

# SUPREME COURT OF QUEENSLAND

CITATION: *A-G for the State of Queensland v Sands* [2014] QSC 189

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**  
(applicant)  
v  
**ERIC SANDS**  
(respondent)

FILE NO: SC No 11025 of 2010

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: Delivered ex tempore 14 July 2014

DELIVERED AT: Brisbane

HEARING DATE: 14 July 2014

JUDGE: Applegarth J

ORDERS: **1. The supervision order made on 10 January 2011, as amended on 5 December 2011, be rescinded.**

**2. The respondent be detained in custody for an indefinite term for care, control or treatment.**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the respondent was released on a supervision order pursuant to the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* (“the Act”) – where contravention proceedings were brought against the respondent and he was detained in custody – where the applicant did not contend that he had discharged the onus under s 22(2) of the Act – where the Court is required to make a continuing detention order in the circumstances – where high intensity programs are only available in custody – where programs and other measures are expected to address the respondent’s treatment needs and reduce risk of re-offending

*Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 22*  
*Attorney-General for the State of Queensland v Sands* [2011]

## QSC 397

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

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

- [1] HIS HONOUR: This is a proceeding pursuant to section 22 of the Dangerous Prisoners (Sexual Offenders) Act 2003. There is no dispute that the respondent, Mr Sands, contravened an order made by Justice Byrne as amended by an order of Justice Atkinson. Pursuant to section 22(2) of the Act, unless Mr Sands satisfies the Court on the balance of probabilities that the adequate protection of the community can, despite the contravention or likely contravention of the existing order, be ensured by the existing order as amended under subsection 7, the Court must, rescind the supervision order and make a continuing detention order.
- [2] Mr Sands, by his counsel, does not submit that the onus under section 22(2) has been discharged. Despite that concession, it is important that I address the matter as to whether adequate protection of the community can, despite the contravention, be ensured by a supervision order. One reason for that is that a continuing detention order has severe consequences upon the liberty of a citizen who has served a sentence and, in principle, a supervision order is to be preferred to a continuing detention order if a supervision order can adequately protect the community.
- [3] With some hesitation, I have reached the conclusion that a supervision order cannot presently provide for the adequate protection of the community. I am not satisfied of that at this time. I emphasise “at this time” for two reasons. First, Mr Sands has been able to be in the community, subject to a supervision order, without committing a serious sexual offence and importantly, by being able to abstain from alcohol and substance abuse, which is a trigger for his sexual offending. Secondly, I am not satisfied of the position at the present time because it is to be expected that in coming months, he will receive treatment and develop supports in the community so that a supervision order, in combination with a possible community involuntary treatment order, which addresses his mental health issues, will reduce the risk of his committing a serious sexual offence to an acceptable level and will generally provide for the adequate protection of the community.
- [4] I propose to deal with his background, then the circumstances of his contravention, then I will address the evidence of Dr Lawrence and Dr McVie, who were psychiatrists appointed by the Court to report, and Dr Simpson, who is Mr Sands’ treating psychiatrist. Then I will consider the evidence of Mr Phelan.
- [5] By way of background, Mr Sands was born in early 1975. That means he is 39 now. He is the eldest of seven children. He had a difficult relationship with his mother, who has died in recent years, and did not really know his father. He has a poor educational history and has had minimal work history. Unfortunately, the circumstances in which he was raised involved alcohol abuse and domestic violence and it is reported that he was the victim of sexual abuse as a young child at the hands of someone who was described as an uncle.

