

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Hynds* [2009] QSC 355

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
(applicant)
v
GREGORY ALAN HYNDS
(respondent)

FILE NO: SC No 7584 of 2007

DIVISION: Trial Division

PROCEEDING: Dangerous Prisoner Application

ORIGINATING COURT: Supreme Court

DELIVERED ON: 9 November 2009

DELIVERED AT: Supreme Court at Brisbane

HEARING DATE: 5 March 2009, 16 July 2009 and 14 August 2009

JUDGE: Justice P Lyons

ORDER/S:

1. Pursuant to s 30(1) of the *Dangerous Prisoners (Sexual Offenders) Act 2003*, the decision made by Justice Fryberg on 7 December 2007 that the prisoner is a serious danger to the community in the absence of a Division 3 order is affirmed.
2. Pursuant to s 30(3)(a) of the *Dangerous Prisoners (Sexual Offenders) Act 2003*, the respondent, Gregory Alan Hynds, continue to be subject to a continuing detention order for his care, control or treatment.

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – SERIOUS OR VIOLENT OFFENDER – where the respondent’s continuing detention order is reviewed under section 27 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* – whether the community would be adequately protected if the respondent is released subject to a supervision order – where the reports of psychiatrists regarding the respondent are considered
Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 7, s 11, s 13, s 27, s 29, s 30

COUNSEL: J Rolls for the applicant
S Ryan for the respondent

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

- [1] **P LYONS J:** On 7 December 2007 Fryberg J made an order, referred to as a continuing detention order, that Mr Hynds be detained in custody for an indefinite term for control, under s 13(5)(a) of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (DPSOA)*. This is a review of that order, under s 27 of the *DPSOA*.

Course of proceedings

- [2] The review initially came on for hearing on 5 March of this year. Reports had then been prepared by two psychiatrists for the review. It emerged that the view which one psychiatrist would express orally was significantly different from the view which Counsel for Mr Hynds had anticipated as a result of that psychiatrist's report. An adjournment was granted to enable evidence to be obtained on behalf of Mr Hynds from another psychiatrist.
- [3] The matter then came on for hearing on 16 July 2009. Some evidence was then heard, but witnesses on whose evidence Counsel for the Attorney-General wished to rely were not available for cross-examination, and the matter was again adjourned. It came on for hearing again on 14 August 2009.

Statutory provisions regulating review

- [4] Section 27 of the *DPSOA* requires an annual review of a continuing detention order made under s 13. The review itself is regulated by s 30, which is in the following terms:

“30 Review hearing

- (1) This section applies if, on the hearing of a review under section 27 or 28 and having regard to the matters mentioned in section 13(4), 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), the paramount consideration is to be the need to ensure adequate protection of the community.
- (4A) If the court makes the order under subsection (3)(b), the supervision order must include the requirements mentioned in section 16(1)(da) and (db).
- (5) If the court does not make the order under subsection (3)(a), the court must rescind the continuing detention order.”

[5] The reference in s 30(1) to the matters mentioned in s 13(4) makes it necessary to refer to that provision. It is in the following terms:

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

- (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.”

[6] When an application is made for an order under s 13, provision is made for the making of an order that the prisoner undergo examination by two psychiatrists.¹ Section 11 then regulates the preparation of reports by the psychiatrists. For a review, s 29 requires further psychiatric examination, unless the Court otherwise orders. Notwithstanding the language of s 30(1), it is plainly the legislative intent that the reports of the psychiatrists who carry out an examination under s 29 are to be considered on the review. The view taken by the parties seems to have been that the reports resulting from an examination under s 29 take the place of earlier reports prepared under s 11.

¹ See s 8 of the *DPSOA*.

- [7] The first question raised by s 30 is whether Mr Hynds is a serious danger to the community in the absence of a Division 3 Order.
- [8] A Division 3 Order is made under s13 of the *DPSOA*, and is either an order the prisoner be retained in custody for an indefinite term for control, care or treatment; or an order that the prisoner be released from custody subject to the requirements the court considers appropriate, to be stated in the order.²
- [9] It will be apparent that s 13(4) poses the test for deciding whether a prisoner is a serious danger to the community by reference to s 13(1). However, that in turn makes it necessary to refer to s 13(2), where the test is formulated as follows:
- (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.
- [10] At the hearing, there was no suggestion that Mr Hynds would not be a serious danger to the community in the absence of a Division 3 Order. As will become apparent, I am satisfied, by acceptable, cogent evidence, and to a high degree of probability, that the evidence put before me was of sufficient weight to affirm a decision to that effect. The real debate was whether Mr Hynds should continue to be detained in custody, or whether he should be released from custody subject to a supervision order.
- [11] Before coming to the psychiatric evidence before me and the contentions of the parties, it is necessary to refer to a number of background matters, including the offences by reason of which Mr Hynds has been in custody for such a long time.

