# SUPREME COURT OF QUEENSLAND

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| CITATION: | *Attorney-General for the State of Queensland v BRJ* [2014] QSC 168 |
| PARTIES: | **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**<br>(applicant)<br>**v**<br>**BRJ**<br>(respondent) |
| FILE NO: | BS 1894 of 2014 |
| DIVISION: | Trial Division |
| PROCEEDING: | Application |
| ORIGINATING COURT: | Supreme Court of Queensland |
| DELIVERED ON: | 29 July 2014 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 21 July 2014 |
| JUDGE: | Daubney J |
| ORDER: | **There will be a supervision order pursuant to s 13 (5)(b) of the Act, in the terms set out in Annexure A to this judgment.** |
| 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 applicant seeks a Division 3 order under the *Dangerous Prisoner (Sexual Offenders) Act* 2003 (Qld) – where the court may order a continuing detention order or a supervision order pursuant to s 13(5) – whether a supervision order would ensure the adequate protection of the community pursuant to s 13(6) of the *Dangerous Prisoner (Sexual Offenders) Act* 2003 (Qld)<br><br>*Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld), s 13, s 15, s16<br><br>*Attorney-General (Qld) v Francis* [2007] 1 Qd R 396; [2006] QCA 324, relied on |
| COUNSEL: | K Philipson for the applicant |

R East for the respondent

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

[1] This is an application by the Attorney-General for a Division 3 order to be made pursuant to s 13 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) ("the Act").

[2] The applicant contends that the Court should make a continuing detention order.

[3] Counsel for the respondent conceded that, on the evidence, the Court could be satisfied that the respondent is a serious danger to the community in the absence of a Division 3 order,[1] but submitted that it was appropriate in this case for a supervision order to be made.

[4] The following summary of the respondent's background, his criminal history, the circumstances of the index sexual offences, his family and relationship history, his drug and alcohol history, his medical and psychiatric history, the background of events during his time in prison, and his participation in programs was not in issue before me.

**Criminal history**

[5] The respondent has a Queensland criminal history dating back to 1974. Most notably, he has been convicted and sentenced on five occasions for numerous offences of a sexual nature.

**Previous conviction of a sexual nature (Offence occurring after index offences)**

[6] On 23 April 1991, the respondent was convicted in the District Court at Kingaroy for an offence of rape and sentenced to five years imprisonment. The female victim was 14 years old and the respondent was 32 years old at the time and both were known to each other.

[7] On the day of the offence, arrangements had been made for the respondent to collect the victim and two other males after horse riding and drive them to Murgon where the victim would be collected by her parents.

[8] Prior to leaving the property, the respondent and another male decided to go shooting. While they were gone, the victim and her boyfriend, who is the respondent's nephew, had sexual intercourse. This was the first time the victim had ever had sexual intercourse. When the respondent returned to the van he opened the rear doors and saw the victim and her boyfriend having sexual intercourse or in a semi-naked state shortly afterwards. Nothing was said at this time.

[9] Shortly after leaving the property, the respondent stopped the van and got out with the other occupants. The victim tried to leave but the respondent grabbed her forcing her into the back of the van. She was screaming and trying to push him away. Nobody heard her. The respondent had sexual intercourse with her in the rear of the van. She cried throughout and stated she could not do anything because he was a lot bigger than she was.

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1 *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld), s 13(1).

[10] The victim did not disclose the incident to her parents as she was in trouble for being late home. However, when the incident did come to her mother's attention, the victim's mother contacted the respondent who denied the offending.

[11] The learned sentencing judge on this occasion said:

> "Having witnessed the earlier incident, I accept that you might have readily believed that she might have been a willing party to an act of intercourse. However, after she refused your initial request, it had to be obvious to you that she was not consenting. I am satisfied the limited resistance she offered was as a result of the isolated position where the act took place and your over-powering physical strength.
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> … The other males present at the time were teenagers and I have little doubt that you influenced them in leaving the van in order that you could take advantage of the complainant.
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> … I accept that this is an isolated incident on your part and your involvement in it was precipitated by you becoming aware of the earlier act of intercourse between the complainant and [MS]. However, the age discrepancy between you and the complainant and the abuse of the trust and protection that the complainant should have been able to expect from someone your age are aggravating features of the offence."[2]

**Index Offences**

***Conviction on 30 May 2001***

[12] The respondent was convicted and sentenced in the Kingaroy District Court on 30 May 2001 to a head sentence of 10 years imprisonment for five counts of assault with intent to have carnal knowledge against the order of nature, four counts of carnal knowledge against the order of nature, incest, five counts of indecent treatment of a girl under 14 years, attempted carnal knowledge against the order of nature, deprivation of liberty, indecent treatment of a boy under 14 years and unlawful assault. The respondent was eligible for parole after serving four years of that sentence.

[13] The four victims were inter-familial relatives. The offences occurred over an extended period of time between 1972 and 1989, a 17 year period where the respondent was between 14 and 31 years of age.

***Offences against JB***

[14] The respondent was between 14 and 15 years of age at the time he committed the first offence against his nephew, JB, who was five years old. The victim was home from kindergarten due to illness and left in the care of the respondent while his grandmother went out.

[15] The respondent entered the victim's bedroom and forced the victim down so that he was lying face down on the bed. The respondent removed the victim's shorts and forced his legs apart. He pinned the victim down with one hand, spat on his free

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2 Exhibit ZR-10 (pp24 to 25) to affidavit of Zoë Rutherford (CFN 8).

hand and inserted his fingers into the victim's anus. He then had anal intercourse with the victim before ejaculating on the victim's back and bottom.

[16] The victim experienced severe pain in his bottom and stomach and when he touched his bottom he saw his hand was covered with blood, faeces and semen. The respondent told the victim to shower and clean up, including disposing of the stained bed sheets. He threatened that if the victim did not stop crying he would tell his Nan of the things that the victim forced him to do to him.