- [6] Mr Sands is an Indigenous man. His personal development was affected by the disadvantage that beset his community. He has had three significant relationships. The first was with a woman that lasted several years and produced a daughter, who is now aged 19. The daughter, I understand, resides most of the time at Palm Island. That relationship with his former partner was marred by domestic violence. The relationship ended and the mother and daughter went to live on Palm Island. Mr Sands has had little or no contact with his daughter in recent years. There was another short-lived relationship between Mr Sands and a woman who had a child to him. That relationship ended. Again, it was beset by problems of alcohol and drug abuse and Mr Sands has not had contact with that former partner or his daughter. Then there was another relationship that lasted several months in 2007.
- [7] As is already apparent, Mr Sands has a significant history of alcohol abuse and that has coloured his relationships and has led to criminal offences. He also abused cannabis from the age of about 12 to 14.
- [8] Turning to Mr Sands' psychiatric history and by way of brief summary, he was first taken to a psychiatrist by his mother when he was aged about 15. In around 2002, he started hearing voices and he was diagnosed with schizophrenia. That diagnosis has been confirmed and there have been a number of worrying behaviours when he has had those episodes. His illness is characterised by auditory hallucinations and his illness has been complicated by failure to comply with treatment regimes and other problems, including the cannabis and alcohol abuse that I have mentioned earlier.
- [9] He was admitted to treatment at the Cairns Base Hospital in 2004, 2005 and 2006 and Dr Simpson, whose evidence I will return to, became his treating psychiatrist during his first admission at the Cairns Base Hospital Mental Health Unit in 2004. The illness is reasonably controlled at the moment by depot antipsychotic treatments and he is also receiving an adjunct treatment to his depot treatment.
- [10] As to Mr Sands' criminal history, he has a significant adult history, which includes offences of assault. There have been breaches of domestic violence orders, other acts of assault, drug and alcohol offences that resulted in his being imprisoned numerous times. As to sexual offences, as Justice Atkinson mentioned in her reasons – [2011] QSC 397, at page 6:
- “Mr Sands' sexual offending, while persistent, is at a relatively low level. It involves exposure and/or masturbation to post-pubescent women. Dr McVie didn't think he was a paedophile and if he has offended against women under the age of 18, it seems to be that he's had difficulty in telling the difference between adult post-pubescent females and post-pubescent females who are not yet adults.”
- [11] The index offences were the subject of sentences accumulating to three years and six months, imposed in 2007. They included offences of entering premises and committing an indictable offence, three counts of committing indecent acts and one count of indecent treatment of a child under the age of 16. The entering premises occurred when he climbed through the window of a house. The family was asleep. I infer that he was drunk at the time. He had been drinking all afternoon and told police that he went to the house in order to find alcohol. After he entered the house, he found a six year old girl. She was awoken. He put his hand over her mouth and touched her on the leg. She screamed and other family members awoke.

- [12] The indecent acts include acts of masturbation in public. I won't detail them, but there are a series of incidents that were committed in 2006. One, for example, happened when he went into a video store and masturbated in view of two employees. The indecent treatment of a girl under the age of 16 occurred when the 13 year old victim was on a bus with a 16 year old girl. The respondent sat down beside one of them and they had the unfortunate experience of witnessing him exposing his penis and masturbating. That gives some insight into his sexual offending.
- [13] After being placed on a supervision order by Justice Byrne on 10 January 2011, Mr Sands progressed somewhat. However, his conduct under the supervision order was marred by problems with compliance. That included attempts to contact his daughter by telephone, which was, at the time, in breach of the order. Staff were concerned about his erratic behaviour and his sexual preoccupation.
- [14] Justice Atkinson amended the order by removing some conditions thought to be unnecessary and adding some other orders required by the Act, and that occurred on 5 December 2011. The respondent, Mr Sands, ended up at the Townsville precinct in mid-2012, and it seems from the reports that I have read that he did accept the requirements of living in the precinct initially in Wacol, and then in Townsville. A chance was given for him to transfer from Townsville to the Cairns Probation and Parole. But his time in Cairns under the supervision order was unfortunately short-lived. There was the episodes that culminated in the contraventions to which I will turn. Shortly stated, it was only within a few days of being transferred to rental accommodation in Cairns that troubles commenced.
- [15] These have their origin, in part, in Mr Sands having access to pornography on the internet via a mobile phone. He gained the impression, which is almost certainly a wrong impression, that his daughter had been filmed in these pornographic episodes. Having convinced himself of that either by some cognitive impairment or because he was delusional at the time, he had thoughts of having sex with his daughter, as it were, as a means of punishing her. He told, it seems, a staff member in Townsville about that, and he also reported this to his new treating psychologist in Cairns. That was the right thing to do.
- [16] As it happened, Mr Sands' daughter was visiting family at Yarrabah at that time. He had expressed a desire to go to Yarrabah, and the authorities, unsurprisingly, were concerned at the risk to his daughter if he did so, had contact with her at Yarrabah and carried through on what had earlier been expressed as a threat to have sex with her. So as an interim risk management measure, on 11 October 2013, Queensland Corrective Services applied an exclusion zone on the Yarrabah area and gave the respondent a direction that he was not to enter the area. This was because, as I have mentioned, the authorities were aware that his daughter was in Yarrabah visiting family.
- [17] Upset by that exclusion, on 12 October 2013, Mr Sands made several telephone calls to the Central Monitoring Unit and then to the acting director of the High Risk Offender Management Unit querying the exclusion. He was offensive and abusive to the acting director over the telephone. After she concluded the call, he attempted to call her on a number of occasions and then left a message which was in the nature of an apology, or it started out as an apology or trying to explain that he wanted to talk to her in some way, but it, again, became abusive.

