

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General v Van Dessel* [2006] QSC 016

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

FILE NO/S: SC No 8126 of 2005

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court

DELIVERED ON: 10 February 2006

DELIVERED AT: Brisbane

HEARING DATE: 30 January 2006

JUDGE: White J

ORDER: **1. The court is satisfied to the requisite standard that Eric Henri Van Dessel is a serious danger to the community in the absence of a supervision order pursuant to s 13(2)(b) of Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003*.**

2. On release the respondent be subject to the following conditions until further order of the court:

The respondent must:

- (a) Be under the supervision of a corrective services officer for the duration of this order;**
- (b) Report to the corrective services officer at the Department of Corrective Services Area Office closest to his place of residence between 9am and 4pm on or before 22 February 2006 and therein to advise the officer of the respondent's current name and address;**
- (c) Reside at a place within the State of Queensland as approved by the corrective services officer by way of a suitability assessment, the place not to be within 200m of a school, or some other public place or business where children frequent unless authorised in writing by the corrective services officer in order to provide temporary accommodation;**

- (d) Report to and receive visits from the corrective services officer at such frequency as determined necessary by the corrective services officer;**
- (e) Notify the corrective services officer of every change of the prisoner's last name at least two business days before the change happens;**
- (f) Notify the corrective services officer of the nature of his employment, the hours of work each day, the name of his employer and the address of his premises where he is employed;**
- (g) Notify the corrective services officer of every change of employment at least two business days before the change happens;**
- (h) Notify the corrective services officer of every anticipated change of the respondent's place of residence at least two business days prior to the change and obtain the approval of the corrective services officer prior to the change of residence;**
- (i) Not leave or stay out of Queensland without the written permission of the corrective services officer;**
- (j) Not commit an offence of a sexual nature during the period for which these orders operate;**
- (k) Obey the lawful and reasonable directions of the corrective services officer;**
- (l) Respond truthfully to enquiries by the corrective services officer about his whereabouts and movements generally;**
- (m) 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;**
- (n) Notify the corrective services officer of the make, model, colour and registration number of any motor vehicle owned by, or generally driven by him;**
- (o) Not be on the premises of any shopping centre, without reasonable excuse, between 8.00am and 9.30am and between 2.30pm and 4.30pm on school days other than for the purposes of:**
 - (i) employment; or**
 - (ii) to attend a bona fide pre-arranged appointment with a government agency, medical practitioner or the like;**
- (p) Not without reasonable excuse be in the area within 200 metres of a school between 8.00am to 9.30am and 2.30pm to 4.30 pm on school days;**
- (q) Not without reasonable excuse be within 200m of a children's playground or child care area;**
- (r) Not have any supervised or unsupervised care of children under 16 years of age;**
- (s) Not have any unsupervised contact with children**

under 16 years of age except with the corrective services officer's prior written approval. Further the respondent is to disclose the terms of this order to the guardians of the child/ren before any such contact can take place;

- (t) Not establish and maintain contact with children under 16 years of age;
- (u) Not access pornographic images containing photographs or images of children on a computer or on the internet;
- (v) Abstain from illicit drugs for the duration of this order;
- (w) Take prescribed drugs only as directed by a medical practitioner;
- (x) Submit to drug testing as directed by a corrective services officer, the expense of which is to be met by the Department of Corrective Services;
- (y) Attend a psychiatrist or psychologist who has been approved by the corrective services officer at a frequency and duration which shall be recommended by the treating psychiatrist/psychologist, the expense of which is to be met by the Department of Corrective Services;
- (z) Permit any treating psychiatrist, psychologist or counsellor to disclose details of medical treatment and opinions relating to his level of risk of re-offending and compliance with this order to the Department of Corrective Services if such request is made in writing for the purposes of updating or amending the supervision order and/or ensuring compliance with this order;
- (aa) Attend any program, course, counselling, therapy or treatment, in a group or individual capacity, as directed by the corrective services officer in consultation with the treating psychiatrist/psychologist, the expense of which is to be met by the Department of Corrective Services;
- (bb) Attend any such sex offending treatment program or counselling as considered appropriate by the corrective services officer in consultation with the treating psychiatrist/psychologist, the expense of which is to be met by the Department of Corrective Services;
- (cc) Agree to undergo medical testing or treatment as deemed necessary by the treating psychiatrist/psychologist in consultation with the corrective service officer, and permit the release of the results and details of the testing to the Department of Corrective Services, if such a request is made in writing for the purposes of updating or amending the supervision order, the expense of

which is to be met by the Department of Corrective Services. Further and specifically, if it is deemed by the treating psychiatrist/psychologist in consultation with the corrective service officer that sexual impulse medication is an appropriate course of therapy/treatment this is only to occur with the respondent's consent.