The offences

- [12] Mr Hynds was convicted of a series of offences committed on 3 April 1987 (*the 1987 offences*). They include four offences of sexual intercourse without consent, one offence of attempted sexual intercourse without consent, one offence of threatening to inflict actual bodily harm by means of a weapon with intent to have sexual intercourse without consent, and attempted murder.
- [13] He committed a further series of offences on 9 December 1988 (*the 1988 offences*). They included one offence of enticing away for abduction; two offences of sexual intercourse without consent; and one offence of threatening to inflict bodily harm by means of a weapon. The 1988 offences were committed while Mr Hynds was on bail for the 1987 offences.

² See s 13(5) of the *DPSOA*.

- [14] For the 1987 offences, other than the attempted murder offence, Mr Hynds was sentenced to varying terms of imprisonment, the longest term being four years. For the attempted murder offence, he was sentenced to a minimum term of eight years' imprisonment, to commence on 19 August 2002, which was the date when the longest of the other sentences for the 1987 offences would expire. However, the sentences included provision for parole, to be available from 18 February 2003.
- [15] Mr Hynds was subsequently convicted for the 1988 offences. For each of them, he was sentenced to a term of imprisonment of five years, commencing on 18 August 2000. The parole provisions imposed in respect of the 1987 offences were varied, with the effect that Mr Hynds became eligible for parole early in 2008. The order made by Fryberg J prevented Mr Hynds's release at that time.
- [16] Mr Hynds was transferred from New South Wales to Queensland in 1996, under the *Prisoners (Interstate Transfer) Act 1982 (NSW)*.
- [17] Mr Hynds pleaded not guilty to both series of offences.
- [18] The material before me includes a summary of the sentencing remarks for the 1987 offences.³ It is relevant to an understating of the background, and the psychiatrist's reports.
- [19] Mr Hynds was a member of the Royal Australian Navy in 1987. The first victim's husband was also a member of the Navy. Mr Hynds had had previous contact with the victim and her husband, and had been to their home on two previous occasions.
- [20] On the night of the offence Mr Hynds arrived at the home (without prior arrangement) and suggested that the victim's husband and he go out to a club. At the club, Mr Hynds informed the victim's husband that he had to go to the toilet. However, he left the club, and returned to the victim's home. He gained entry to the home by stating that he was concerned that something had happened to the victim's husband, and that he should wait for him to return. He then produced a knife and forced the victim into the main bedroom, where the offences were committed. In the course of the offences, a struggle, described as being "of quite amazing violence and ferocity", took place between Mr Hynds and the victim. Mr Hynds tried to strangle the victim, initially manually, and then later with a telephone cord. The victim managed to fight back but Mr Hynds retrieved the knife and was kneeling over the victim with it in his hand when her husband returned. There was then a further struggle, before Mr Hynds collected his clothing and left the victim's home.
- [21] While Mr Hynds was on bail for the 1987 offences, he was transferred by the Navy to Nowra, so that he would not be near the victim of the 1987 offences and her husband. Another member of the Navy who was based at Nowra was temporarily in Sydney, leaving his wife alone at their home in Nowra. Mr Hynds arranged for another person to ring this woman, telling her that her husband had been injured in

³ Affidavit of Guy Baulf filed 11 February 2009 (1 Baulf) exhibit GB-1.

an accident in Sydney, and that the Navy was sending someone around to pick her up, so that she could be flown there. Mr Hynds arrived, and then drove her to a disused airfield, where he committed the offences, using a knife to threaten the woman.⁴

[22] On a number of occasions, Mr Hynds has given differing accounts of the events associated with the offences. On one account, he says that, although he was serving in the Navy, he was associated with a man who was a “loan shark” and drug dealer. Mr Hynds acted as a debt collector and drug courier for this man.⁵ His debt collecting activities involved significant violence, including clubbing people with a baseball bat.⁶ Mr Hynds claimed that he had not received an amount of between \$15,000 and \$20,000 of the money which had come due to him from this work. According to Mr Hynds, the drug dealer told him that the money had been given to the first victim’s husband. Mr Hynds then had to wait some time before he contacted this man. In that period, he became agitated and angry. On the day of the offences he went to the house, found the husband and tied him to a chair. He “then proceeded to question him with violence”. According to Mr Hynds, the wife was visiting neighbours. Mr Hynds then went and found her, and she returned to the home with him. He then tied her up, and tortured both the husband and wife. He subsequently forced them to perform sexual acts upon one another, but denied that he had participated in any sexual activity himself.⁷

[23] Mr Hynds associated the 1988 offences with the account he gave of the events leading up to the 1987 offences. He states that he initially thought the victim of the 1988 offences was the same person as the victim of the 1987 offences. He seemed to suggest that the 1988 offences were a consequence of his belief about the conduct of the husband of his first victim. However, he says that when he went to the house of the second victim he was shocked when he found out that it “was the wrong person”, but nevertheless went ahead with his plan. He says that he has no memory of the events for much of the night of the 1988 offences.⁸

[24] He pleaded not guilty to the 1987 offences. He pleaded not guilty to some, but not all, of the 1988 offences, his reason for the plea of not guilty being his memory lapse.