- [18] He was visited by staff on 13 October 2013 and given a direction not to go to Yarrabah. He was observed on 14 October 2013 in a state of hostility, rejecting the direction that he had been given, and he said that he “didn’t give a fuck” and “no white cunt could tell him what to do”, and he said that he intended to go to Yarrabah.
- [19] In the circumstances, it was reasonably believed that he was likely to contravene the requirement that had been imposed upon him. On 14 October, an arrest warrant was issued, and the respondent was taken into custody. On 13 February 2014, he pleaded guilty to the offence of using a carriage service to menace, harass or cause offence in relation to the phone call to the acting director of the High Risk Offender Management Unit.
- [20] I turn to some debate as to whether this contravening conduct and misbehaviour was largely the result of problems with his medication and his underlying psychiatric illness. Dr McVie opined that it was highly likely that his underlying schizophrenic illness played a major role in his behaviour and his inability to moderate his behaviour. Dr Lawrence, in her report, was not so sure, and I will return to her opinion shortly. It is really unnecessary, in my view, to resolve a question of whether his underlying psychiatric illness played a major part or a relatively minor part in his bad behaviour in October 2013. Both his major mental illness and other problems that beset him contributed to that behaviour, and both had the potential to undermine the efficacy of a supervision order and to elevate risk. Both need to be addressed.
- [21] I turn, then, in some greater detail to the evidence of Dr Lawrence, Dr McVie and Dr Simpson. Dr Lawrence interviewed Mr Sands on 3 March 2004. It was a difficult interview because of Mr Sands’ reaction to questioning. I won’t set out in full what Dr Lawrence reported, but it is important that I spend some time in dealing with her assessment and the results of her interview with Mr Sands. In that interview, Mr Sands apparently said that he still strongly believed that it was his daughter on the film. Dr Lawrence noted that he did appear perplexed when saying that. He said he was still angry about seeing his daughter on the internet pornography site. That is a troubling matter that he has not come to terms with the fact that his daughter was not there. There is no evidence that she was. His belief that she was on that pornographic film is a mistake on his part and possibly the result of some delusion.
- [22] Dr Lawrence also reported a number of matters of concern about conversations the respondent had with his daughter. At paragraph 12.4 of her report, Dr Lawrence reported considerable rigidity of thought processes and of Mr Sands’ belief system. She said that even mild challenges to his system appeared to lead to the ideas becoming more entrenched and increase in his anger and hostility that his beliefs were not accepted. Dr Lawrence gave the opinion that a lot of his statements were unreliable in their veracity, and there were contradictions in the information. His ideas were held with great intensity, and he did not appear to be delusional.
- [23] She reported that he expressed significant sadness and feelings of isolation and aloneness. He had difficulties in controlling his emotions. Dr Lawrence considered him to have intellectual limitations, possibly borderline intellect, and his cognitive processes, including memory, were limited as a result of his concentration and intellectual deficiencies. Dr Lawrence reported many matters concerning his

history. I should say it was not all negative, and there were remarks made about Mr Sands' ability to abstain from alcohol and substance abuse.