***Offences against CFB***

[17] Between 16 and 18 years of age, the respondent committed a number of offences against his sister, CFB, who was between 12 and 13 years of age. The victim was asleep in her bedroom when she was woken by the respondent undoing her shorts. The light was on and she shared this bedroom. She pretended to remain asleep as she was scared. The respondent proceeded to remove her shorts, open her legs and inserted his penis into her vagina. He had sexual intercourse with her until he ejaculated. He then pulled her shorts up and left the bedroom.

[18] Two nights later the victim was again asleep when the respondent came in, put his hand in her underwear and touched her vagina. The respondent left the bedroom when the victim sat up.

***Offences against CRB***

[19] Between 16 and 18 years of age, the respondent offended against his five year old niece, CRB. On the night of the offence, he carried her out of the house to the front stairs. The victim woke up while he was moving her. He sat her on his lap, and after taking his penis out he made her masturbate him until he achieved an erection. This continued until the victim heard someone moving inside and started to cry. The respondent carried the victim back to her bedroom. The following day he told her that if she mentioned anything she would never see her Nan and Pop again.

[20] A few years later, the victim, who was now about seven or eight years old, was home from school. She was in the care of the respondent while her grandmother went out. The respondent closed the doors to the house before carrying the victim to his bedroom where he laid her face down on his bed and removed her pants. He rubbed his penis on her bottom, without penetrating her anus, until he ejaculated. As the victim was crying he put his hand over her mouth and told her to stop.

[21] A few months later the family moved. The victim stated that late one night the respondent carried her from her bedroom to his bedroom. He removed her pants, spat on his hand and rubbed it onto her backside where he repeatedly tried to penetrate her anus with his penis. The victim kept crying due to the pain so he put his hand over her mouth. Eventually he took the victim back to her own bedroom. He moved out of the house a few months later.

[22] When the respondent was between 21 and 23 years of age, he requested that the victim, who was about nine or 10 years of age, go to his house. When the victim arrived, she saw him lying on his bed with his erect penis exposed. He told her to come over as he wanted to give her a birthday present. She initially refused but

went over after he started yelling at her. He placed her hand over his and made her masturbate him. He then pulled her head down towards his penis. The victim tried to keep her mouth shut but was yelled at to open it. The respondent forced her to give him oral sex. After some time he pulled her away and laid her face down on the bed where he removed her pants. The victim was crying at the time and he told her to stop or she would not see her Nan and Pop again. He rubbed Vaseline over her backside and inserted his penis into her anus. The victim screamed in pain but he did not stop. He put his hand over her mouth and had anal intercourse, at first slowly and then really hard. He withdrew his penis and ejaculated on the victim's back. She was in extreme pain and bleeding from her anus. The respondent told her not to tell anyone.

[23] Between 22 and 24 years of age, the respondent again assaulted this victim who was now 11 years old. On this occasion, she was home alone when the respondent arrived and invited her to go shooting. She went with him and once they were in bushland he bent her over a tree and held her whilst he pulled her pants off. When the victim screamed 'no' the respondent held her down and masturbated until he ejaculated onto her back. He then placed his penis which was still erect inside her anus and held her down while he had anal intercourse with the victim. After some time, he stopped and after resting told the victim they were leaving. The victim could barely walk due to the pain and discovered when she got home that she had been bleeding.

[24] The final offence against this victim occurred when the respondent was between 29 and 31 years of age. The victim was between 17 and 18 years of age and had returned to Cherbourg for the funeral of her Nan. After the funeral, the respondent and victim were asked to collect something from another house. Once inside this other house, the respondent fondled the victim's breasts. She pushed him away and told him never to touch her again.

***Offences against SSB***

[25] When the respondent was about 19 or 20 years of age, he offended against his nephew, SSB, who lived near him in Cherbourg. The victim was almost six years old. He was on school holidays and playing in the house with his cousins. When his cousins left the room, the respondent grabbed the victim and shut the door. He pulled the victim's shorts down and tried to pull him backwards onto his penis. The victim refused to move. The respondent held him face down on the bed and had anal intercourse with him while fondling the victim's penis. This continued for approximately five minutes before the respondent masturbated in the corner of the room. The victim was crying and could hear his cousins trying to get in but the respondent would not open the door and kept yelling at them to 'fuck off'. When he finished, he then pulled the victim's pants up, told him not to cry and let him leave.

[26] The respondent refused to participate in a police interview.

[27] In sentencing, Judge Robertson stated:

> "The first series of offences, counts one and two, against [JB] occurred when you were about 15 years of age …

JB was about five. He was at kindergarten when those offences including forceful sodomy occurred. The offences involving [CFB] who is your sister, occurred when she was approximately 12 or 13. She was a virgin and she was your sister. [JB] is your nephew in European terms. [CRB] and [SSB] are your closer relatives and I take into account and accept that in the aboriginal community those relationships are as important and as vital to the community as blood relationships in the wider Australian community.

Your sexual abuse of [CRB] which was extensive and prolonged commenced when she was a child of five and you were 17 or 18 and your abuse of [SSB] commenced when he was almost six and you were 19 or 20. The victim impact statements are powerful testament to the harm that you've caused all of them, no doubt, the harm that you've caused in the community. [SSB's] statement to me shows that he has a lot of insight, but he is very angry and very disturbed and similarly with [CRB]. I've often described this sort of conduct as similar to introducing a contagion into the community because it reaches out and effects many, many innocent people for years into the future.

