# SUPREME COURT OF QUEENSLAND

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| CITATION: | *Attorney-General for the State of Queensland v Turnbull (No 2)* [2016] QSC 24 |
| PARTIES: | **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**<br>(applicant)<br>**v**<br>**GARY UNE TURNBULL**<br>(respondent) |
| FILE NO: | SC No 3675 of 2014 |
| DIVISION: | Trial Division |
| PROCEEDING: | Application for annual review of a continuing detention order pursuant to the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) s 27(2) |
| ORIGINATING COURT: | Supreme Court at Brisbane |
| DELIVERED ON: | 22 February 2016 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 22 February 2016 |
| JUDGE: | Ann Lyons J |
| ORDERS: | **1. THE COURT affirms the decision of Boddice J, made on 13 June 2014, that the respondent, Gary Une Turnbull, 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 (Qld).**<br>**2. The continuing detention order made by Boddice J on 13 June 2014 is rescinded.**<br>**3. The respondent be subject to a supervision order containing the conditions contained in Annexure A until 22 February 2021.** |
| CATCHWORDS: | CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT SEXUAL OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the respondent committed a series of ten sexual assaults against women who were strangers to him – where the respondent was sentenced to, *inter alia*, 13 years imprisonment for three counts of rape – where the respondent was detained under a continuing detention order pursuant to the *Dangerous* |

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| | *Prisoners (Sexual Offenders) Act* 2003 (Qld) at the time of his full-time release date – where the judge who made the continuing detention order formed the view that to assess the respondent's true risk he should undergo the "High Intensity Sexual Offender Program" – where the respondent has now undertaken the "High Intensity Sexual Offender Program" – where two psychiatrists now consider that the respondent's risk of future sexual violence is moderate and that the risk could be reduced with the imposition of a supervision order – whether the respondent is a serious danger to the community in the absence of a division 3 order pursuant to the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) – whether the respondent should remain detained under a continuing detention order or released on a supervision order and, if so, what conditions should be imposed in the supervision order |
| | *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld), s 13(4), s 26, s 27, s 28A, s 29, s 30 |
| | *Attorney-General for the State of Queensland v Ellis* [2012] QCA 182, cited |
| COUNSEL: | M Maloney for the applicant<br>A M Nelson for the respondent |
| SOLICITORS: | Crown Law for the applicant<br>Alexander Law for the respondent |

**Introduction**

[1] On 13 June 2014 the respondent was made subject to a continuing detention order pursuant to s 30 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) ("**the Act**"). Pursuant to an application filed on 12 June 2015 the applicant seeks a review of that order pursuant to s 27(2) of the Act. The Attorney-General seeks orders affirming the order of 13 June 2014 that the respondent is a serious danger to the community in the absence of a division 3 order and that pursuant to s 30(3) he continue to be subject to a continuing detention order or alternatively that he be released from custody subject to a supervision order.

[2] Pursuant to submissions filed on 11 February 2016 the applicant acknowledges that the psychiatric assessment reports now support the rescission of the continuing detention order made on 13 June 2014 and the imposition of a supervision order.

[3] Pursuant to submissions filed on 12 February 2016, and further submissions filed by leave at the hearing today, counsel for the respondent argues that whilst there is evidence to support a finding that the respondent is a serious danger to the community in the absence of a division 3 order and agrees with the Crown submission that the respondent should be subject to a supervision order for a period of 5 years, there is an objection to the necessity for and the extent of the Draft Conditions.

[4] The first question therefore which needs to be determined by this Court is whether the requirements of the Act have been satisfied and to ascertain if the respondent should be subject to orders under the dangerous prisoner regime.

## Background

[5] The respondent is currently 41 years of age and has the following criminal history:

| **Date** | **Description of Offence** | **Sentence** |
|---|---|---|
| Brisbane District Court 07/06/2002 | *Criminal Code*: Sexual Assault (on 6/10/98)<br>*Criminal Code*: Assault occasioning bodily harm (on 6/10/98)<br>*Criminal Code*: Assault with intent to commit rape (on 21/01/01)<br>*Criminal Code*: Attempted rape (on 21/01/01)<br>*Criminal Code*: Rape (on 11/05/01)<br>*Criminal Code*: Robbery with actual violence (on 11/05/01)<br>*Criminal Code*: Assault with intent to commit rape (on 15/06/01)<br>*Criminal Code*: Rape (2 charges on 15/06/01)<br>*Criminal Code*: Sexual assault with a circumstances of aggravation (on 16/06/01)<br>*Drugs Misuse Act*: Possession of utensils or pipe (on 6/10/98) | 5 years imprisonment<br>3 years imprisonment<br>8 years imprisonment<br>8 years imprisonment<br>16 years imprisonment<br>12 years imprisonment<br>12 years imprisonment<br>On each charge:<br>20 years imprisonment<br>12 years imprisonment<br>Declared to be a serious violent offender<br>Conviction recorded<br>Admonished & Discharged |
| Court of Appeal 19/06/2013 | Application for extension of time to apply for leave against sentence imposed on 07/06/2002 | Application allowed on 3 counts of rape on grounds of manifestly excessive but the application is otherwise refused |
| Court of Appeal 13/12/2013 | Application for leave to appeal against sentence imposed on 07/06/2002 | Application allowed<br>Set aside sentence for rape offences of 16 years and 20 years x 2 and in lieu thereof substitute 10 years and 13 years x 2 respectively.<br>All other orders remain unchanged. |