- [24] At paragraph 13.20 of her report, Dr Lawrence remarked about denial and avoidance of responsibility for past offences and events at Yarrabah, and that seemed to be characteristic of Mr Sands' method of coping with adversity. She described it as a somewhat primitive but not uncommon coping mechanism. She said that Mr Sands expects others to ignore or forget the past, and he becomes increasingly angry when his wishes are ignored. And that approach to coping with things can only increase the risk of re-offending.
- [25] In short, Dr Lawrence remarked upon the respondent's idiosyncratic and somewhat irrational and inappropriate attitudes, particularly in relation to sexual activity with his daughter. There were some statements reported in the file about his not caring about the consequences of certain behaviour. Dr Lawrence thought that Mr Sands' statements to her during the interview did not suggest that his mental illness of schizophrenia played any part in the events leading up to his contravention. Dr Lawrence was prepared to accept in her oral evidence that it may have played a part.
- [26] Importantly, in paragraph 13.22 of her report, she reported that there was an element of resistance to Mr Sands' sexual approaches to women that he found stimulating and satisfying. There was not enough evidence to suggest a sadistic element, but he did find some extra stimulation in that element of resistance, and Dr McVie reported a similar concerning attitude.
- [27] Dr Lawrence, as did Dr McVie, identified the vulnerabilities in the respondent's personality which give rise to a risk of re-offending if not subject to an order. She identified the anger that besets him and lack of control and thought that, at the time of the contraventions, there was an increased risk to his daughter.
- [28] Importantly, and in terms of looking forward, Dr Lawrence recommended that the respondent complete a sexual offender program for Indigenous males, that he receive individual counselling from a culturally sensitive counsellor to allow him the opportunity to explore his feelings of isolation and rejection by his community and family and to assist him to find more adaptive ways of dealing with his distress. She recommended that he attend anger management courses and also attend literacy and numeracy classes and that he gain assistance in balancing the meeting of his own needs as an independent adult with sharing his resources at the request of others.
- [29] That sexual offender program for Indigenous males can only be completed in custody. Dr Lawrence recommended that he undergo that program and thought that on completion of such a course, his level could again be at such a level that it could be addressed by the imposition of a supervision order and that, over time, it may be possible to relax certain conditions in that supervision order.
- [30] It is important to emphasise that Dr Lawrence did not see this as a case where any continuing detention order should, as it were, continue indefinitely, and that there was little or no hope that Mr Sands' behaviour could be adequately addressed by a supervision order. On the contrary, she thought that the courses that she recommended would, upon completion, place him in the situation where the risk

that he posed could be addressed by a supervision order. And that is a view that I share.