[CRB] suffered appalling abuse at your hands, that's the only way to describe it, and counts 14 to 16 occurred when she was nine or 10 and you were in your early 20s and involved forceful sodomy which caused her intense physical pain. It is accepted on your behalf by Mr Thompson that the offences involving [CRB] were not isolated incidents. Your conduct can only be described as appalling, predatory conduct involving serious breach of trust, involving offences against very young and innocent family members which has had a devastating effect on them. …

I take into account the efforts that you've made since 1999 to address your problem. The report tendered on your behalf from Dr Kingswell indicates that you are a paedophile, you suffer from paedophilia, and of course your criminal history contains that entry on 23 April 1991 when you were convicted in this Court of a rape of a 14 year old girl. I have regard to what Judge Hoath said. That was, of course, a violent crime and was opportunistic.

Because you are a paedophile then, of course, in the future you have to carefully monitor your own conduct … it's probably necessary for you to remain in some form of therapeutic relationship for the rest of your life to ensure that you do not offend against any other children. Having said that, there's no evidence that you've offended since the incident in 1991. …

I recommend that whilst in custody you undertake the sexual offenders treatment program …"[3]

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[3] Exhibit ZR-12 (pp.60 to 66) to affidavit of RZ (CFN 8).

***Conviction on 9 September 2003***

[28] Further offences subsequently came to light and on 9 September 2003 the respondent was convicted and sentenced in the Maroochydore District Court to a period of 10 years imprisonment on each of the four offences of rape. These terms of imprisonment were concurrent with the terms of imprisonment already being served. The respondent was eligible for parole on 30 May 2006.

[29] The two female victims were his nieces.

***Offence against KB***

[30] KB was diagnosed with brain damage when she was two-and-a-half years old but functions relatively well. When she was about eight years old she suffered burns to 80 per cent of her body. At the time of the offence the victim would have been about seven or eight years old and living in Cherbourg with her grandparents, her older brother JB and older sister CRB (victims of the offending dealt with in 2001). The respondent was about 27 years of age and lived in the same house.

[31] On the day of the offence, the victim came home from school as she was unwell. She was left in the care of the respondent while her grandmother went out. The victim was asleep in her bedroom when she was woken by the respondent. He was on top of her and touching her, specifically rubbing her vagina and breasts with his hands and penis.

[32] He undressed the victim and she told him "not to take her clothes off as it wasn't nice". The respondent got undressed and commenced having sexual intercourse with her. She said that she could not move with him on top of her and that she was in extreme pain. When she tried to call out for help, the respondent put his finger in her mouth and told her not to tell anyone or he would do it again. She said that the sexual intercourse lasted for about twenty minutes and stopped when he heard a noise in the house. This was the victim's brother JB returning home for lunch. He saw the respondent having sexual intercourse with the victim and that she was crying. He said that he did not know what to do and went outside and made some noise.

[33] When the victim's grandmother arrived home, the victim was visibly upset. The grandmother saw that there was blood on the victim's sheets and made her go for a salt bath to ease the pain. The victim's grandmother nursed the victim but nothing was ever said about what happened until 1997 when JB told police what he saw. The victim provided a statement however the complaint did not proceed at this stage.

***Offences against PC and KB***

[34] In 2002, a further victim PC made a complaint regarding an incident in Yeppoon in 1981/1982, which also involved KB. Both victims were about nine years of age. The two victims and a third girl, SMB, were left in the care of the respondent and told to have a sleep. He told PC and SMB to sleep in the lounge room while KB was told to go to his bedroom. Once in the bedroom, the respondent told KB to

remove her underpants where he penetrated her just past the labia majora. When the victim became upset the respondent stopped and took her out of the room telling the other girls that she had been misbehaving and had to sleep in the lounge room.

[35] He then took PC into the bedroom. She was only wearing a bikini and he took the bottoms off and played with her while telling her that everything was alright and that this was normal. He took his pants off and held both of victim's hands above her head while using his other hand to open her legs. When she started to scream he covered her mouth until he finished having sexual intercourse. She stated that she felt a lot of pain. The respondent threatened to kill her if she told anyone. Afterwards, he told her to go out to the lounge room for a sleep. She saw that SMB was comforting KB before she was called into the room. There was no complaint in relation the offending against SMB at this time.

***Offence against PC***

[36] The last offence against PC occurred when she was about 13 years old and living in Murgon. She went to her aunt and the respondent's house for the night to help them clean. Later that night the respondent dropped her aunty at bingo while she looked after their two girls. When the respondent returned home he went to watch television while the victim went into sleep with one of the children. She was wearing a nightie and underpants. When she woke up she could feel a breeze and saw that her underpants had been pulled down to her ankles and the respondent was sitting on the floor playing with her breasts. The victim tried to pull her pants up and get away from the respondent but as she struggled the respondent stood up and held her down. The victim saw that he was only wearing a shirt and that his penis was erect. He turned the victim over onto her stomach, pulled her legs apart and held her down with his body weight while he had sexual intercourse with her. She said that the sex did not last long and when the respondent had finished he told her not to tell anyone. When the victim said that she was going to tell, the respondent took her to his room threatened to kill her while repeatedly hitting her on the legs with his belt, leaving marks.

[37] The respondent refused to participate in a police interview.

[38] The learned sentencing judge in this case said:

> "[BRJ], I do not intend to repeat what I said you on 30 May 2001. You are a paedophile. The evidence placed before me by a psychiatrist on your own behalf clearly establishes that. That would have been obvious from the conduct to which you have admitted. It was appalling predatory conduct of the most destructive kind. I doubt whether any of your victims will ever truly recover fully. It leaves a trail of misery, of pain and suffering. …"[4]

***Conviction on 27 October 2003***

[39] On 27 October 2003, the respondent was convicted and sentenced in the Maroochydore District Court to a period of 10 years imprisonment for each of the

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4 Exhibit ZR-14 (pp90-94) to affidavit of RZ (CFN 8).

three offences of carnal knowledge against the order of nature. These terms of imprisonment were concurrent with the terms of imprisonment already being served. The respondent was eligible for parole on 30 August 2006.