[6] That history indicates therefore that the respondent was sentenced to a head sentence of 20 years imprisonment on 7 June 2002 and that his full-time release date was originally 14 June 2021.

[7] On 19 June 2013 the Court of Appeal allowed the respondent's application for an extension of time to appeal against those sentences and allowed the appeal in relation to the three counts of rape and substituted shorter sentences of imprisonment in relation to those counts.[1] As a consequence of that decision the respondent's full-time release date was 14 June 2014.

[8] On 13 June 2014 Boddice J made an order,[2] pursuant to s 13(5)(a) of the Act, subjecting the respondent to a continuing detention order following a hearing on 10 June 2014. That decision was appealed to the Court of Appeal and that appeal was dismissed on 14 April 2015.[3]

[9] The evidence indicates that, between 1998 and 2001, the respondent committed a series of ten sexual assaults against women who were complete strangers to him. A short history of that offending is set out in the 2015 Court of Appeal decision as follows:

> "[2] The first two offences in 1998 were against a woman he followed from a railway station. He placed his arm around her throat and brushed his hand against her breast. She screamed and struggled and was knocked to the ground.
>
> [3] In January, May and June 2001 Mr Turnbull attacked three more women:
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> - The first in January involved an assault, threats and attempted rape. Mr Turnbull only stopped when disturbed, leaving the victim with scratches and abrasions.
>
> - The second in May involved a violent assault, threats to kill and rape. Mr Turnbull attacked the victim from behind, knocked her to the ground, and rammed her head into a wall. She suffered a black eye, lacerations, bruises and abrasions to various parts of her body.
>
> - The third in June involved a severe and violent assault after Mr Turnbull followed a woman from the railway station into nearby parkland. He knocked her to the ground, held a piece of wood on her throat, threatened to kill her, before hitting her a number of times and dragging her into bushes. The assault broke the victim's jaw, and Mr Turnbull forced her to masturbate herself and him, and fellate him. She was raped. The victim suffered extensive injuries to her head, face and other parts of the body.
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> [4] Mr Turnbull pleaded guilty to all offences and was convicted and sentenced on 7 June 2002. He received sentences of imprisonment for

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1 *R v Turnbull* [2013] QCA 374.
2 *Attorney-General (Qld) v Turnbull* [2014] QSC 132.
3 *Turnbull v Attorney-General (Qld)* [2015] QCA 54.

> three to 12 years on the assault charges, and 10 to 13 years on the rape charges."

[10] The main issues in contention in the 2015 Court of Appeal hearing were whether there was acceptable cogent evidence that the respondent was a serious danger to the community under s 13(1) of the Act, and whether the primary judge should have formed the view that in order to assess the respondent's true risk he should undergo the High Intensity Sexual Offender Program ("**HISOP**"). The Court of Appeal was satisfied that there was acceptable cogent evidence that the respondent was a serious danger to the community under s 13(1) of the Act. In respect of whether the respondent should undergo the HISOP, the issue was whether the primary judge should have accepted the evidence of the psychiatrists and, in particular, whether there was evidence to support the primary judge's conclusion that the respondent:[4]

> "… represents a serious danger to the community in that there is an unacceptable risk he will commit a serious sexual offence in the future. Without the benefit of a proper assessment following completion of the high intensity sexual offenders treatment program, there are no conditions which could be imposed which would satisfy me that unacceptable risk of committing further sexual offences could be rendered acceptable. The triggers for the escalating sexual violence must be identified before any consideration can be made as to whether any conditions can be formulated which would make the risk of sexual reoffending no longer unacceptable."