- [31] In her oral evidence, Dr Lawrence helpfully addressed issues concerning access to pornography. On the issue about whether the delusional thoughts were a major contributor to his offending Dr Lawrence thought it is possible that they did, but she thought it was more likely that they were the result of cognitive distortions about women, idiosyncratic problems and generalised attitudes that Mr Sands has towards all women. Dr Lawrence, in her oral evidence, remarked about the possible role that could be played by a community involuntary treatment order, and that upon the making of a supervision order in the future there may be a condition that referred specifically to the making of a community involuntary treatment order.
- [32] Dr Lawrence emphasised in her oral evidence the importance of his completing the high intensity program, and that he needs to address his isolation, lack of family and his disenfranchisement, and for it to reinforce problems of anger management and reinforce the need to avoid substance abuse. Although recognising that perhaps inadequate antipsychotic treatment and his underlying psychiatric illness may have operated in the past in the contravening behaviour, Dr Lawrence still thought that the respondent was beset by sexual preoccupations, and that the matters that fed into the contravention and his bad behaviour go beyond his mental illness.
- [33] Dr McVie gave a report which, again, if I can say so with respect, gave an insightful account into the respondent's mental state. She examined Mr Sands on 21 March 2014. The interview went much better than the one with Dr Lawrence some weeks earlier. She noted that at times he became agitated during the interview. He appeared perplexed, particularly when musing about his daughter and her alleged activities. Dr McVie thought that Mr Sands displayed limited insight into his mental illness. Importantly, she concluded that his judgment was extremely poor, as evidenced by his complete lack of understanding of the deviant nature of his sexual behaviour and his lack of capacity to moderate his description of his thinking in the interview situation.
- [34] She went on to provide a risk assessment which clearly justifies the making of an order whether in the nature of a supervision order or a continuing detention order. She remarked that Mr Sands' social adjustment is very poor, with his history indicating problems with intimate relationships, non-intimate relationships, employment, and non-sexual criminality. She thought that he presented as a person of below average intelligence. He has a history of deviant sexual behaviour and continues to display a callous attitude towards women he sees as actual or potential sexual partners. As I said, Dr McVie thought that his underlying schizophrenic illness may have played a major role in his behaviour.
- [35] Dr McVie concluded that the problems that Mr Sands has, including his schizophrenic illness, combine to make him an extremely difficult management problem because he continues to display a lack of any real understanding of the pathological nature of his sexual urges, the risks he will act on them, or the consequences of such actions on others. And she did not think that he presently had any realistic plans for the future although he speaks of getting a job as a station hand at Richmond.
- [36] Against that background, Dr McVie recommended:

- (1) psychological testing to clarify the nature of any intellectual disability as this may impact on ongoing management;
  - (2) review of his mental illness and consideration for involuntary mental health treatment;
  - (3) continuation of specific treatment for his sexual deviancy with a high intensity sex offender treatment program;
  - (4) a long-term engagement in a sexual offender maintenance program as well as individual support and counselling;
  - (5) he should continue in some drug alcohol program; and
  - (6) he should receive culturally sensitive counselling to assist him to reintegrate into his preferred Indigenous community.
- [37] Dr McVie also thought there should be a formal assessment of his need for anti-libidinal medication including testosterone levels. He would benefit from an anger management program, and he needs to remain abstinent from alcohol. He has to undergo programs to assess his suitability for employment.
- [38] So Dr McVie thought that he requires intensive supervision and support by both corrections and mental health services. Continued compliance with the mental health treatment program will be an essential component to decrease the risk of recidivism. And she recommended that he been seen regularly by a psychiatrist with extensive experience in assessment and management of sex offenders.
- [39] In her oral evidence, Dr McVie reiterated the difficulties that Mr Sands faced and his obsessive reference to sexual conquests. Dr McVie could not be sure whether his account of having had sex with numerous adult women over his time in the community was reliable or whether it was some form of bragging, as it were, to convince her that he was not a risk of committing sexual offences against women let alone children in the community because he had little trouble having sexual partners. In any event, she remarked upon his incredibly high obsessive reference to sex. This underlined her recommendation that he undergo some formal assessment for anti-libidinal medication. And I expect that that recommendation will be acted upon.
- [40] It will be for others at a future date to address whether under any future supervision order include an order of the kind that originally appeared in the supervision order made on 10 January 2011 for the respondent to not access pornographic images on a computer or on the internet or in any format. It is a vexed question, and as both Dr Lawrence and Dr McVie explain it may be that some access to certain kinds of pornography may be part of Mr Sands' treatment under programs. Access to some form of pornography – certainly not any kind of violent pornography - may be recommended if he is in the community. These are vexed questions which others will need to address when the time comes. For my part, and it is only a passing opinion, it would seem to me to be an obvious danger that Mr Sands could access violent pornography over the internet. And one would think any access to pornography of any kind should be controlled in terms of its content and the

circumstances in which he has access to it. But that is for others to form a more considered view about.