[40] The victim was his nephew, CH, who was nine to 10 years of age at the time of the offending. The victim was living with his grandmother in Cherbourg for about a year.

[41] The respondent entered the bathroom as the victim was getting out of the shower. The victim was only wearing a towel around his waist. The respondent hit the victim to the head area and forced him to the ground. He penetrated the victim's anus which caused him extreme pain. The victim stated that he had anal intercourse until ejaculation. Afterwards, the respondent threatened to kill the victim if he told anyone.

[42] The next offence against the victim occurred in the outside toilet. The respondent entered the toilet while the victim was in there. He made the victim bend over the toilet while he penetrated his anus from behind causing pain. The respondent had anal intercourse for a period of time before withdrawing. The victim could not say if the respondent ejaculated on this occasion. Again, the respondent hit the victim to the head and made threats to kill him if he told anyone.

[43] The last offence occurred the night before the victim was to return to Brisbane. He was asleep in the lounge room with his brothers. He woke up to find that the respondent had pulled his pants down and was behind him with a knife to his throat. The respondent forced the victim to his hands and knees and penetrated his anus from behind. When the victim screamed from the pain, the respondent withdrew and walked out onto the veranda. The victim's mother woke up and approached the respondent who made a threatening gesture towards the victim by drawing his finger across his throat.

[44] The victim did not tell anyone about the offending until 2000 when he told his grandmother and mother. The respondent admitted to the anal intercourse as particularised.

[45] The same sentencing judge on this occasion said:[5]

> "[BRJ], I will not repeat now what I have said to you on two occasions. …
> I am satisfied that there would be a substantial risk that you may, after your release, commit offences of a sexual nature on children…"

***Conviction on 8 February 2007***

[46] On 8 February 2007, the respondent was convicted and sentenced in the Kingaroy District Court to a period of seven years and six months' imprisonment for the offence of rape against SMB whilst she was in Yeppoon in 1981/1982. The respondent was eligible for parole on 30 September 2007.

[47] The circumstances of this offence arise from the same circumstances as the offending the respondent was sentenced for on 9 September 2003. It was not until the respondent was convicted for the offences against KB and PC that this victim was willing to make a statement.

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5 Exhibit ZR-15 (pp95-96) to affidavit of RZ (CFN 8)

[48] This victim was five years old at the time of the offence. When he called her into the bedroom he told her to close the door. She saw that all of the curtains were closed. The victim resisted when the respondent grabbed her and pinned her down on the bed. He removed her bikini bottoms, opened her legs and inserted his penis into her vagina and had sexual intercourse with her. The victim was crying and screamed so he shoved his fingers into her mouth. The victim bit his fingers so he squeezed her lips together. The victim could not recall if he ejaculated but at some point he stopped and told her to get out. She put her bikini back on and went out where KB and PC asked her what happened. The respondent threatened to kill her if she told anyone.

[49] After the offending, the respondent made the victims have a shower together. The victim and KB were bleeding. The respondent reinforced the threat to kill if they told anyone and brought them all ice-creams after lunch.

[50] The learned sentencing judge said:

> "This matter to which he has pleaded guilty today is another one in a litany of rape and other sexual offence cases for which he has been before the Court in the past. … In all but one of the cases the children were very young. …
>
> It is very difficult to know what a Judge may have done, had he been aware of this further rape of a five year old female relative at the same time as the rapes of the other two girls at Yeppoon, who were approximately, I think, eight or nine years of age at the time.
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> Judge Robertson, in his sentencing remarks on the occasions I referred to, has summed-up pretty succinctly the disgraceful and disgusting nature of these offences. They were violent. They were utterly selfish. They did untold damage to these children."[6]

**Family and relationship history**

[51] The respondent lived most of his life in a large pro-social family but reported that a family friend sexually molested him when he was a very young child and that caused him some sexual identity confusion. He had multiple partners before settling with his wife with whom he had seven children (varying in ages from 14 to 30) and he had three or four or possibly more with other women (from seven to 13 years of age). He has reported having contact with two sons and two daughters.

**Drug and alcohol history**

[52] The respondent reported that his use of alcohol began when he was 17 years of age and was mainly on weekends. He indicated that it never reached the point where it has caused a problem. He claims that he used cannabis from about 24 to 35 years of age. He has denied any other drug use and states he is not prone to prescription drug abuse.

**Medical and psychiatric history**

[53] In 1999, the respondent sought treatment for anxiety and stress. He was prescribed psychotropic medication and in 2000 was referred to Dr Brian Kirkup, psychiatrist, for assessment and management of anxiety and depression.

[54] Since being charged for the sexual offences, the respondent reported receiving death threats from friends and family. He reported feelings of fear and distress at being separated from his wife and children. He was prescribed anti-depressants and sedatives, in addition to counselling, which successfully reduced his symptoms.

[55] The respondent has diabetes and is medicated for that, blood pressure and cholesterol. The respondent recently underwent an operation on an abscess on his tailbone.

**Events in prison**

[56] The respondent is has been incarcerated at Wolston Correctional Centre throughout this period of imprisonment. He is held in a high security section. The respondent's general conduct and behaviour is acceptable. Case notes indicate that he is polite, compliant, maintains his cell and personal hygiene to a satisfactory standard, gets along with his peers and goes about his daily routine without disruption to others. He has one breach of discipline on 30 August 2004 for entering another offender's cell without permission.

[57] He has maintained employment in a variety of areas and is currently employed in the kitchen where he has worked for the past five years and is performing to the expected standard.

**Programs**

[58] It was recommended that the respondent complete a number of educational and sexual offender programs to address his criminogenic needs.

[59] On 18 April 2005, the respondent completed the Cognitive Skills Program. The exit report dated 22 July 2005 indicated that although he was a willing participant who was amenable to gaining familiarity with the concepts involved, he "did not specifically address the details of his offending behaviours and described the emotions, feelings and suffering of his victims in general terms".