[11] The Court of Appeal was satisfied that there was such acceptable evidence. A further issue was whether the primary judge should have accepted that in order to assess the true risk the respondent should undergo the HISOP. Ultimately Morrison JA (Philippides JA and Douglas J agreeing) held that the evidence of the psychiatrists supported a conclusion as follows:

> "[39] Section 13(6)(b)(i) of the Act requires a consideration of whether adequate protection of the community can be reasonably and practicably managed by a supervision order.
>
> [40] In my view the evidence supported only one conclusion as to that. In the absence of Mr Turnbull undergoing the HISOP, one could not conclude that a supervision order could be fashioned which would reasonably and practicably manage the question of adequate protection of the community. The expert evidence was that there are important gaps in the information about Mr Turnbull's motivations and desires, and that more needs to be known before it can be said that his risk is one that can be managed, if that was possible at all. The unknown factors underlying the violent and severe attacks perpetrated by Mr Turnbull prevented, in my view, the conclusion that adequate protection of the community could be ensured under a supervision order."

[12] It was clear therefore that the Court of Appeal was satisfied that the unanimous view of the examining psychiatrists was that the respondent should undergo the HISOP prior to release because, without undergoing the HISOP, there was insufficient information to

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[4] *Attorney-General (Qld) v Turnbull* [2014] QSC 132, [36].

identify the true triggers behind the respondent's offending. It was clear that without knowing those triggers there could be no proper assessment of the risk factors leading to the structuring of any conditions for a supervision order.

**History in custody since April 2015**

[13] This is the first annual review of that continuing detention order. The affidavit of Carly Divall sworn on 8 January 2016 states that the respondent participated and completed the HISOP program between 28 August 2014 and 31 August 2015.

[14] In her Completion Report dated 20 October 2015, Ms Divall detailed the respondent's participation in the program. She states that the respondent completed 127 sessions during the program and her report outlines his participation in the program and her conclusions in relation to the progress he has made. Whilst it is clear that Ms Divall considered that the respondent was committed to exploring his offending pathway, she also notes that he was at times reluctant to complete some paperwork and at times engaged minimally or superficially. Ultimately, however, she considered that the respondent had demonstrated investment and insight during the course of the program. She also considered that whilst he had the opportunity to understand his emotional management and his links to his offending pathway, at times he was too focused on moving quickly through the program. She indicated that the respondent should be encouraged to further explore, develop and consolidate his program knowledge, including his high risk factors, triggers and relevant management strategies. She considered he had made progress in relation to his treatment needs and acknowledged his willingness to seek professional counselling in the future.

[15] Ms Divall also recommended that the respondent seek assistance from a psychologist or psychiatrist in relation to the area of sexual offending. She further noted that the respondent's Sexual Offending Programs Assessment identified "sexual deviancy as an intervention target" and recommended that he seek further counselling in this area. The respondent's transition from custody was also noted to be a significant stressor given the time he had been in custody. It was also important that he remain abstinent from illicit substances. It was also recommended that he participate in the Staying on Track: Sexual Offending Maintenance Program.

**The evidence of the psychiatrists**

[16] Two psychiatrists have prepared reports for the purpose of the annual review as required by the Act. Dr Andrew Aboud has prepared a report dated 22 January 2016 and Dr Grant has prepared a report dated 2 December 2015.

[17] Dr Aboud in his report identified that the respondent's offending was serial in nature and that the ten offences were committed on four different dates, the first in 1998 and the last three in quick succession in 2001. He noted the context within which that offending occurred related to significant problems with alcohol and illicit substances and relationship instability. Dr Aboud considered that the respondent discharged his anger in the form of extreme physical and sexual violence in an attempt to redress chronic and acute feelings of disempowerment. Dr Aboud noted that he had demonstrated increased

maturity during his 14 years in custody and that had been reflected in his high standard of general behaviour, his participation in available therapy programs and his commitment to developing further work skills. He also was involved in providing mentorship and support to other inmates. Dr Aboud expressed concern about his refusal to provide urine samples in 2007, 2011 and 2012 which would suggest that he might have taken contraband substances. He noted however that such a stance had not recurred during the last four years.

[18] Dr Aboud considers that the respondent's substance use disorders are currently in remission, although he had a previous diagnosis of alcohol dependence, cannabis dependence and stimulant drug dependence. He considered that those features were salient and severe at the time of his arrest and therefore the respondent must be considered "vulnerable to re-emergence". He did not however consider that he met the diagnosis of a personality disorder or that he suffered from a major mental illness such as a mood disorder or a psychotic disorder. Neither did he find evidence to support a diagnosis of paraphilia or other sexual deviancy. He did note, however, that it remains possible that he could be "sexually sadistic". He considered that that should remain an issue for further exploration and potential management in the context of individual psychological therapy.

***The Risk Assessments***

[19] Dr Aboud conducted a number of risk assessments. On the *Risk Matrix 2000/S*, the respondent was placed in the group regarded as medium risk of offending. In the *Risk Matrix 2000/V*, the respondent was once again placed in the medium risk of offending. In relation to the *Psychopathy Checklist (PCL-R)*, Dr Aboud stated that the respondent had a score of 9 out of 40 which is a relatively low score and well below the cut-off point for diagnosing psychopathy.