- CATCHWORDS: STATUTES – ACTS OF PARLIAMENT – INTERPRETATION – STATUTORY POWERS AND DUTIES – EXERCISE – GENERAL MATTERS – where respondent convicted of multiple sexual offences – whether respondent “serious sexual offender” for purposes of *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* – whether respondent to be released from prison subject to a supervision order – conditions appropriate and practicable to reduce the risk to the community – duration of order
- Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)*
- Attorney-General v Fardon* [2003] QSC 379, considered
Attorney-General v Foy [2005] QSC 001, considered
Attorney-General v Francis [2005] QSC 381, considered
Attorney-General v G [2005] QSC 071, considered
Attorney-General v RPD [2005] QSC 016, considered
Briginshaw v Briginshaw (1938) 60 CLR 336, discussed
Fardon v Attorney-General (Qld) [2004] HCA 46; 78 ALJR 1519, considered
Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd (1992) 110 ALR 449, discussed
R v Secretary of State; Ex parte Khawaja [1984] AC 74, discussed
- COUNSEL: J A Logan SC and L Gill for the applicant Attorney-General
 J Hunter for the respondent
- SOLICITORS: Crown Solicitor for the applicant Attorney-General
 Legal Aid Queensland for the respondent

- [1] The respondent who is almost 42 years of age is presently serving concurrent terms of imprisonment of two and half years imposed in the District Court at Cairns on 13 July 2004 for nine counts of indecent treatment of a child under the age of 12 years under his care. He had been convicted of similar offences in 1989 (occurring between 1 and 31 December 1987) in Mt Isa and in Townsville in April 2001 (occurring between 1 June 1999 and 31 October 1999). For the Mt Isa offences he was sentenced to three years probation and for the Townsville offences he was sentenced to concurrent terms of imprisonment of two years.
- [2] The respondent is due to be released from prison on 19 February 2006.
- [3] The Attorney-General has applied to the court pursuant to the *Dangerous Prisoners (Sexual Offenders) Act 2003* (“the Act”) that he be detained in custody for an

indefinite term for care, control or treatment or, alternatively, that he be released from custody but subject to appropriate conditions.

- [4] On 13 October 2005 Dutney J ordered pursuant to s 8 that the respondent undergo examination by two psychiatrists – Dr Robert Moyle and Dr Donald Grant – for the purpose of preparing reports in accordance with s 11 of the Act. Those reports, as well a report from Professor Barry Nurcombe, a psychiatrist, are before the court together with an extensive body of material (in excess of two thousand pages) relating to the respondent’s history and his conduct and treatment during his several periods in custody.
- [5] Mr Logan SC for the Attorney-General accepts that the more likely order, if the court is satisfied that the respondent constitutes a serious danger to the community, is a supervision order. Mr Hunter for the respondent does not seek to persuade the court that such an order ought not be made. The issue has been to fashion appropriate conditions in order to reduce the risk to the community in a practical way, bearing in mind that those conditions must be workable both for those supervising the respondent and the respondent himself.

Structure of the Act

- [6] There have now been a number of continuing detention or supervision orders made by the court pursuant to the Act, see for example, *Attorney-General v Fardon* [2003] QSC 379; *Attorney-General v Francis* [2005] QSC 381; *Attorney-General v G* [2005] QSC 071; *Attorney-General v Foy* [2005] QSC 001; *Attorney-General v RPD* [2005] QSC 016 where the provisions of the Act have been discussed. The High Court upheld the constitutional validity of the Act in *Fardon v Attorney-General (Qld)* [2004] HCA 46; 78 ALJR 1519.
- [7] The objects of the Act are
- “(a) to provide for the continued detention in custody or supervised release of a particular class of prisoner to ensure adequate protection of the community; and
- (b) to provide continuing control, care or treatment of a particular class of prisoner to facilitate their rehabilitation.”
- [8] A “prisoner” for the purpose of this application is one who is detained in custody who
- “... is serving a period of imprisonment for a serious sexual offence... whether the person was sentenced to the term of imprisonment before or after the commencement of this section”, s 5(6).
- [9] A “serious sexual offence” means an offence of a sexual nature, whether committed in Queensland or outside Queensland, involving violence or offences against children. “Violence” includes intimidation and threats, s 2, Schedule, Dictionary.

- [10] Division 3 of the act concerns the circumstances in which the court may make a final order either continuing the prisoner in detention or subjecting him to supervision on release. Section 13 provides

“(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

(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.”

- [11] Subsection (4) sets out the matters to which the court must have regard when deciding whether a prisoner is a serious danger to the community. They are

“(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.”

- [12] In deciding whether to make a continuing detention order or a supervision order the paramount consideration is ensuring adequate protection of the community, s 13(6).

The onus is on the Attorney-General to prove that a prisoner is a serious danger to the community, s 13(7).

[13] A supervision order has effect in accordance with its terms

“(a) on the order being made or at the end of the prisoner’s period of imprisonment, whichever is the later; and

(b) for the period stated in the order,” s 15.