[60] The report also notes that the respondent was unable to explore the rationale for his offending behaviour and related impact to a significant level, and that cognitive distortions were evident particularly relating to minimisation of his offences. He was unable to identify reasons for his offending cycle or any predisposing factors associated with his offending behaviour.

[61] On 11 October 2007, the respondent was interviewed regarding his suitability to participate in a sexual offending program. On the Static-99 assessment, he received a score of 3 placing him in the moderate to low category. On the Stable-2000 assessment, he was assessed as having moderate intervention needs in relation to his sexual offending. Assessors noted that the respondent did not appear emotional

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6 Exhibit ZR-17 (pp113-117) to affidavit of RZ (CFN 8).

throughout the interview or willing to provide information that might be perceived as incriminating. He had limited understanding about the effect of his behaviour on his victims despite expressing an acceptance of responsibility for his actions. The respondent expressed motivation to participate in an indigenous sexual offending program. It was recommended that he undertake the Getting Started: Preparatory Program ("GS:PP") and the Indigenous Medium Intensity Sexual Offending Program.

[62] The respondent has been interviewed on the following five occasions regarding his participation in the GS:PP:

(a) On 26 October 2007, the respondent indicated that he did "not want to attend any sexual offender program with non indigenous sexual offenders and he believes it culturally inappropriate".

(b) On 25 January 2008, the respondent indicated a willingness to participate in the preparatory program with other indigenous offenders at Lotus Glen Correctional Centre.

(c) On 4 November 2011, the respondent indicated that he would be prepared to undertake the program if it was culturally specific. As a result, on 10 November 2011 arrangements were made to transfer the respondent to Lotus Glen Correctional Centre for program participation. On 23 February 2012, the respondent requested that this transfer be cancelled stating that his children planned on visiting regularly and did not want him to be so far away.

(d) On 7 January 2013, the respondent stated that he was not willing to participate in the program at this time.

(e) On 4 December 2013, the respondent stated he did not want to participate in the program and declined to provide a reason.

**Parole**

[63] The respondent became eligible for parole on 30 September 2007 but has not made an application for parole.

**Psychiatric evidence**

[64] The respondent has been examined by three consultant psychiatrists, Dr Michael Beech, Dr Rob Moyle and Dr Donald Grant. Each of the psychiatrists provided written reports. Dr Beech and Dr Moyle also gave oral evidence before me.

***Dr Beech***

[65] Dr Beech examined the respondent on 2 May 2014. His report is dated 30 June 2014. Dr Beech's report includes a detailed recitation of the respondent's background and personal history, as related to him by the respondent, as well as details of the respondent's employment history and relationship history. The report addresses, amongst other things, the respondent's account to Dr Beech of the various offences for which he had been convicted, and also described his current circumstances in prison.

[66] After reviewing other reports and material made available to him, Dr Beech commenced his summary of the respondent's circumstances saying:

> "[BRJ] is a 56 year old divorced Indigenous man who was convicted in 2001 and again in 2003 and 2007 for historical violent sexual offences against child members of his immediate and extended family. Those offences had occurred in the home settings often when the child was in his care. They spanned a considerable period of time between 1972 and 1989, when he was aged between 18 and 35 years, although in reality the offending had probably commenced earlier. They involved significant coercion and many seemed to have been particularly callous and brutal. Some offences, particularly with his younger sister, were extensive and prolonged, and seemed to have been predatory, while others seemed to have been opportunistic.
>
> [BRJ] has tended to truncate or perhaps minimise the duration of the offending and to deny that some of it occurred. He has indicated that some of it occurred while he was between adult partners but in effect there does not seem to have been any particular break in the offending period that occurred throughout his adult relationships and during his marriage.
>
> His offending first came to light in 1990 when he raped a teenage female family friend. Unlike the others she was probably a bit older, was not related, and was not indigenous. He was convicted in 1991, released on parole and then remained in the community until 1998 when he was arrested for the earlier offences. He remained in the community on bail from 1998 until he was sentenced in 2001. This is in my opinion a significant factor because it indicates that once he was charged in 1990, his offending ceased despite time and opportunity in the community. I think that the 1990 rape was an indication that his offending was starting to escalate, or at least to move beyond the bounds of family and children, but his offending was then held in check. This gives significant credit to reducing his risk of re-offending on release now."[7]

[67] Dr Beech said that on the Hare Psychopathy Checklist (Revised), he gave the respondent a score of 12/40, which was much lower than the score of 19/40 allocated by Dr Grant. Neither of those scores indicates psychopathy. Dr Beech continued:

> "I consider that he has the sexual deviance of Paedophilia. It is both homosexual and heterosexual Paedophilia, but he is not exclusively attracted to children and he has been married and sired children in a long term adult relationship. His last offence was for the rape of a recently sexually active teenage female. I cannot see that the violence he has used has been anything than a means of coercing compliance as distinct from sadism.
>
> In prison his behaviour has been fairly good. He has worked although he has not that I can see continued to support his family, or in fact to have maintained much contact with them. He has not though completed any programs that would have directly addressed his offending.
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> He has some insight into the causes of his offending and he cites his own sexual abuse as having distorted his beliefs and caused some sexual confusion in adolescence. This may have been a factor in its instigation but in my opinion it does not explain its persistence. He is likely to have

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7 Report of Dr Michael Beech dated 30 June 2014, p 19.

> harboured views of sexual entitlement that were self-serving. He continues to minimise the extent of the offending but there is nothing that indicates thoughts that condone it. I think that he actually has little in the way of genuine victim empathy, but he accepts the wrongfulness of his behaviours."[8]

[68] Dr Beech noted in his report that, whilst the respondent had declined to participate in sex offender programs, he thought that this was because the respondent did not want to be confronted with his offending and because of the respondent's habit of minimising and rationalising his actions.