[20] In terms of the *HCR-20*, Dr Aboud noted that the respondent's overall score was 17 out of 40 which meant that his overall risk was between low and moderate and that there was a static loading due to historical factors with a relative lack of current dynamic risk factors given his period in custody.

[21] Dr Aboud concluded that the respondent's risk for future violent offending would be low if he remained free of destabilising factors, such as relationship instability, employment difficulties, alcohol and substance misuse and other psychosocial stressors, maintained his key supports, remained engaged with formal therapy and supervision and did not succumb to negative thought patterns. Dr Aboud stated that the respondent needed robust pre-release planning with psychological and social support post-release.

[22] In relation to the *Risk for Sexual Violence Protocol (RSVP)*, Dr Aboud considered that there had been a positive shift in the respondent's assessment under that category and a reduction of risk in some areas compared to his previous assessment. He concluded that the respondent's overall risk would be moderate for both general (non-sexual) and sexual violence. He stated that in coming to that conclusion he had taken into account the worrying aspects of the offending behaviour at the index time and the increasing frequency of offences prior to his apprehension, as well as the use of verbal threats, actual physical violence, the use of weapons to control and subdue, the escalating severity of the

physical and sexual violence and the serial nature of his behaviour. Dr Aboud noted that in the past he had demonstrated denial and minimisation in respect of those behaviours.

[23] Dr Aboud stated that he took into account important positives including the respondent's increasingly high standard of interpersonal behaviour during his custodial term and his engagement in various therapeutic and rehabilitation activities. In particular, he took into account the respondent's participation in the HISOP program and his lack of relative prior forensic or criminal history. He concluded:[5]

> "It is my view that, with the benefit of insights gained from his participation in the HISOP, which have greatly assisted in progressing to a more robust understanding of Mr Turnbull's offending, his vulnerabilities and his future treatment needs, it is now possible to more confidently formulate his risk and its management. I endorse all the recommendations made in the HISOP Completion Report, and consider that in the circumstances of such support, and **in the context of a supervision order, that his risk of general (non-sexual) violence and sexual violence would be between low and moderate, and potentially manageable in the community.**
>
> Should he be released to the community, important considerations will include: open communication with his supervising officer such that any social difficulties (including intimate relationships, non intimate relationships, employment situation) can be closely monitored, with a recognition that he may present a protective "mask"; abstinence from alcohol and illicit substances; participation in a Sexual Offender Maintenance Program; engagement with a psychologist (to assist with adaptive coping and problem solving skills, building healthy relationships, addressing his underlying negative regard for women, addressing the possible issues associated with the death of his mother, managing negative and difficult emotions, addressing underlying anger, exploring links between low self-regard and anger and violence, exploring links between sexual arousal and violence)." (emphasis in original)

***The report of Dr Donald Grant dated 2 December 2015***

[24] Dr Grant stated that he did not consider that there was any evidence of the respondent suffering from a psychiatric disorder and noted that the respondent had never had any treatment for a mental illness and that he did not demonstrate a significant personality disorder nor any psychopathic personality factors of any significance. Dr Grant considered that the primary relevant past diagnosis was one of significant abuse and dependence on drugs and alcohol which had been in remission in custody for some years. He noted that whilst there was reluctance to supply urine for testing in 2007 and 2012, there was no evidence of any alcohol or substance abuse in recent years.

[25] Dr Grant stated:[6]

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5 Applicant's outline of submissions filed 11 February 2016, 17, citing the report of Dr Andrew Aboud dated 22 January 2016, 14.

6 Report of Dr Donald Grant dated 2 December 2015, 12.

> "In my previous report I discussed uncertainties in regard to the possible presence of any sexual paraphilia such as sadism. At that stage the nature of the offending was of concern, the violence in the offending had been escalating and it was unclear whether sadism might be playing a role in that offending. Having completed the HISOP and discussed his offending in considerable detail during that program, there is evidence of a close link between sexual assaults, substance intoxication and violent expression of repressed anger but there is no significant evidence to indicate a true sexual deviance of sadism. He does not describe recurring sadistic fantasies upon which he might subsequently act, either through masturbation or sexual assault. Therefore the indications are that Mr Turnbull does not suffer from sadism but that his sexually violent assaultive behaviour is linked to complex problems resulting from child abuse, emotional issues, distorted attitudes towards women and relationships, the use of substances to both mask emotional factors and to allow expression of emotions and relationship and environmental issues which helped trigger the offending. All of those factors have been clarified to a considerable extent during the HISOP and Mr Turnbull now shows considerably increased insight into all of those factors."

