour moved on to reach her conclusions as to what orders should be made. She noted that the respondent conceded that the evidence allowed the court to be satisfied that there was an unacceptable risk that he would re-offend if released from custody without being subject to a supervision order. Her Honour, quite properly, nevertheless determined that she was required to make that decision for herself. She referred to the evidence of the psychiatrists (therein set out) which was, in the terms required by s 30(2) of the DPSOA, acceptable and cogent and satisfied her to a high degree of probability that there was an unacceptable risk that the respondent would commit a serious sexual offence if released from custody in the absence of a division 3 order.

[147] Her Honour then posed the next question she was required to answer, i.e. whether the continuing detention order made by the Court of Appeal should be continued or whether a supervision order should be made. As a guide to answering that question, her Honour referred to the statutory tests set out in s 30(4)(a) and s 30(4)(b) of the DPSOA.

[148] Her Honour then referred to the appellant's arguments against the respondent's supervised release:

- optimism about the respondent's expressed willingness to comply with the conditions of a supervision order was not sufficient to allow the conclusion that such an order would be effective;
- such an order would only provide adequate protection of the community if the respondent was himself capable of internal regulation of his behaviour in conjunction with the external regulation of the supervision order; and
- the evidence did not support a conclusion that the respondent had the ability to control his own behaviour and deal appropriately with the anxiety and stress that he would inevitably experience under a supervision order.

[149] The appellant urged reliance on Dr Grant's opinion in preference to that of Dr Beech as to whether the respondent would be likely to comply with a supervision order.

[150] Her Honour then set out the factors which were against the arguments put forward by the appellant:

- the respondent's increasing age;

- his constructive therapeutic relationship with Mr Smith;
- improved relationships in recent times with QCS employees;
- some acknowledgement of risk factors; and
- the commencement of preparation of strategies for dealing with risk factors, emotional triggers and anxiety symptoms.

[151] These were not set out as the respondent's arguments but rather as findings made by her Honour in answer to the arguments put forward by the appellant, who, as has been noted, bore the onus of proof.

[152] Her Honour then considered that the change in attitude to cooperation demonstrated by the respondent between the October 2012 and February 2013 hearings and during the hearing on 7 February 2013 was relevant but not determinative. It provided some support for "his positive motivation to comply with a supervision order and to continue to work on his capacity to do so."

[153] Her Honour then made the astute observation that "adequate protection of the community from the risk of violent sexual offending does not impose a standard that is capable of precise measurement or prediction." She referred to the decision of the Court of Appeal in *Francis* referred to earlier in these reasons that the DPSOA does not contemplate that arrangements to prevent such a risk are "watertight" otherwise orders for release on supervision would never be made.

[154] Her Honour then considered the evidence given by Dr Beech as to the type of conditions that would be essential in any supervision order and the evidence by Dr Grant of the crucial areas. She noted that there was no suggestion that s 30(4)(b)(ii) was not satisfied, that the requirements of a supervision order appropriate for the respondent could not be "reasonably and practicably managed by corrective services officers."

[155] Her Honour then considered the evidence of the length of time that an order should last. She referred to Dr Beech's view that if the respondent were to be successful in complying with the supervision order for a period of five years, that would show he had adapted to release in the community. That was not the subject of dispute at the hearing.

[156] Her Honour then returned to the appellant's submission that Dr Grant's opinion should be preferred to that of Dr Beech. She noted the qualifications made by Dr Grant in his oral evidence. Those qualifications were referred to earlier in her reasons. Her Honour found that ultimately the aspects of Dr Grant's opinion on which the appellant placed weight were qualified by his oral evidence. As a result her Honour concluded that the differences in the opinions of the two psychiatrists were "not that significant". The reasons her Honour used in reaching that conclusion, albeit brief, and her finding as to the significance of their differences of opinion were open to her on the evidence she set out.

[157] The learned primary judge then found that the appellant had failed to discharge the onus of satisfying the court that the adequate protection of the community from the risk of sexual offending by the respondent could not be reasonably and practicably managed by a supervision order on appropriately stringent terms. Those terms were extensive, comprehensive and, as her Honour characterised them, stringent.

[158] In making those orders her Honour specifically identified the following two factors:

- the reasons identified in Dr Beech's evidence that support the increasing likelihood of the respondent's compliance with the requirements of a supervision order because of his motivation to comply with such an order; and
- the judge's conclusion about the respondent's positive motivation to comply with a supervision order.

[159] Her Honour made consequently three orders. She affirmed the 2011 decision that the respondent is a serious danger to the community in the absence of an order under Division 3 of the DPSOA. She ordered that the continuing detention order be rescinded upon his release from custody and that he be released from custody subject to the following conditions:

> "The Respondent must:
>
> (1) be under the supervision of a corrective services officer ('the supervising corrective services officer') for the duration of this order;
>
> ***Mandatory requirements***
>
> (2) report to the supervising corrective services officer at Queensland Corrective Services Area Office closest to his place of residence between 9 am and 4 pm within 24 hours of his release and therein to advise the officer of his current name and address:
>
> (3) report to, and receive visits from, a corrective services officer at a frequency as determined necessary by the supervising corrective services officer;
>
> (4) notify a corrective services officer of every change of his name, place or residence or employment at least two business days before the change happens;
>
> (5) comply with a curfew direction or monitoring direction;
>
> (6) comply with any reasonable direction under section 16B of the Act given to him;
>
> (7) comply with every reasonable direction of a corrective services officer that is not directly inconsistent with a requirement of the order;
>
> (8) not leave or stay out of Queensland without the permission of a corrective services officer;
>
> (9) not commit an offence of a sexual nature during the period of the order;
>
> ***Case management***
>
> (10) seek permission and obtain approval from an authorised corrective services officer prior to entering into an employment agreement or engaging in volunteer work or paid or unpaid employment;