[69] Dr Beech then set out details of the risk assessment tools he applied in the case, and concluded:

> "Overall I consider that the risk of reoffending is in the Moderate range. On the one hand the offences are historical and they seem to have ceased once he was convicted in 1991. They did not resume following his release. However, they were persistent and extensive and occurred in the context of Paedophilia. He is now a lot older, but on release he will not have the supports that he had on his release in 1995, and I consider that this will be a destabilising factor. He denies now some of the charges, and he has not engaged in any treatment program. He has no clear concrete plans for his release. However his behaviour in prison has been otherwise unremarkable. On release I assume that he will be subject to ANCOR requirements, and it sounds as though his family is now very much aware of his offending.
>
> I consider that he is still a material risk, but it is not high. I think that the risk is that in the community he could enter into a situation where a child is placed in his care. Dormant sexual urges would arise and he would act on them, opportunistically but with coercion to assault a young child. There is a lesser risk that he might assault an older female, but again still one that he knows and one who is somehow in his care.
> The victims would suffer some physical injury and significant psychological injury.
>
> In my opinion the risk could be further reduced by his participation in a sex offender treatment program, and restrictions on his access to minors."[9]

[70] In oral evidence before me, Dr Beech noted that the respondent had spent a period of more than eight years in the community between his release on parole and his conviction in May 2001, and that Dr Beech regarded this as a most significant credit to reducing the respondent's risk of re-offending on release now. He confirmed that the respondent had shown by example that he could comply with conditions of parole, and this was a positive sign that he could comply with a supervision order.

[71] In relation to the respondent's non-participation in a sex offender program, Dr Beech was cross-examined on the period of some four and a half years that had elapsed after it was recommended by the sentencing judge in May 2001 that the respondent be given access to a sex offender treatment program. Dr Beech confirmed that he understood that the respondent's resentment about doing a program stemmed from the idea that "when it was actually offered to him years had

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8 Report of Dr Michael Beech dated 30 June 2014, pp 19-20.
9 Ibid, p 21.

passed where he could have done it".[10] Dr Beech was then further cross-examined on further delays in the respondent being offered a place on a sex offender treatment program, which ultimately would have involved him transferring to the Lotus Glen facility. Dr Beech confirmed the explanation given to him was that the respondent felt considerable resentment that the programs had been offered very late and the difficulty the respondent would suffer by transferring to North Queensland away from the few supports he had at Wolston.

[72] Dr Beech also confirmed under cross-examination that, whilst it would be preferable for the respondent to complete a sex offender program in custody, it would not be absolutely necessary. In other words, the respondent could engage in appropriate sex offender counselling outside the custodial setting.

[73] Dr Beech also confirmed that the risk of re-offence which the respondent presented if released without a supervision order is moderate. That risk would be reduced by, relevantly, restricting the respondent's access to children pursuant to a supervision order.

[74] Dr Beech said that a supervision order should be for five years' duration, on condition that the respondent engages in a sex offender treatment program. That duration of supervision order would allow completion of the treatment program and a subsequent maintenance program.

***Dr Moyle***

[75] Dr Moyle's report, dated 15 June 2014, is based on an assessment conducted on 15 May 2014.

[76] Dr Moyle's report contains a detailed recitation of the background information derived from the material supplied to Dr Moyle and of the information provided to Dr Moyle during the interview. Dr Moyle made, relevantly, a diagnosis of "paedophilia, non-exclusive both genders, not limited to incest, past adjustment disorder with anxiety in remission".[11]

[77] Dr Moyle described at length the risk assessment tools he applied in BRJ's case and concluded that the respondent posed a moderate risk, no greater than the average sexual offender on completing their sentence, of re-offending in a sexually violent manner in the foreseeable future.

[78] Relevantly, Dr Moyle concluded:

> "184. It is my conclusion that clinically [BRJ] presents a moderately high risk of sexual reoffending if not subject to the DPSOA. The measured risk does not make his case extraordinary compared to the bulk of sexual offenders being released after serving their sentence. In his past potential victims would have been most likely early school aged boys and girls over whom he had a duty of care while babysitting for relatives. They included members of his family, first and second degree relatives. Now they include adult ex victims and other women who are alone with him who are considerably younger than he. He is 56 now and finds younger women attractive.

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10 T 1-9 ll 10-11.

11 Report of Dr Robert Moyle dated 15 June 2014 at [10].

> 185. Out of the 2 most significant clinical features he could have that pose a risk he had one the sexual paraphilia but without serious personality disorder outside of his offending sexually. Non-exclusive paedophilia has a better prognosis than exclusive paedophilia. The negative is that he is also a rapist of children and adults that doesn't bode as well as if his offending was all paedophilic assaults. Age may have slowed his sexual interest a little but I am unable to comment on this.
>
> 186. Treatment would be limited to management of the paraphilia using a combination of biological, psychosocial paradigms, monitoring, potential victim protection and supervision. Ideally he shouldn't place himself at risk or force victims to confront their abuser to satisfy his felt need to apologise to them, or to return to his community from which he was banished. Any return to the environment where he offended in the past should only occur when he and the community are well prepared, know fully of his past indiscretions and won't leave him alone with their vulnerable children and women.
>
> 187. Diagnostically he has a non-exclusive paedophilia and a risk of reacting to threats and rejection with anxiety. Treatment of the paraphilia using psycho-education approaches, especially if made relevant to aboriginal populations, would be advised and if he wants biological suppression of paedophilic sexual arousal he would need to have better control of his metabolic state than he has at present and more self discipline. Psychological treatment should also allow for him to consider his emotional consequences to his own childhood memories of being victimised. There would be a significant barrier in that [BRJ] sees any attempt to force him to do anything he doesn't wish to do as racism. I think that defends him against the full awareness of facing the horrific effects of his behaviour on his victims in the past. At this time I don't see him voluntarily accepting that the advice is given in his best interests and to protect potential victims in the future."[12]

[79] In oral evidence, Dr Moyle confirmed, as indeed had Dr Beech, that any supervision order should contain a condition that the respondent not enter the community of Cherbourg or the nearby township of Murgon. Dr Moyle confirmed that there was benefit in such a condition for the sake of the victims, potential victims, and the respondent's potential interaction with people who might have strong feelings about his past.