[14] The Act mandates certain requirements if a prisoner is released under a supervision order. By s 16

“(1) If a judicial authority orders that a prisoner’s release from custody be supervised under a supervision order or interim supervision order, the order must contain requirements that the prisoner—

(a) report to a corrective services officer at the place, and within the time, stated in the order and advise the officer of the prisoner’s current name and address; and

(b) report to, and receive visits from, a corrective services officer as directed by the judicial authority; and

(c) notify a corrective services officer of every change of the prisoner’s name, place of residence or employment at least 2 business days before the change happens; and

(d) be under the supervision of a corrective services officer; and

(e) not leave or stay out of Queensland without the permission of a corrective services officer; and

(f) not commit an offence of a sexual nature during the period of the order.

(2) The order may contain any other order the judicial authority considers appropriate—

(a) to ensure adequate protection of the community; or

Examples for paragraph (a)—

1 That the prisoner not knowingly reside with a convicted sex offender.

2 That the prisoner must not, without reasonable excuse, be within 200m of a school.

(b) for the prisoner’s rehabilitation or care or treatment.”

[15] Those orders may be amended by application made by the prisoner who has been released under a supervision order or the chief executive of the Department of Corrective Services with the Attorney-General’s consent if the court is satisfied that

the released prisoner is not able to comply with the conditions of the order because of a change in that person's circumstances, or for some other necessary or desirable reason, and adequate protection of the community is ensured, ss 18, 19. Division 5 deals with breach of the supervision order.

- [16] Whilst there is provision for mandatory annual reviews where the court has made a continuing detention order, there is no similar provision for a supervision order. Such an order may, as mentioned, be varied or amended but if, for example, a supervision order is for a finite period (in *Attorney-General v Foy* it was for 10 years) there does not appear to be any provision for extending its operation. An amendment does not readily encompass an extension. It was urged for the respondent that any order that might be made for supervision should be for a finite period. That will be discussed below but in the absence of evidence to support the contention that the risk will be appropriately reduced by the end of a stated period the consequence must be that the period of supervision will be for the respondent's lifetime.

Evidentiary standard

- [17] The Act requires the court hearing an application for a Division 3 order to be satisfied on acceptable and cogent evidence "to a high degree of probability" that the evidence is of sufficient weight to justify the decision. In weighing the evidence and deciding whether to make an order the Act requires the court to have the protection of the community as the paramount consideration. The explanation in *Neat Holdings v Karajan Holdings* (1992) 110 ALR 449 at 450 of the test in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362 of the proper approach to the strength of evidence necessary to establish a fact or facts on the balance of probability may be kept in mind. In *R v Secretary of State; Ex parte Khawaja* [1984] AC 74 Lord Scarman observed at 113-4

"The flexibility of the civil standard of proof suffices to ensure that the court will require the high degree of probability which is appropriate to what is at stake."

Here what is at stake is the fundamental legal right to the unfettered personal liberty of the respondent on the expiration of his term of imprisonment. The serious nature of the inquiry is underscored in the Act by the use of the expression "high degree of probability".

The mandatory requirements of s 13(4)(a)-(j)

- [18] The court is required to have regard to the matters set out in s 13(4)(a)-(j) in deciding whether a prisoner is a serious danger to the community. It is convenient to consider those matters not necessarily in the order in which they appear in the legislation and not under separate headings but so as to give some coherence to the discussion.

The respondent's antecedents and criminal history

- [19] The relevant events of the respondent's childhood and exposure to sexual abuse were obtained at interview with the psychiatrists, psychologists and other counsellors and were not independently investigated. Whilst these professionals

were not necessarily confident of the reliability of particular details of what the respondent told them, overall they tended to accept that the respondent was giving them a truthful account of his childhood and this was to some extent verified by the nature of his subsequent offending behaviour.

- [20] The respondent and his family migrated to Australia in 1972 under the sponsorship of his father's brother-in-law and went to live with him in Mt Isa when the respondent was aged 8 years. The respondent is the third of five siblings with two older brothers and two younger sisters, one of whom is deceased. Both his parents are alive. The respondent described being physically and sexually abused by the sponsoring uncle and other adults between the ages of 8 and 12 years. He appears to have been an isolated child who did not related well to his parents. He had no recollection of expressions of affection unrelated to punishment from his mother and his father was particularly stern.
- [21] The sexual abuse at the hands of his uncle commenced shortly after arriving in Mt Isa. The respondent suffered from bedwetting and was spanked or caned by his uncle for doing so or humiliated by being undressed and having his wet pyjamas and bed clothes tied around his neck in front of the other members of his family. He was not protected by his parents. A few days after arriving in Mt Isa the respondent was alone with his uncle. He was anally raped by him and thereafter about once a week over three years his uncle fondled his penis, made him perform fellatio and raped him. He was threatened with being sent to a boy's home or that the family would be sent away from Australia if he spoke of the abuse.
- [22] The uncle introduced the respondent to a friend, "Uncle R", who visited the respondent's uncle's shop. He was expected to perform fellatio on them and if he refused they would masturbate him until he had an erection and put a blade of grass down his urethra causing him extreme pain. He was sometimes given money for these services.
- [23] His uncle also introduced him to a man "J" who was on his paper run and a woman friend "Auntie A" both of whom molested him. "Auntie A's" form of molestation involved excessive mothering; spanking him; and dressing him, after bathing him, in clothes that she had chosen for him. He did not find these mothering experiences unenjoyable. He was sexually abused by "Uncle R" until he was 12 years, by "J" until he was 13 and "Auntie A" until he was 12.
- [24] The respondent told his parents about his uncle's abuse but was disbelieved. When he was 9 he attended an "Adopt-a-cop" program at the local school. He subsequently approached the police officer to tell him about his uncle's abuse, who instead of taking him to the police station to give a statement, drove him to a caravan park, sexually molested him, intimidated him and anally raped him. He did not speak of this particular abuse until undergoing treatment with a psychologist as a consequence of his second criminal offending.
- [25] The respondent related juvenile theft from shops, some vandalism and cruelty to animals of a fairly serious kind. He was unhappy at school, performed poorly and had no friends.
- [26] When the respondent was 13 the family moved from Mt Isa and he was not sexually abused thereafter.