Personal background

[25] Mr Hynds is 48 years old, his date of birth being 29 August 1961. After he left school in 1978, he worked as a car salesman. He joined the Navy the next year. He was apparently deployed to Afghanistan for six months.⁹ While his group was not

⁴ A brief summary of these events is found in the report of Professor Philip Morris of 14 April 2009 (*Morris*), exhibit B to his affidavit of 8 July 2009.

⁵ See *Morris* pages 1-3; report of Dr Scott Harden dated 8 February 2009, exhibit SH3 to Dr Harden’s affidavit filed 11 February 2009 (*Harden*) pages 2-4, 11, 18; report of Dr Josie Sundin of 26 November 2007 (*Sundin 2007*) pp 2-6, 14.

⁶ *Morris* p 2; *Harden* p 4; *Sundin 2007* p 3.

⁷ *Sundin 2007* p 4.

⁸ *Sundin 2007* p 5.

⁹ *Sundin 2007* p 8.

involved in any direct military engagement, they were regularly shot at. In Afghanistan, he witnessed the consequences of torture of Russian prisoners by Afghan tribes. He said that he saw some atrocious things, and is reported as saying, “nobody took prisoners, neither the Russians nor Afghans”.

- [26] He was also apparently based in Beirut. In Beirut he assisted in the immediate recovery of US serviceman after their compound had been bombed.¹⁰
- [27] He also served time in the Navy in the United States, and in Australia.
- [28] Mr Hynds has a history of alcohol abuse while in the Navy.¹¹ He has on infrequent occasions used drugs.¹²
- [29] Mr Hynds was married, and has a child. It seems that the marriage has not survived.
- [30] Mr Hynds’s mother and stepfather live in Mackay. If released, he plans to move to Mackay and work in the Mackay region.

History in custody

- [31] While in custody, Mr Hynds has learnt a carpentry trade, and has been working continuously.¹³
- [32] Early in his imprisonment there were a number of breaches for discipline problems (including the use of drugs), these being prior to his transfer to Queensland. Since then, there have been four breaches, the last being in 2001.
- [33] Prior to 2006, he was classified as low security, but the classification was changed to high security, apparently associated with administrative changes.¹⁴
- [34] Mr Hynds has undertaken a number of courses whilst in prison, including an anger management course and a cognitive skills program as well as a violence intervention program. This is said to be a nine month course, and quite intensive. Mr Hynds undertook this course in 1998.¹⁵ Mr Hynds has also completed the Preparatory Program for Sexual Offenders.¹⁶

¹⁰ Morris p 5.

¹¹ Morris p 6.

¹² Morris p 6.

¹³ Morris p 3

¹⁴ Morris p 3.

¹⁵ Morris pp 3-4.

¹⁶ Morris p 4.

- [35] Mr Hynds is a prisoner at the Borallon Correctional Centre. It has been recommended that he undertake a High Intensity Sexual Offenders Program (*HISOP*) but he has not done so. The course is apparently only available at the Wolston Correctional Centre, and at the Lotus Glen Correctional Centre outside Mareeba. Mr Hynds has stated that he is willing to do the *HISOP*, but is not prepared to go to the Wolston Correctional Centre because the majority of prisoners who undertake the course there are child sexual offenders with whom he is not willing to associate, and because he does not want to be regarded as a “protected” prisoner.¹⁷ He is, apparently, prepared to undertake the *HISOP* at Lotus Glen, but that facility is intended for indigenous offenders.
- [36] Mr Hynds has been seeing a psychologist in training, generally about twice a month, for much of 2008. The sessions continued into 2009.