- [41] I turn, then, to Dr Simpson who has been treating Mr Sands. She has seen him since he returned to custody in October 2013. She last saw him in February this year. She was supposed to see him last week but he did not attend, which is a matter of concern in itself. Dr Simpson expresses the opinion that overall Mr Sands appears to have limited insight into the need for his ongoing treatment with mental health services. In her opinion, he will default from treatment without assertive community follow up by mental health services. Given his limited insight, he may require the use of an involuntary treatment order in the community to ensure his compliance.
- [42] She notes that although he has been a voluntary patient since 2009 this has mainly been in custody. She also expresses the opinion that a lot of his sexual preoccupations stem from his psychotic experiences in terms of auditory hallucination and delusional beliefs and that his risk of re-offending is increased if he is not having regular psychiatric treatment. Dr Simpson considers that if Mr Sands was to be released into the community then serious consideration should be given to placing him on a community involuntary treatment order under the Mental Health Act and ensuring that the receiving mental health service put in place a robust plan for assertive and intensive community follow up.
- [43] Mr Phelan is a very experienced psychologist. He is highly qualified and currently a PhD student. He has gained more than 3,000 hours of experience of clinical endeavours with adult male sexual offenders. The community is lucky to have people like Mr Phelan working in this field. I benefited from his affidavit and from his oral evidence. Drawing upon the recommendations of Dr Lawrence and Dr McVie, he gave evidence about the sexual offender program for Indigenous males. It is a high intensity program that is specifically designed to accommodate cultural, custom, and language considerations relevant to Indigenous offenders. It equates to between 114 and 351 hours of treatment. It varies. It might consist of three sessions of three hours per week.
- [44] Mr Phelan thought that Mr Sands would need to be in the program for between nine and 12 months. How long that will be will depend upon his progress. The program facilitators and Mr Phelan will work with Queensland Mental Health to try and stabilise his mental health and make plans for employment and life skills and day to day emotional regulation and also work with cultural advisors to address his past, present, and future. The program is designed to improve his life skills, his ability to communicate. Obviously this is a complex case of working with the respondent with his treatment needs. The program is run at Lotus Glen Correctional facility and the respondent has agreed to undergo assessment and intervention. It is hoped that that program can start for him fairly soon, his having been in custody now since October.
- [45] Mr Phelan identified that that program is in small segments. It is purposely designed to challenge certain core beliefs and antisocial behaviours. I have some confidence from Mr Phelan's evidence about the fact that that program will not be administered in isolation and will be part of a plan for the respondent to progress into the community with support from Mental Health Services and ideally some form of employment arranged through Corrective Services.

- [46] The applicant, unsurprisingly against the background that I have noted, submits that the respondent is unable to satisfy the Court on the balance of probabilities that adequate protection of the community can, despite the contravention, or likely contravention, be ensured by a supervision order. Reliance is critically placed upon the medical reports that I have summarised which indicate that the respondent has very little or no insight in relation to identification of risk or, for that matter, in relation to his offending, and that it would be prudent for him to undertake the programs that I have mentioned whilst in custody. Neither of the high intensity programs are conducted in the community.
- [47] As I noted, the respondent does not submit that he is able to satisfy the Court on the balance of probabilities of the matters stated in section 22(2). Notwithstanding that concession, I remind myself that a continuing detention order is an extreme measure and should only be made if I am satisfied that the onus under section 22(2) has not been discharged. I have to remind myself, after all, that the respondent's past sexual offending was as I have described it. Whilst persistent, it was at a relatively low level. I have to remind myself that the contraventions were triggered in the unfortunate circumstances that I have mentioned. Through some delusion or other cognitive impairment, after viewing certain pornography, he convinced himself that his daughter appeared in it. That seems to have triggered the matters that I have earlier mentioned and the understandable response of the authorities that he should not be permitted to go to Yarrabah whilst she was there.
- [48] I also have to remind myself before making a continuing detention order that the respondent has under the existing supervision orders been able to abstain from substance abuse and that a supervision order, if made, could go hand in hand with a community order made under the Mental Health Act which would reduce the risk of re-offending. Notwithstanding the concession, I have to consider whether the onus has been satisfied. I am reasonably satisfied that, with the kind of assistance that might be arranged in the community and a community involuntary treatment order, that the risk of further offending could be reduced.
- [49] But presently – and I emphasise presently – I am not satisfied that it can be reduced to an acceptable level. And so with some hesitation, given the background that I have earlier mentioned of some reasonable performance under the supervision order, I am persuaded that I am bound to make a continuing detention order under section 22(2).
- [50] Although I have had some hesitation in making that continuing detention order, I think, if I had a discretion in the matter, I would exercise my discretion in favour of making a continuing detention order at present. That is because the respondent needs greater support and preparation for release under a supervision order. He needs support particularly to gain greater insight into his unacceptable behaviour in the past. He needs treatment that challenges ingrained beliefs, and he needs treatment and programs that will help him address his anger management.
- [51] It might be thought the fact that he has already done one high intensity sexual offending program may make it somewhat futile to undergo another. I do not think that is necessarily the case. The respondent has shown poor judgment and has a number of difficulties. It is no bad thing for him to have to repeat a program. After all, some ordinary students in the education system have to repeat grade 12, and the