- [27] When the respondent left school he completed two years of an apprenticeship in diesel mechanics and worked occasionally in that field and as a seasonal rural worker. In 1990 he injured his back in a fall working in the mines rupturing the L5/S1 disc which required surgery two years later. He was on a disability pension for ten years doing casual mechanical work and some rural seasonal work.
- [28] The respondent reported symptoms of depression over many years. After the second set of offences he attempted to commit suicide on two occasions by drug overdose.
- [29] He has abused alcohol in the past to a serious degree, smoked tobacco and some unlawful drugs.
- [30] The respondent does not suffer from any mental illness.
- [31] In 1989 the respondent was convicted of indecent dealing during 1987 and placed on probation for three years with a particular requirement to submit to psychiatric and psychological treatment. The child was the 8 year old son of a family friend. He invited the boy to his home to play computer games. The respondent fondled the boy sexually and spanked him when the boy told him to stop. He related this conduct to his own childhood experiences. He said that these were the only times that as a child he felt loveable. The child told his mother who reported the conduct to the police.
- [32] The respondent married a woman 16 years his senior in about 1990 but did not achieve as satisfactory heterosexual relationship. The marriage has ended with divorce in 2001.
- [33] In 1999 the respondent sexually abused twin brothers separately. The respondent knew the boys' single mother and planned the abuse about a week before he took the first of the boys away on an overnight camping trip. He fondled the boy on four occasions not involving oral or anal intercourse. Subsequently he took the other brother camping. He spanked and attempted to fondle the boy who was not cooperative. He attempted to bribe him with goods in an attempt to prevent him from telling his mother what had happened. The mother, overhearing her sons speaking about their experiences with the respondent, discovered the truth and informed the police. The respondent pleaded guilty, was sentenced to two years imprisonment in April 2001 and released on parole after 12 months with strict conditions.
- [34] The respondent reportedly resented a condition of his parole that there should be an adult present if he were in the company of a child. He had a number of foster grandchildren and in due course he became associated with some other families with children including those of a convicted sex offender. He eventually bought a PlayStation and encouraged the children to visit. If one of the children misbehaved he was given the choice of being banned from the house and hence the game or being corporally punished. The children invariably chose the latter and the respondent would generally take them to his bedroom, pull their pants down, bend them over a bed and smack them on the buttocks with his hand or a wooden spoon. He had sexual fantasies of fondling their genitals but did not actually do so. Eventually one of the mothers found out about the conduct and complained to police. This conduct led to the present terms of imprisonment imposed in July

2004. It is likely that this offending conduct commenced during the respondent's parole in respect of the second group of offences.

Participation in programs

[35] The respondent participated in voluntary psychiatric and psychological treatment programmes with Dr R Caniato and Ms E Wainwright in Townsville between March 1999 and 2001.

- *Dr Caniato*

[36] Dr Ricardo Caniato, a psychiatric registrar, treated the respondent on nine occasions in Townsville during 1999 and 2000. He prepared a report dated 15 December 2000 at the request of the respondent's then solicitors for sentencing purposes (the second group of offences). The respondent had depressive symptoms and received supportive counselling attempting to help him avoid future offending.

- *Ms Wainwright*

[37] Ms Eugenie Wainwright, a psychologist, treated the respondent over a lengthy period from March 1999 when he attended a community mental health service in Townsville. She continued to treat him after his imprisonment in April 2001. She noted the respondent's expressed remorse and that he was motivated to effect change in his lifestyle to minimise the risk of re-offending. In November 2001 Ms Wainwright assessed his risk of re-offending if released to home detention as low. After re-offending she wrote that provided he continued with therapy she would not characterise him as "posing a risk to the community at large."

[38] Whilst in prison he completed a Substance Abuse Education Program, Cognitive Skills Program, Word Processing Application, Nurture Positive Self-Esteem and Self-Image (as part of Certificate One in Workplace Preparation and Practice), and the High Intensity Sexual Offending Program.