[26] Dr Grant also noted that Mr Turnbull had completed the HISOP satisfactorily and had been able to actively involve himself in the program and achieve significant gains in understanding and insight. He also noted the recommendations from the completion report and agreed with those recommendations and noted that those aspects of future management would be important. He also noted that Mr Turnbull was willing to engage actively in such future programs of treatment and support.

[27] In terms of risk assessment, Dr Grant stated he had not repeated the risk instruments because the scores are not likely to have changed significantly. He considered that overall the formal instruments would indicate a statistical likelihood of moderate risk for future sexual violence. He continued:[7]

> "In my previous report and in the oral evidence which I gave in the court hearing I discussed the uncertainties in regard to risk assessment because at that stage insufficient was known about the motivations for Mr Turnbull's offending and the question of whether he suffered from sexual sadism was unresolved. In my opinion, as a result of him undergoing the HISOP his offending pathway and motivations are more clearly understood. He has better insight into them and it is now more definite that sadism as a definite sexual deviance is not part of the motivation. The absence of sadism is an important positive aspect in terms of lessening future risk. In addition, the fact that Mr Turnbull does not have significant psychopathic personality traits is a positive feature in terms of reduced future risk. Nevertheless, Mr Turnbull has complex emotional issues which, combined with drug and alcohol abuse, have resulted in his offending. He now has a better understanding of those issues but does require ongoing counseling, treatment and assistance to deal with them into the future. In my opinion, Mr Turnbull's moderate risk for future sexual offending could be reduced to low to moderate by the application of a Supervision Order in the community and in my opinion

[7] Report of Dr Donald Grant dated 2 December 2015, 13.

such an order would be a suitable means to contain the risk to the community if Mr Turnbull were released into the community."

[28] Dr Grant considered that if the respondent was not under supervision and if he returned to substance abuse and unstable interpersonal and social situations, the risk of sexual offending would increase to at least moderate or even high. He considered a supervision order would be effective in detecting any deterioration and such an order should contain clauses that mandate individual therapy with an appropriately qualified psychiatrist or psychologist and the involvement of his partner in the relationship counselling would be of benefit. He considered that the order should mandate abstinence from drugs and alcohol. He stated that, as the respondent has no history of offences against children and does not suffer from paedophilia, he is not a risk towards children. He considered that a supervision order should be for five years.

**Should a division 3 order be made?**

[29] The respondent has been subject to a continuing detention order since the hearing on 10 June 2014. This is an annual review of that continuing detention order. Part 3 of the Act sets out the requirements for annual reviews of continuing detention orders under the Act.

"**26 Purpose of this part**

The purpose of this part is to ensure that a prisoner's continued detention under a continuing detention order is subject to regular review.

**27 Review—periodic**

(1) If the court makes a continuing detention order, it must review the order at the intervals provided for under this section.

(1A) The hearing for the first review and all submissions for the hearing must be completed within 2 years after the day the order first had effect.

(1B) There must be subsequent annual reviews while the order continues to have effect.

(1C) Each annual review must start within 12 months after the completion of the hearing for the last review under this section.

(2) The Attorney-General must make any application that is required to be made to cause the reviews to be carried out.

**28 Review—application by prisoner**

(1) The prisoner may apply to the court for the prisoner's continuing detention order to be reviewed at any time after the court makes its first review under section 27(1) if the court gives leave to apply on the ground that there are exceptional circumstances that relate to the prisoner.

(2) The registrar must immediately forward a copy of the application to the Attorney-General.

(3) As soon as practicable after the making of the application, the court must give directions to enable the application to be heard.

(4) Subject to any directions given by the court, the application must be heard as soon as practicable after the application is made.

**28A Attorney-General may produce report**

Section 8A applies for any application under section 27 or 28 as if the application were an application for a division 3 order.

**29 Psychiatric reports to be prepared for review**

(1) Unless the court otherwise orders at the hearing of any application under this Act, for the purposes of a review under section 27 or 28, the chief executive must arrange for the prisoner to be examined by 2 psychiatrists.

(2) For subsection (1) and the purposes of a review, sections 11 and 12 apply with necessary changes.

(3) Subsection (1) authorises examinations of the prisoner by the 2 psychiatrists.

**30 Review hearing**

(1) This section applies if, on the hearing of a review under section 27 or 28 and having regard to the required matters, the court affirms a decision that the prisoner is a serious danger to the community in the absence of a division 3 order.

(2) On the hearing of the review, the court may affirm the decision only if it is satisfied—

(a) by acceptable, cogent evidence; and

(b) to a high degree of probability;

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

(3) If the court affirms the decision, the court may order that the prisoner—

(a) continue to be subject to the continuing detention order; or

(b) be released from custody subject to a supervision order.