fact that someone has failed grade 12 once does not mean they are going to fail grade 12 again.

- [52] Here we are dealing with far more serious matters and I think for the reasons that have been advanced by the doctors and by Mr Phelan it is very important that he undergo a high intensity sexual offending program that is adapted to his particular circumstance. If I had a discretion in the matter, then I would have to wonder exactly how any substitute could be formulated under a supervision order where the kind of program is not conducted in the community. If I was to make a supervision order today, I expect Mr Sands would end up in a precinct in either Wacol or Townsville where he would not have the advantage of the program that he is going to undertake. He may languish in one of those precincts for a long time.
- [53] Instead, I expect he will remain at Lotus Glen Correctional Centre and transition to a supervision order with suitable accommodation, ideally some form of gainful work or other employment, and there will be steps taken for him to have linkages and support in the Indigenous community. So although, in the circumstances, under section 22(2) I do not have a discretion in the matter, I consider that Mr Sands' rehabilitation and the protection of the community are advanced by his remaining at that institution and his undergoing the programs that I have identified, and that the authorities act on the various recommendations that have been made by Dr Lawrence and by Dr McVie.
- [54] Although, under the Act, the form of order which I must make is one that is described as being for detention for an indefinite term, that should not be misunderstood. Under the Act, a continuing detention order, which is the form of order that I am bound to make in circumstances where the respondent has not discharged the onus under section 22 has to be made for an indefinite term. That does not mean that I expect that the continuing detention order will, as it were, go on forever.
- [55] Indefinite simply means indefinite. I cannot make a continuing detention order for six or 12 months. However, for the reasons that I have already given, I expect that if matters proceed as expected, Mr Sands will complete the program in the next nine to 12 months and will have completed it by the time of the annual review of the continuing detention order.
- [56] Despite the concession, I must say that this is something of a borderline case and, notwithstanding my reluctance to make a continuing detention order, I think the only order that I am authorised to make in the circumstances is a continuing detention order. I should emphasise that it is my expectation that, with the treatment and other programs that are planned and in accordance with Dr Lawrence's expectation that in 12 months time the respondent's behaviour could be at such a level that his risk could be addressed by the imposition of a supervision order with requirements similar to those currently imposed and a condition that he be subject to a community order under the Mental Health Act.
- [57] It seems to me that the prospects of Mr Sands' long-term compliance with a supervision order will be enhanced by the treatment that he is going to receive under the programs that he is about to embark upon. Unless and until he undergoes those programs, I cannot be satisfied that adequate protection of the community can, despite the contravention, be ensured by the existing order.

- [58] I should also say that although, in terms, the order is that he be detained in custody for an indefinite term for care, control, and treatment, the element of treatment is at the forefront. The continuing detention order is also necessary for his care in the sense that he needs care, given his mental health problems. It is also needed, to some extent, to control the risk of his reoffending during the kind of episode developed that developed last October. But, primarily, Mr Sands needs treatment. Treatment will address some ingrained attitudes and, notwithstanding his problems with intelligence and problems in confronting matters in his past, will give him a better prospect of complying with a supervision order when the continuing detention order comes to be reviewed.
- [59] For these reasons, I intend to make an order in terms of the amended draft.