[39] The respondent commenced the High Intensity Sexual Offending Programme ("HISOP") on 18 April 2005 and completed it on 19 January 2006 although at the time of hearing there was still some outstanding post program testing to be completed. The court has a report from François Jubert and Christine Tunbridge, a psychologist and counsellor respectively, both facilitators for the HISOP. When Professor Nurcombe prepared his report in June 2005 the respondent had not long started the program and he still had some four months or so to completion when he was interviewed by Drs Moyle and Grant. They were able to supplement their reports during oral evidence.

[40] The treatment in the HISOP involved approximately nine hours per week of group based psycho-education and psychotherapy and occasional individual sessions. The respondent attended approximately 309 hours of group therapy and 15 hours of individual sessions.

[41] The facilitators considered that the respondent's participation was of a good standard. It was accepted that the respondent's motivation in participating in the program may have been because of a possible application under the Act. The respondent admitted his offending and demonstrated acceptance of his punishment and treatment. Although the facilitators reported he was initially

nervous about discussing certain personal details he overcame those reservations and presented well, remaining open to questions and actively encouraging others' input. He put a great deal of time and effort into both his written work and oral presentation. The facilitators wrote

“During his time on the program [the respondent] appeared to gain insight into the links between his own childhood experience and abuse, how he interpreted certain behaviours and how he used these distorted beliefs to give himself permission to offend. He acknowledged full responsibility for his offending behaviour and expressed remorse and empathy for the damage done to his victims stating his program goal to learn why he offended and to develop interventions which would prevent the creation of any new victims. He was able to provide changes to these distorted beliefs which, if applied would assist him not to re-offend against children. He was able to establish a more realistic view of children and how they should be treated.”

- [42] The respondent sought out the facilitators to gain additional support and guidance on matters that were causing him concern and this, they reported, was something new which he had not done before. This was thought to give some hope that on release he would be able to deal with problems.
- [43] The respondent has written a lengthy document called his “New Life Plan” – part of the HISOP. He has identified two sets of friends who are aware of his offending behaviour and who have offered to support him upon his release. He has set goals which would support his intention to remain offence free and, according to the facilitators, “establish healthy and appropriate adult relationships across all domains in his life.” Finally the facilitators set out a number of factors which may increase his risk of re-offending – factors which are largely identified in the reports of the psychiatrists – including
- not finding ways to use his time gainfully whether for employment or other non-sexual interests
 - involving himself with children or offering to baby-sit in order to gain acceptance from adults
 - lapsing into avoidant coping strategy such as isolation and seeking the easy comfort of the company of minors
 - failure to develop a social network which supports a positive lifestyle.
- [44] The facilitators also identified a number of factors which may decrease his risk of re-offending (including the converse of the above factors) particularly in finding ways to use his time gainfully, to become involved in relationships only with peer-aged adults who are not responsible for young boys, developing a social network which supports a positive lifestyle, and exercising arousal control and other techniques learnt during the HISOP to replace distorted beliefs with positive alternatives.
- [45] The facilitators included a 22 page detailed running sheet of the respondent's participation in the program in their report which supports the report's conclusions.

- [46] Professor Nurcombe and Drs Moyle and Grant said that there was no further treatment which the respondent could receive in custody which would assist his rehabilitation.

Pattern of offending

- [47] The psychiatrists all agree that the pattern of the respondent's offending behaviour is consistent in that he has tended to ingratiate himself with socioeconomically disadvantaged families and attract children to his house by offering something which they want such as camping trips or computer games or promoting himself as a friendly babysitter. His sexual fantasy is consistent, involving punishment and affection. He dissuades his victims from disclosing the abuse to their parents by threats of one kind or another. He has a well-developed capacity for deceiving himself and others about his true intent.

The psychiatrists' reports

- [48] Professor Nurcombe was asked by the Attorney-General's office to provide a report about the respondent to assist the Attorney-General in deciding whether to bring an application pursuant to the Act.
- [49] Professor Nurcombe has extensive experience in this field and most of his conclusions were agreed with by Drs Moyle and Grant. Any differences were largely matters of emphasis. His diagnosis of paedophilia sexually attracted to males of the exclusive type with elements of sexual sadism/masochism was generally accepted by Drs Moyle and Grant although there was some suggestion that the respondent's sexual orientation might not be exclusive. Substance and alcohol abuse both of which were in remission were noted.
- [50] Professor Nurcombe concluded that the respondent was predisposed to being sexually abused by the lack of affection in his family of origin. His response to that abuse was to confuse hatred and the need for love and to associate sexual fondling with being loved. His sexual orientation, accordingly, was fixated on pre-pubertal and pubertal boys.
- [51] Professor Nurcombe concluded that the respondent had developed an Avoidant Personality Disorder characterised by avoidance of interpersonal contact, the inability to form or sustain intimate relationships, a concern about being rejected in social situations and the view of himself as inadequate, socially inept, personally unappealing and inferior to others. Those personality distortions have been associated with a chronic depressive condition for which he has received only intermittent treatment.
- [52] There was considerable agreement amongst the three psychiatrists who prepared detailed reports about the respondent as to their methodology and testing results. They all advocate a combination of actuarial predictive methods of risk appraisal together with clinical assessment. Professor Nurcombe exemplified this when he concluded