(11) reside at a place within the State of Queensland as approved by an authorised corrective services officer by way of a suitability assessment and obtain written approval prior to any change of residence;

(12) not reside at a place by way of short term accommodation including overnight stays without the permission of an authorised corrective services officer;

(13) respond truthfully to enquiries by an authorised corrective services officer about his activities, whereabouts and movements generally;

(14) submit to and discuss with an authorised corrective services officer a schedule of his planned and proposed activities on a weekly basis or as otherwise directed;

(15) notify the supervising corrective services officer promptly of any intention he has of entering any intimate relationship with another person;

(16) disclose to an authorised corrective services officer upon request the name of each person with whom he associates and respond truthfully to requests for information from an authorised corrective services officer about the nature of the association, address of the associate if known, the activities undertaken and whether the associate has knowledge of his prior offending behaviour;

(17) notify an authorised corrective services officer of the make, model, colour and registration number of any vehicle owned by or generally driven by him, whether hired or otherwise obtained for his use;

(18) if directed by an authorised corrective services officer, make complete disclosure of the terms of this supervision order and the nature of his past offences to any person as nominated by an authorised corrective services officer who may contact such persons to verify that full disclosure has occurred;

(19) supply to an authorised corrective services officer any password or other access code known to him to permit access to any computer, or other device by Corrective Services and to any content accessible through such computer or other device and allow any device where the internet is accessible to him to be randomly examined using a data exploitation tool to extract digital information or any other recognised forensic examination process;

(20) allow any other device including a telephone or camera to be randomly examined. If applicable, account details and/or phone bills are to be provided upon request of an authorised corrective services officer;

(21) advise an authorised corrective services officer of the make, model and phone number of any mobile phone owned, possessed or regularly utilised by him within 24 hours of connection or commencement of use and includes reporting any changes to mobile phone details;

Offending and substance abuse

(22) not commit an indictable offence during the period of the order;

(23) abstain from the consumption of alcohol and illicit substances for the duration of this order;

(24) submit to any form of drug and alcohol testing including both random urinalysis and breath testing as directed by an authorised corrective services officer;

(25) disclose to an authorised corrective services officer all prescription and over the counter medication that he obtains;

(26) not visit premises licensed to supply or serve alcohol, without the prior written permission of an authorised corrective services officer;

Treatment and medical assessment

(27) attend upon and submit to assessment, treatment, and/or medical testing by a psychiatrist, psychologist, social worker, counsellor or other mental health professional as directed by an authorised corrective services officer at a frequency and duration which shall be recommended by the treating intervention specialist;

(28) permit any medical, psychiatrist, psychologist, social worker, counsellor or other mental health professional to disclose details of treatment, intervention and opinions relating to level of risk of re-offending and compliance with this order to Queensland Corrective Services if such a request is made for the purposes of updating or amending the supervision order and/or ensuring compliance with this order;

(29) develop a risk management plan in consultation with a treating psychologist or psychiatrist and discuss it as directed with an authorised corrective services officer;

Contact with other

(30) not have any direct or indirect contact with a victim of his sexual offences;

(31) not have any contact with the complainant the subject of the proceeding decided by the Queensland Court of Appeal on 12 November 2010;

(32) not go unsupervised to a place that houses children, intellectually disabled persons, mentally ill persons or persons with substance misuse difficulties;

(33) not establish or maintain any supervised or unsupervised contact including undertaking any care of children under 16 years of age except with prior written approval or an authorised corrective services officer."

[160] The final primary submission of the appellant that "it would not have been possible for a Judge to conclude, in the proper exercise of discretion, that release on supervision was appropriate" cannot be sustained on a proper analysis of her Honour's reasons. The finding was clearly open to her on the evidence to which she had reference which was a fair and accurate summary of that evidence.

[161] The final secondary submission was that her Honour failed to give detailed reasons of her decision. This submission must also fail. She referred, as can be seen from the discussion of her Honour's reasons in these reasons, to the relevant evidence and made an assessment of it. That assessment was quintessentially a matter in the domain of the judge conducting an annual review. The reasons for that assessment are adequately explained.

[162] She examined the legal basis for the respondent's continuing detention and the nature of the application before her for annual review; his age, intelligence, personality disorder which was aggravated by alcohol and substance abuse, and that he was not a paedophile nor had sexual paraphilia. She referred to his history of offending, orders made under the DPSOA and that he had been effectively detained without interruption since 3 April 2008. She set out the opinions expressed by the psychiatrists at the hearing on 15 October 2012. She referred to the engagement of Mr Smith to provide individual counselling and treatment to the respondent and his promising initial response to it. She referred to the adjournment of the review application to enable further counselling. She then referred to the further report by Mr Smith, and the supplementary reports of the psychiatrists, the respondent's evidence and relapse prevention plan and support that would be given to the respondent on his release on a supervision order, Mr Smith's oral evidence, her preference for the psychiatrists' explanation of the reasons for the respondent's symptoms rather than Mr Smith's diagnosis of PTSD and the effect of those symptoms on compliance with a supervision order, and the oral evidence of the psychiatrists including qualifications made by Dr Grant.

[163] Taking all of those matters into account she concluded that the first order should be made; she examined the arguments against his release and the factors that told against those arguments, considered the change in attitude of the respondent, considered the types of conditions that could and should be imposed; set out her conclusions as to the difference between the psychiatrists and the significance of that difference and found that the appellant had failed to demonstrate that the respondent should continue to be detained and consequently made order 2 and order 3 with its comprehensive and strict conditions.

[164] In my view the appellant has failed to show any error in the learned trial judge's decision and the appeal should therefore be dismissed.