(4) In deciding whether to make an order under subsection (3)(a) or (b)—

(a) the paramount consideration is to be the need to ensure adequate protection of the community; and

(b) the court must consider whether—

(i) adequate protection of the community can be reasonably and practicably managed by a supervision order; and

(ii) requirements under section 16 can be reasonably and practicably managed by corrective services officers.

(5) If the court does not make the order under subsection (3)(a), the court must rescind the continuing detention order.

(6) In this section—

***required matters*** means all of the following—

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

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

[30] It is clear therefore, that for the purposes of a review, the Court must be satisfied and affirm that the prisoner is a serious danger to the community having regard to the matters mentioned in s 13(4) of the Act and any report produced pursuant to s 28A.

[31] Having considered the reports of Drs Grant and Aboud, together with the other matters I am required to consider pursuant to s 13(4), I am satisfied that the respondent is a serious danger to the community in the absence of a division 3 order and I affirm the finding of Boddice J of 13 June 2014.

**Should a continuing detention order or a supervision order be made?**

[32] The evidence indicates that, since being made subject to a continuing detention order, the respondent has undertaken the HISOP treatment program as recommended by the psychiatrists who gave evidence at the previous hearing before Boddice J. I have considered those reports. Both psychiatrists now state that the fact that the respondent has completed the HISOP program has provided them with a better understanding of his offending and his risk factors. There is clear evidence that he has now gained better insight into his offending.

[33] Drs Grant and Aboud now assess the respondent's level of future sexual violence as moderate and both consider that that risk could be reduced with the imposition of a supervision order. There is clear evidence in this regard. As previously indicated Counsel for the applicant acknowledges that the psychiatric opinions would support the rescission of the continuing detention order and the imposition of a supervision order.

[34] The submissions from the respondent indicate that the respondent seeks the rescission of the continuing detention order and accepts that the Court would impose a supervision order. The applicant has produced a draft supervision order which it submits would adequately address any risk.

[35] Counsel for the respondent however opposes the imposition of proposed orders 10, 12, 13, 14, 15, 17, 18, 19, 20, 21, 24, 25, 30, 31, 32 and 33. The detail included in orders 11, 26, 27 and 28 is also opposed.

**What conditions should be imposed?**

[36] Drs Grant and Aboud gave concurrent evidence at the hearing of the application in relation to the appropriateness of the draft conditions and how each draft condition was or was not required in order to address the risk posed by the respondent's release into the community. Counsel for the respondent relies on Dr Grant's report dated 2 December 2015 at page 13:

> "However, if he was not under supervision and if he returned to substance abuse and an unstable interpersonal and social situation the risk for sexual offending would increase significantly to at least moderate or even high. Any such increase would not occur precipitously, but would likely be the result of a gradual increase in risk factors such as substance abuse and emotional turmoil."

[37] Counsel argues that, on the basis of that opinion, it is unlikely that the respondent will re-offend by committing a serious sexual offence without first having breached his supervision order in relation to the consumption of drugs and/or alcohol with a breakdown in his personal relationship.

[38] Counsel submits that restraints on the respondent's movement and activity or limitations upon his right to privacy should be those which are reasonably necessary to identify whether his personal relationship is persisting and whether he has been consuming illicit drugs or alcohol.

[39] It is argued by the respondent that a number of the proposed restraints are not reasonably necessary and appear to be standard orders which seem to maximize the control the Crown has over the respondent. Counsel submits that the purpose of a supervision order is to "adequately protect" the community and should not impose such restraints and impositions on privacy so as to provide the Attorney-General with near certainty through controlling every aspect of the respondent's life.

**Proposed orders 10 and 11 (Employment)**

[40] Counsel argues that there can be no justification in requiring the respondent to seek permission prior to entering into employment. If there is reasonable suspicion that the nature of the respondent's employment is likely to contravene a requirement of the order, this could lead to his return to custody under s 20 of the Act.

[41] Counsel for the respondent submits that requiring the respondent to provide notice of any offers of employment is entirely unnecessary. Mr Turnbull could be offered any job in any location doing anything but, unless he accepts that job, it could not be said that he was at greater risk of re-offending.

[42] Drs Grant and Aboud both considered that both draft conditions were required to ensure that the nature of the respondent's work and his workplace did not increase the risk of future offending because his employment in bars and nightclubs in the past was a factor in his offending. The psychiatrists considered that the nature of the respondent's employment was a key factor and it was important he present plans for future employment well in advance so there could be planning, discussion and collaboration with Corrective Service officers. They considered that there needed to be a proactive approach to

managing the risk in a collaborative way because poor management of his employment options would escalate the risk. They also considered that the hours he worked were also significant.