“The celebrated debate between those who advocate actuarial prediction and those who advocate clinical decision making has abated. It is generally conceded that it is as important to have

knowledge of statistical base rates for particular sub-groups as it is to have thoughtful, well reasoned clinical opinion about a particular case. Many established actuarial variables (e.g. the PCL-20) are ultimately based on clinical knowledge and expertise. In this report a combine actuarial/clinical approach will be employed.”

- [53] All three considered that the respondent’s physical health is an important factor in his risk assessment. He suffers from serious back pain and should he relapse into alcohol or illegal substance use to deal with it the risk of re-offending would increase. Similarly, although he is not currently depressed, he has a disposition to a depressive condition and a lapse into that condition after release could be reactivated by problems of adjustment and loneliness.
- [54] At the time of preparing his report Professor Nurcombe concluded that the respondent was only a low risk of violent recidivism but was at a moderate to high risk of sexual recidivism particularly of molesting pre-pubertal and pubertal boys. Having considered the effect of the respondent’s participation in the HISOP as well as having some further material relating to the respondent’s history he articulated the risk as

“... further involvement with pre-pubertal boys in interaction involving spanking and genital manipulation. This would be foreshadowed by grooming, by involving himself with the family of the boys, by ingratiating himself in that way and thus gaining access to the boys ...”

As to the severity of that risk Professor Nurcombe concluded

“I would say, summarising all the risk documents and taking into account improvement following the High Intensity Sex Offenders Treatment Program I would say the risk is moderate, and that’s on a scale of low, low to moderate, moderate, moderate to high and high.”
t/s 17.

- [55] If, however, there were no supports or continuing treatment Professor Nurcombe concluded that the risk of re-offending would be moderate to severe or moderate to high end level. Consistently with Drs Moyle and Grant, Professor Nurcombe considered that the behavioural qualities of the respondent were entrenched and would last into advanced age.
- [56] The psychiatrists agreed that it was essential that the respondent have the services of an experienced probation officer or correctional officer to supervise his overall plan and to have continuing contact for counselling with a psychiatrist or psychologist who is experienced in the treatment of sex offenders. It was not thought that there was any great risk by virtue of incidental contact with children. The risk was rather where children became familiar with the respondent through contact within the family. The greatest risk was if the respondent became an “uncle” to little boys.
- [57] Dr Grant rated the respondent as being a moderate risk of future offending and as being of less risk than prior to commencing the present sentence. This is because he has achieved some genuine insights and a degree of rehabilitation which he had not

managed previously. Nonetheless, that assessment of risk indicated that the respondent required supervision and treatment on release. Dr Grant identified very similar post-release conditions to those of Professor Nurcombe. He particularly referred to the need to undergo appropriate alcohol and drug counselling in conjunction with assistance for pain management to avoid risks of drug or alcohol abuse.

- [58] Dr Grant elaborated in his oral evidence on the kind of support that the respondent would require on release

“I think he would need someone who would act as a kind of case manager and I think the correctional services officer would provide that role in coordinating ongoing care and detention, but I think that he would benefit from an ongoing supervision and support relationship with either a psychiatrist or a psychologist, both of whom would need to be experienced in treating sexual offenders and that would need to be a long-term supervisory role, monitoring role. He might also need the benefit of alcohol and drug counsellors and he might benefit from assistance from a social worker, for example, in various practical aspects of living, but I think the actual mix at any one time might vary and that might be coordinated by the community correctional officer.” t/s 28

- [59] Dr Moyle concluded in his report that unsupervised and not subject to the Act the respondent was “at least moderately high risk of re-offending sexually against male children between 8 and 12 years of age using violence to sexually arouse himself of a relatively minor but nonetheless significant level.” He was able to elaborate in oral evidence given by telephone from New Zealand. Although Dr Moyle had some reservation about the beneficial effect of the HISOP he concluded that the respondent had made some additional gains, particularly his ability to be sociable.

- [60] None of the psychiatrists thought that prison had anything left to offer the respondent by way of assistance or treatment. They agreed that the necessary mix of treating professionals could only be found in big centres such as greater Brisbane or Townsville. The respondent was interested in returning to Townsville to live.

Ought a Division 3 order be made?