[80] Dr Moyle also confirmed that whilst he was of the view that if the respondent were released from custody without a supervision order he represented a moderate risk of committing a sexual offence in the future, with a supervision order in place this risk would be "lessened considerably".[13] Dr Moyle also spoke to the desirability of the respondent having ongoing counselling, either psychological or psychiatric.

[81] Dr Moyle also confirmed that it would be appropriate for the supervision order to be in force for five years.

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12 Ibid, at [184] – [187].

13 T 1-20 ll 24.

***Dr Grant***

[82] Dr Grant saw the respondent on 15 August 2013, and provided a report dated 21 August 2013.

[83] As with the other doctors, Dr Grant's report contains an extensive and detailed exposition of the respondent's background, reciting both the relevant sentencing remarks and the information provided the respondent to Dr Grant in the course of his interview. Dr Grant also described the risk assessment tools he had applied for the purposes of reaching his conclusions.

[84] Dr Grant stated:

> "[BRJ] is therefore an untreated child sex offender for whom treatment is indicated. Treatment would assist in him gaining insights and developing a better idea of victim empathy, understanding his offence pathways and helping him develop an appropriate relapse prevention plan. Ideally such treatment should occur in a suitable high intensity sexual offender program or indigenous sex offender program whilst in custody. However, given the assessed moderate level of risk and the remoteness of his offending it might be seen as sufficient for him to undergo a medium intensity sexual offender program, which could be conducted either in custody or in the community.
>
> Whilst in my opinion it would be best for [BRJ] to undergo sexual offender treatment programs whilst in custody, the risk could potentially be reduced by the application of a supervision order if he was released. In the situation where he was placed on a supervision order, that order should have clauses banning his use of alcohol or drugs and also banning unsupervised access to children. Whilst his predatory behaviour in the past has been confined to extended family members it nevertheless would be possible for him to seek paedophilic victims in the future from the wider public and I think that an abundance of caution would mean that he not be allowed to go to public places where he could solicit potential child victims, at least until his sexual interests and drives are better understood as a result of a sexual offender program. Under a supervision order he should be ordered to undertake a sexual offender program in the community if he has not completed one is custody. In my opinion a supervision order would need to be in place for at least five years."[14]

## Division 3 order

[85] Section 13 of the Act provides:

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

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[14] Exhibit DAG-2 (p ) to affidavit of Donald Archibald Grant (CFN 7).

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

(3) On hearing the application, the court may decide that it is satisfied as required under subsection (1) only if it is satisfied –

(a) by acceptable, cogent evidence; and

(b) to a high degree of probability;

that the evidence is of sufficient weight to justify the decision.

(4) In deciding whether a prisoner is a serious danger to the community as mentioned in subsection (1), the court must have regard to the following –

(aa) any report produced under section 8A;

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

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

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

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

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

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

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

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

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

(j) any other relevant matter.

(5) If the court is satisfied as required under subsection (1), the court may order –

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

> (b) that the prisoner be released from custody subject to the requirements it considers appropriate that are stated in the order (***supervision order***).
>
> (6) In deciding whether to make an order under subsection (5)(a) or (b) –
>
> (a) the paramount consideration is to be the need to ensure adequate protection of the community; and
>
> (b) the court must consider whether –
>
> (i) adequate protection of the community can be reasonably and practicably managed by a supervision order; and
>
> (ii) requirements under section 16 can be reasonably and practicably managed by corrective service officers.
>
> (7) The Attorney-General has the onus of proving that a prisoner is a serious danger to the community as mentioned in subsection (1)."

[86] By s 13(1) of the Act, a Division 3 order may only be made if the Court is satisfied that the respondent is a serious danger to the community. The onus of proof in this regard rests on the applicant.[15]

[87] As already noted, it was conceded on behalf of the respondent that the evidence established that he does present a "serious danger to the community" in the absence of a Division 3 order. For completeness, I should record that I consider that the applicant has established this by acceptable cogent evidence and to a high degree of probability. The collective effect of the evidence of the psychiatrists, together with reference to the respondent's antecedents and criminal history and the unanimous expert opinion as to the risk that the respondent would present of committing another sexual offence if released into the community without a supervision order, combine to satisfy me to the requisite standard, that the evidence is of sufficient weight to justify satisfaction that the respondent is a serious danger to the community in the absence of a Division 3 order.

[88] Being so satisfied, then, the question is whether, under s 13(5) there should be a continuing detention order or a supervision order. Section 13(6) prescribes the relevant considerations, including the paramount consideration of the need to ensure adequate protection of the community.

[89] It is appropriate to recall the oft-cited observations by the Court of Appeal in *Attorney-General v Francis*:

> "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**

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15 *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld), s 13(7).

> **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**"(emphasis added).[16]

[90] In light of the expert psychiatric evidence before me, which I have detailed above, it is clear that the paramount consideration of the need to ensure adequate protection of the community can be achieved by the imposition of an appropriate supervision order. The moderate risk of sexual re-offence which the respondent would otherwise present on release would be considerably ameliorated by the conditions of a supervision order. Whilst completion of a sexual offender treatment program before release would have been desirable, none of the psychiatrists expressed the view that the respondent needs to complete such a course before being released on a supervision order. On the contrary, it is clear from their evidence that such a course may satisfactorily be completed under the conditions of a supervision order.