[43] I am satisfied that the draft condition is required to address the risk posed and is appropriate to ensure the adequate protection of the community.

.**Proposed orders 12, 13 and 14 (Accommodation)**

[44] The respondent argues that, pursuant to order 8 which is not challenged, the respondent is not permitted to leave or stay out of Queensland without approval. It is therefore superfluous to say that he must live in Queensland. Furthermore, it is argued that accommodation issues were never identified as a trigger for his offending nor are they likely to be triggers in the future. It should be sufficient that he keeps Corrective Services informed as to his living arrangements.

[45] The evidence of the psychiatrists was that these draft conditions were required to ensure that the respondent was in a socially stable and supportive environment. Given the significance of the respondent being a stable environment, which is highlighted in all the reports, it would seem to me that the proposed conditions are necessary. Not only do the conditions ensure that he is in appropriate accommodation but also ensures that information is provided to Corrective Services about his social life and about who he is involved with. The conditions basically require that he inform Corrective Services officers if he is to be away from his accommodation for short stays and that he gets approval.

[46] I am satisfied that the draft conditions are appropriate to ensure the adequate protection of the community.

**Proposed Order 15**

[47] Counsel argues that the purpose of the supervision order is to provide "adequate protection" from the risk that the respondent will commit a serious sexual offence, not to provide certainty that the respondent will not commit any indictable offence at all. The respondent relies on *Attorney-General for the State of Queensland v Ellis* [2012] QCA 182 where McMurdo P, dissenting as to the orders made, stated at [24]:

> "The question for a judge deciding whether a prisoner under the Act should be detained in custody or released on a supervision order is whether the supervision order will adequately protect the community from the risk of the prisoner committing a serious sexual offence. It is not whether the order will adequately protect from the risk of the prisoner committing any offence at all."

[48] I accept that a general prohibition is not necessarily linked to his past offending and that an appropriate condition would be that he not commit any indictable offences involving violence. Such a condition would be an appropriate condition to ensure the adequate protection of the community.

**Proposed Order 17 to 20 (Activities and Associates)**

[49] Counsel for the respondent argues that the conditions proposed are unnecessary restraints which bear no relationship with the identified triggers for the respondent's risk of committing a serious sexual offence. The psychiatrist's opinions were that these conditions required the respondent to disclose and discuss truthfully with Corrective Services questions about his activities and associates. They considered that this would allow Corrective Services to get an idea of his relationships and how his life was in fact going. In particular it would allow them to assess how he was integrating. Both psychiatrists referred to the fact that the respondent put on "masks" which disguised his emotional turmoil. They considered that it was important that his supervisors actually knew what was going on in his emotional life.

[50] I also accept the fact that it might be important for particular persons he becomes involved with in a significant way to be informed of his history and the terms of this order. That necessarily needs to be left to the discretion of his supervising officers who are aware of his history and his risk factors.

[51] I am satisfied that the proposed order are required to ensure the adequate protection of the community.

**Proposed Order 21 (Motor Vehicle)**

[52] Counsel argues that this is an unnecessary restraint which bears no relationship with the identified triggers for the respondent's risk of committing a serious sexual offence.

[53] Having considered the evidence of the psychiatrists I am satisfied that draft condition 21 which relates to the need to disclose details of his car is not necessary and does not go towards the management of the risk factors for this respondent.

[54] This condition should be deleted.

**Proposed Orders 24 and 25 (Alcohol and Drugs)**

[55] Counsel for the respondent does not challenge those restraints which require him to refrain from consuming drugs or alcohol and to submit to testing that would give early warning of the fact that a breach had occurred. It is submitted, however, that the requirement that the respondent inform Corrective Services of his consumption of Panadol or cough medicine, as an example, is excessive.

[56] It is also argued that preventing the respondent from socialising in restaurants or even cafes where alcohol can be purchased is an excessive restraint and overlooks the fact that compliance with the supervision order can be adequately ensured by orders 22 and 23.

[57] Having considered the opinions of the psychiatrists that the respondent's past offending involved the respondent taking a "cocktail" of substances and their view that both

prescription and "over the counter" medications can be abused, I am satisfied that draft condition 24 should remain.

[58] In terms of draft condition 25 the Crown agrees that such a condition should only cover "bar, clubs and nightclubs" and not places such as restaurants or cinemas as that is an undue restriction. I consider that an amended condition in those terms is appropriate.

**Proposed Orders 26 to 28 (Medical)**

[59] Whilst Counsel for the respondent argues that the conditions are unnecessarily wide. I consider that the conditions necessarily need to be wide to ensure that the respondent receives the assessment and treatment he requires and that this should extend to counsellors, social workers and other mental health professionals. It is clear that whilst the respondent must attend for assessment and treatment as directed, the treatment and frequency is as assessed or recommend by the treating intervention specialist and that there will be consultation with the relevant health professionals.