- [61] The evidence presented to the court which is both acceptable and cogent demonstrates to a high degree of probability, as required by the Act, that the respondent is a serious danger to the community if he were to be released on the expiration of his sentence unless he is subject to a supervisory order. Mr Hunter did not seek to suggest otherwise. It is not contended that no effective order can be made so as to dictate a continuing detention order. The difficulty, as mentioned at the outset, has been to fashion an order which will manage the risk to an acceptable level bearing in mind that adequate protection of the community is the legislative object. Because there is a tendency to “demonise” sex offenders particularly when their offending is against children it should be recognised that this respondent, like so many sex offenders with entrenched behavioural problems, has himself been the victim of serious sexual abuse as a young child. Accepting as the psychiatrists and other professionals have done, the history related by the respondent, the failure of his family and the wider community to protect him and allow him to grow up with a

proper understanding of his own and others' sexuality has made him, in his turn, an offender. Thus, at its widest, the order seeks to bring to an end that particular cycle of victim as offender.

The conditions for supervised release

- [62] Possible conditions were canvassed with the psychiatrists in the course of their oral evidence and these proposed conditions were further elaborated during submissions. There was overall consensus about the nature of those conditions which would serve the purposes of the Act, namely to protect the community, and be sufficiently certain so as to act as a clear guide to the respondent and which would facilitate his rehabilitation. It should be noted that many of these conditions are similar to those imposed by the Parole Board on his release in 2002. Some of the present conditions require particular comment.

Residence

- [63] It is proposed that the order contains a condition that the respondent reside at a place within Queensland as approved by the corrective services officer by way of a suitability assessment but in any event not to be within 200m of a school or some other public place or business where children frequent unless authorised in writing by the corrective services officer in order to allow for temporary accommodation. The Legal Aid solicitors acting on behalf of the respondent have made extensive inquiries about accommodation in Townsville and Brisbane. All potential places operate a waiting list system and would wish to interview the respondent before placement. Some waiting lists for suitable (no children) accommodation are very long, for example, 80 months in Townsville for a one bedroom unit from the Department of Housing (the respondent was placed on it in March 2005). Some suitable accommodation may be available at the Salvation Army Hostel in Brisbane (men only) but a school and childcare centre are within 100m of that facility.
- [64] The psychiatrists recognised, when discussing the conditions in evidence, that the respondent will have great difficulty in establishing suitable permanent accommodation from prison. Since they agreed that the risk to the community arises from "grooming" type conduct by the respondent ingratiating himself into families rather than by random preying on a child, in the short term, the respondent could be accommodated in an accommodation venue even though children would be nearby in a school or similar, if authorised by the respondent's corrective services officer.

Places where there are children

- [65] Another condition provides that the respondent not be on the premises of any shopping centre without reasonable excuse between 8am-9:30am and between 2:30pm-4:30pm on schooldays other than for the purposes of employment or to attend a bona fide pre-arranged appointment with a government agency, medical practitioner or the like; nor without reasonable excuse be within 200m of a school between 8:00am-9:30am and 2:30-4:30pm on schooldays or a children's playground or childcare area.

[66] Although random acts against unknown children have not been part of the respondent's *modus operandi* and are not seen as a real risk, nonetheless such conditions serve, in the opinion of the psychiatrists, two purposes – they enforce the respondent's understanding that children are “off limits” to him and they address any overall concern by members of the community who cannot be expected to have information about the particular nature of the risk in this respondent's case.

[67] When asked about the reasonableness of “no contact with children” conditions Dr Moyle said he had treated a number of repeat offenders with homosexual, paedophilic interests towards children and for whom children are “off-limits” but who nonetheless have “meaningful and enjoyable lives but children aren't part of it.” t/s 56

Medication

[68] The respondent has raised with the psychiatrists the possibility of chemical intervention to reduce his sexual impulses. There is one such medication available in Australia which meets ethical standards. It does have side effects but all three agree that should the respondent request it, it is something that could be considered but emphasised that it was a matter for his fully informed consent.

Duration of the order

[69] Mr Hunter submitted that the order should have some temporal limits and suggested 10 years. The opinion of the psychiatrists is that the respondent's offending behaviours are deeply entrenched and may be managed but not eradicated. The protection of the community dictates that the order have no expiration date, that is, so long as the legislation exists in its present form and no variation is made to the conditions imposed the order should continue indefinitely.

Some difficulties

[70] When the Attorney-General commended the Bill for the Act to the Legislative Assembly on 3 June 2003 he referred in broad terms to supervision orders but made no reference to any detail as to how they might be worked out. The Act involves two departments of government – that of the Attorney-General who applies for an order and the Department of Corrective Services whose officers are required by s 16 to implement the supervision orders. Orders may be amended on application brought by the chief executive of the Department of Corrective Services with the consent of the Attorney-General (or may be brought by the prisoner). Any action in respect of the contravention or anticipated contravention of an order is initially brought on complaint by a police officer or a corrective services officer.

[71] Applications under the Act are being made to this court regularly. Release under supervision, if it is to meet both objects of the Act, will have significant resource implications. The evidence of the psychiatrists about the continuing and specialised nature of the prisoner's rehabilitation, care or treatment when released and its limited availability suggests that officers of both the Attorney-General and the Department of Corrective Services need to address these matters in a pragmatic fashion. Justice Mackenzie referred to some similar concerns at the conclusion of his judgment in *Francis*.