[91] A supervision order has effect in accordance with its terms for the period stated in the order.[17] A supervision order must be made for a definite term.[18] Having regard to the evidence of Dr Beech and Dr Moyle, I am of the view that the term of the supervision order in this case should be for five years.

[92] There will, therefore, be a supervision order, pursuant to s 13(5)(b) of the Act in the terms set out in Annexure A to this judgment.

## ANNEXURE A

THE COURT, being satisfied to the requisite standard that the respondent, BRJ, is a serious danger to the community in the absence of an order pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (the Act) ORDERS THAT:

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16 [2007] 1 Qd R 396 at [39].

17 *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld), s 15(b).

1. The respondent be subject to the following requirements until 7 August 2019.

The respondent must:

i report to a Corrective Services officer at the place, and within the time stated in the order and advise the officer of his current name and address;

ii report to, and receive visits from, a Corrective Services officer as directed by Queensland Corrective Services;

iii notify a Corrective Services officer of every change of his name, place or residence or employment at least 2 business days before the change happens;

iv be under the supervision of a Corrective Services officer;

v comply with a curfew direction and monitoring direction;

vi comply with any reasonable direction under section 16B of the Act;

vii comply with every reasonable direction of a Corrective Services officer that is not directly inconsistent with a requirement of the order;

viii not leave or stay out of Queensland without the permission of a Corrective Services officer;

ix not commit an offence of a sexual nature during the period of the order;

x seek permission and obtain approval from a Corrective Services officer prior to entering into an employment agreement or engaging in volunteer work or paid or unpaid employment;

xi notify a Corrective Services officer of the nature of his employment, or offers of employment, the hours of work each day, the name of his employer and the address of the premises where he is or will be employed at least 2 days prior to the commencement of any change;

xii reside at a place within the State of Queensland as approved by a Corrective Services officer by way of a suitability assessment and obtain written approval prior to any change of residence;

xiii if this accommodation is of a temporary or contingency nature, comply with any regulations or rules in place at this accommodation and demonstrate reasonable efforts to secure alternative, viable long term accommodation to be assessed for suitability by Queensland Corrective Services;

xiv not reside at a place by way of short term accommodation including overnight stays without the permission of a Corrective Services officer;

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[18] *Attorney-General (Qld) v Van Dessel* [2006] QCA 285.

xv not commit an indictable offence during the period of the order;

xvi respond truthfully to enquiries by a Corrective Services officers about his activities, whereabouts and movements generally;

xvii not to have any direct or indirect contact with a victim of his sexual offences;

xviii disclose to a Corrective Services officer upon request the name of each person with whom he associates and respond truthfully to requests for information from a 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;

xix notify a 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;

xx submit to and discuss with a Corrective Services officer a schedule of his planned and proposed activities on a weekly basis or as otherwise directed;

xxi if directed by a 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 the Corrective Services officer who may contact such persons to verify that full disclosure has occurred;

xxii abstain from the consumption of alcohol and illicit drugs for the duration of this order;

xxiii submit to any form of drug and alcohol testing including both random urinalysis and breath testing as directed by the Corrective Services officer;

xxiv 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 the Corrective Services officer at a frequency and duration which shall be recommended by the treating intervention specialist;

xxv permit any medical, psychiatrist, psychologist, social worker, counsellor or other mental health practitioner 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;

xxvi attend any program, course, psychologist, social worker or counsellor, in a group or individual capacity, as directed by a Corrective Services officer in consultation with treating medical, psychiatric, psychological or other mental health practitioners where appropriate;

xxvii not establish and maintain any supervised or unsupervised contact, including undertaking any care of children under 16 years of age except with prior written approval of a Corrective Services officer. The respondent is required to fully disclose the terms of the order and nature of offences to the guardians and care givers of the children before any such contact can take place; Queensland Corrective Services may disclose information pertaining to the offender to guardians or caregivers and external agencies (i.e. Department of Child Safety) in the interests of ensuring the safety of the children;

xxviii not establish or maintain contact with a child under 16 years of age without the prior written approval of a Corrective Services officer; except in the case of the respondent's daughter/son by way of supervised contact and communications in writing or by telephone if agreed between the respondent and the mother of the child or approved by order of a court under the *Family Law Act 1975*;

xxix to advise a Corrective Services officer of any repeated contact with a parent of a child under the age of 16. The respondent shall if directed by a 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 the Corrective Services officer who may have contact to verify that full disclosure has occurred;

xxx not to access schools or child care centres at anytime without the prior written approval of a Corrective Services officer;

xxxi not to visit or attend on the premises of any establishment where there is a dedicated children's play area or child minding area without the prior written approval of a Corrective Services officer;

xxxii not visit public parks without prior written permission from a Corrective Services officer;

xxxiii not be on the premises of any shopping centre, without reasonable excuse, between 8am to 9.30am and between 2.30pm and 4.30pm on school days other than for the purpose of:
a. approved employment;
b. attending an approved bona fide pre-arranged appointment with a Government agency, medical practitioner or the like;
without the prior written approval of a Corrective Services officer;

xxxiv not join, affiliate with, attend on the premises of or attend at the activities carried on by any club or organisation in respect of which there are reasonable grounds for believing there is either child membership or child participation without the prior written approval of a Corrective Services officer;

xxxv allow any device including a telephone or camera to be randomly examined. If applicable, account details and/or telephone bills are to be provided upon request of a Corrective Services officer;

xxxvi to advise a Corrective Services officer of the make, model and telephone number of any mobile telephone owned, possessed or regularly utilised by you within 24 hours of connection or commencement of use and includes reporting any changes to mobile telephone details;

xxxvii not enter the Cherbourg community or the township of Murgon without the prior written approval of a Corrective Services officer.