**Proposed Orders 30 to 33 (Telephones and Devices)**

[60] Counsel for the respondent argues these proposed conditions are unnecessary restraints that do not in any way promote compliance with the supervision order and that the use of telephone, emails or the internet were never identified as triggers for the offending, nor are they likely to be.

[61] The psychiatrists both advised that the respondent should not be prevented from using the medium of the internet or a mobile phone as both devices are pivotal to social communication and involvement in the community. However, they considered that the conditions proposed allowed adequate oversight of his social activities to ensure that he was not becoming aggressive or violent in his social interactions. In particular their evidence was that the respondent had, in the past, successfully maintained a façade of normality when his life was in fact dissolving through various stressors. Both psychiatrists referred to the significance of his behaviour in the past where had been able to "mask" the fact his life was spiralling out of control.

**Conclusion**

[62] Having considered the draft supervision order, I am satisfied that the other proposed conditions in the order are appropriate to ensure the adequate protection of the community and that the respondent should be released subject to a supervision order in those terms. I also consider that a transcript of the evidence of the psychiatrist given at this hearing should be provided to the relevant Corrective Service officers.

[63] I am satisfied that the duration of such an order should be five years given the recommendation of the psychiatrists in this regard.

## ANNEXURE A

The respondent must:

**Statutory requirements**

1. report to a Corrective Services officer at the Queensland Corrective Services Probation and Parole Office closest to his place of residence between 9:00am and 5:00pm on the day of release from custody, and at that time advise the officer of his current name and address;
2. report to, and receive visits from, a Corrective Services officer at such times and at such frequency as directed by Queensland Corrective Services;
3. notify a Corrective Services officer of every change of his name, place of residence or employment at least two business days before the change happens;
4. be under the supervision of a Corrective Services officer;
5. comply with a curfew direction or monitoring direction;
6. comply with any reasonable direction under section 16B of the Act given to him;
7. comply with every reasonable direction of a Corrective Services officer that is not directly inconsistent with a requirement of this order;
8. not leave or stay out of Queensland without the permission of a Corrective Services officer;
9. not commit an offence of a sexual nature during the period of this order;

**Employment**

10. 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;
11. 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 two (2) days prior to commencement or any change;

**Accommodation**

12. 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;

13. 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;
14. not reside at a place by way of short term accommodation including overnight stays without the permission of a Corrective Services officer;

**Indictable offences**

15. not commit an indictable offence involving violence during the period of this order;

**Contact with victims**

16. not have any direct or indirect contact with a victim of his sexual offences;

**Activities and associates**

17. respond truthfully to enquiries by a Corrective Services officer about his activities, whereabouts and movements generally;
18. 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;
19. 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;
20. if directed by a Corrective Services officer, make complete disclosure of the terms of this 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;

**Alcohol and drugs**

21. abstain from the consumption of alcohol and illicit drugs for the duration of this order;
22. submit to any form of drug and alcohol testing including both random urinalysis and breath testing as directed by a Corrective Services officer;
23. disclose to a Corrective Services officer all prescription and over the counter medication that he obtains;
24. not visit bars, pubs or nightclubs licensed to supply or serve alcohol, without the prior written permission of a Corrective Services officer;

**Medical**

25. 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 a Corrective Services officer at a frequency and duration which shall be recommended by the treating intervention specialist;
26. permit any medical, psychiatrist, psychologist, social worker, counsellor or other mental health professional to disclose details of treatment, intervention and opinions relating to level of risk of re-offending and compliance with this order to Queensland Corrective Services if such a request is made for the purposes of updating or amending the supervision order and/or ensuring compliance with this order;
27. attend any program, course, psychiatrist, 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;

**Risk management plan**

28. develop a risk management plan in consultation with a treating psychologist or psychiatrist and discuss it as directed with a Corrective Services officer;

**Telephones and devices**

29. supply to a Corrective Services officer any password or other access code known to him, to permit access to such computer or other device or content accessible through such computer or other device, and allow any device where the internet is accessible to be randomly examined using a data exploitation tool to extract digital information or any other recognised forensic examination process;
30. supply to a Corrective Services officer details of any email address, instant messaging service, chat rooms, or social networking sites including user names and passwords;
31. allow any other device including a telephone to be randomly examined. If applicable, account details and/or phone bills are to be provided upon request of a Corrective Services officer; and
32. advise a Corrective Services officer of the make, model and telephone number of any mobile telephone owned, possessed or regularly utilised by him within 24 hours of connection or commencement of use and this includes reporting any changes to mobile telephone details.