- [72] Some kind of temporary accommodation facility for the class of prisoner covered by the Act whilst setting up support groups and employment after release or staged release might be something to consider. There has clearly been an acknowledgement of the financial responsibility of the Department of Corrective Services for managing the risk of re-offending. The Department has agreed to meet the cost of psychiatric and other care after release, see paragraphs (x), (y), (aa), (bb), (cc) of the order. But it is the issue of short-term accommodation which is the most pressing for those in situations like that of the respondent.

The order

- [73] The order of the court is that

1. The court is satisfied to the requisite standard that Eric Henri Van Dessel is a serious danger to the community in the absence of a supervision order pursuant to s 13(2)(b) of Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003*.
2. On release the respondent be subject to the following conditions until further order of the court:

The respondent must:

- (a) Be under the supervision of a corrective services officer for the duration of this order;
- (b) Report to the corrective services officer at the Department of Corrective Services Area Office closest to his place of residence between 9am and 4pm on or before 22 February 2006 and therein to advise the officer of the respondent's current name and address;
- (c) Reside at a place within the State of Queensland as approved by the corrective services officer by way of a suitability assessment, the place not to be within 200m of a school, or some other public place or business where children frequent unless authorised in writing by the corrective services officer in order to provide temporary accommodation;
- (d) Report to and receive visits from the corrective services officer at such frequency as determined necessary by the corrective services officer;
- (e) Notify the corrective services officer of every change of the prisoner's last name at least two business days before the change happens;
- (f) Notify the corrective services officer of the nature of his employment, the hours of work each day, the name of his employer and the address of his premises where he is employed;
- (g) Notify the corrective services officer of every change of employment at least two business days before the change happens;
- (h) Notify the corrective services officer of every anticipated change of the respondent's place of residence at least two business days prior to the change and obtain the approval of the corrective services officer prior to the change of residence;
- (i) Not leave or stay out of Queensland without the written permission of the corrective services officer;

- (j) Not commit an offence of a sexual nature during the period for which these orders operate;
- (k) Obey the lawful and reasonable directions of the corrective services officer;
- (l) Respond truthfully to enquiries by the corrective services officer about his whereabouts and movements generally;
- (m) 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;
- (n) Notify the corrective services officer of the make, model, colour and registration number of any motor vehicle owned by, or generally driven by him;
- (o) Not be on the premises of any shopping centre, without reasonable excuse, between 8.00am and 9.30am and between 2.30pm and 4.30pm on school days other than for the purposes of:
 - (i) employment; or
 - (ii) to attend a bona fide pre-arranged appointment with a government agency, medical practitioner or the like;
- (p) Not without reasonable excuse be in the area within 200 metres of a school between 8.00am to 9.30am and 2.30pm to 4.30 pm on school days;
- (q) Not without reasonable excuse be within 200m of a children's playground or child care area;
- (r) Not have any supervised or unsupervised care of children under 16 years of age;
- (s) Not have any unsupervised contact with children under 16 years of age except with the corrective services officer's prior written approval. Further the respondent is to disclose the terms of this order to the guardians of the child/ren before any such contact can take place;
- (t) Not establish and maintain contact with children under 16 years of age;
- (u) Not access pornographic images containing photographs or images of children on a computer or on the internet;
- (v) Abstain from illicit drugs for the duration of this order;
- (w) Take prescribed drugs only as directed by a medical practitioner;
- (x) Submit to drug testing as directed by a corrective services officer, the expense of which is to be met by the Department of Corrective Services;
- (y) Attend a psychiatrist or psychologist who has been approved by the corrective services officer at a frequency and duration which shall be recommended by the treating psychiatrist/psychologist, the expense of which is to be met by the Department of Corrective Services;
- (z) Permit any treating psychiatrist, psychologist or counsellor to disclose details of medical treatment and opinions relating to his level of risk of re-offending and compliance with this order to the Department of Corrective Services if such request is made in writing for the purposes of updating or amending the supervision order and/or ensuring compliance with this order;

- (aa) Attend any program, course, counselling, therapy or treatment, in a group or individual capacity, as directed by the corrective services officer in consultation with the treating psychiatrist/psychologist, the expense of which is to be met by the Department of Corrective Services;
- (bb) Attend any such sex offending treatment program or counselling as considered appropriate by the corrective services officer in consultation with the treating psychiatrist/psychologist, the expense of which is to be met by the Department of Corrective Services;
- (cc) Agree to undergo medical testing or treatment as deemed necessary by the treating psychiatrist/psychologist in consultation with the corrective service officer, and permit the release of the results and details of the testing to the Department of Corrective Services, if such a request is made in writing for the purposes of updating or amending the supervision order, the expense of which is to be met by the Department of Corrective Services. Further and specifically, if it is deemed by the treating psychiatrist/psychologist in consultation with the corrective service officer that sexual impulse medication is an appropriate course of therapy/treatment this is only to occur with the respondent's consent.