Dr Harden’s evidence

- [37] Dr Harden considered that Mr Hynds has an Anti-social Personality Disorder with additional narcissistic traits.¹⁸ He also considered that he has some psychopathic personality traits. He noted a strong history of alcohol abuse. He considered that the risk of future sexual re-offending on the part of Mr Hynds is high.¹⁹ He considered that risk to be increased if Mr Hynds were to be released from custody without a stringent supervision order.²⁰
- [38] In his oral evidence, Dr Harden said with reference to his diagnosis that Mr Hynds suffers from an anti-social personality disorder, that that was based on his long-standing maladaptive way of dealing with other people and the world around him, which involved the persistent violation of the rights of others. Mr Hynds’s narcissistic traits were related to this condition.²¹ That resulted in Mr Hynds’s seeking to control situations, such as interviews with medical specialists, including controlling the flow of information in such interviews. Dr Harden stated that Mr Hynds had reported to him a version of the 1987 offences which was quite different to the version Mr Hynds had presented at the time of his trial. Dr Harden described Mr Hynds’s personality as “rather anti-social, callous, a little narcissistic”.
- [39] Dr Harden considered that Mr Hynds did not display all the diagnostic criteria for post-traumatic stress disorder. However, he considered it possible that Mr Hynds might have no recollection of some of the events associated with the 1988 offences, because people who have a history of trauma sometimes “disassociate” from traumatic events, such as those related to the commission of a violent kind. He could not confirm whether that was in fact the case with Mr Hynds.

¹⁷ Morris p 5.
¹⁸ Harden p 23.
¹⁹ Harden p 23.
²⁰ Harden p 24.
²¹ Transcript (*T*) 1-46 to 1-47.

- [40] Dr Harden considered that a clear understanding had not been developed of the things that trigger Mr Hynds's offending conduct.²² He had earlier recommended that Mr Hynds undertake a HISOP, and considered that this might give a better understanding of Mr Hynds's conduct. He considered that such a program "may well provide a pathway for Mr Hynds to move back into the general community in a way that's safe for him and for other people".²³
- [41] Dr Harden did not entirely exclude the possibility that Mr Hynds suffers from a post-traumatic stress disorder. He stated that one effect of such a disorder is to increase the risk of alcohol abuse which in turn is a disinhibiting factor, often associated with crimes of violence. However, the information available to him did not indicate that alcohol abuse was a strong part of the context in which Mr Hynds had committed the 1987 and 1988 offences, and he was not satisfied that preventing the abuse of alcohol by Mr Hynds would result in a significant decrease in the risk that he might re-offend. He considered that Mr Hynds's personality structure was of primary importance in relation to his risk of re-offending.²⁴
- [42] Dr Harden's present assessment was that the risk that Mr Hynds would re-offend is high. He considered that a supervision order containing comprehensive but practical conditions may well reduce that risk, but in view of the difficulties in understanding Mr Hynds's personality, he was unable to come to a firm view that a supervising order would have that effect.²⁵
- [43] When asked about the differing versions Mr Hynds had given of the 1987 offences, Dr Harden said that he did not consider that Mr Hynds suffered from a condition affecting his brain or a psychiatric condition that impairs his memory.²⁶ He excluded the possibility of delusions as an explanation for these versions, and could not identify any other psychiatric or psychological mechanism which could explain Mr Hynds's honestly giving different versions of these offences at different times.

Professor Morris's evidence

- [44] Professor Morris considered that Mr Hynds suffered from a post-traumatic stress disorder in the past, the symptoms of which had abated, though some residual symptoms remained.²⁷ He considered that Mr Hynds had suffered from alcohol abuse, and that that might occur again if he were released from prison. He also considered that Mr Hynds had significant personality problems, with prominent personality traits of a paranoid, anti-social and narcissistic type, which have moderated in severity.²⁸ He considered that Mr Hynds should undergo specialist psychiatric review for treatment of his post-traumatic stress disorder, likely to include a course of counselling and the use of SSRI anti-depressant medication;

²² T 1-53.

²³ T 1-55.

²⁴ See T 1-59 to 1-61.

²⁵ See T 1-64 to T 1-65.

²⁶ T 1-75.

²⁷ See exhibit B to Morris p 7.

²⁸ Morris p 8

counselling directed towards alcohol relapse prevention; the use of anti-craving drugs to assist him to remain abstinent from alcohol; and counselling with an experienced counsellor to assist with his personality difficulties. He expected his problem characteristics gradually to diminish in intensity over time.²⁹ He considered that Mr Hynds was a moderate risk of committing further violent sexual offences, but that this could be managed by the development of a risk management plan for him.³⁰

- [45] Professor Morris initially expressed some doubt about the utility of a HISOP. He considered that Mr Hynds could undergo an individual program with an experienced therapist, outside of prison. While Professor Morris considered that the risk that Mr Hynds would re-offend if released from custody under a supervision order was moderate, without such an order the risk would be higher.³¹
- [46] Orally, Professor Morris expressed some doubt about the effectiveness of treatments for personality problems and personality disorders.³² Further, if Mr Hynds were released without the benefit of participation in a sexual offender program within the community, his risk of re-offending would be in the higher-moderate range.³³ Absent participation in such a program, he considered that Mr Hynds should not be released from prison.³⁴
- [47] Professor Morris did not regard it as necessary to know the triggers for Mr Hynds's offending conduct to enable an appropriate treatment program to be provided for him.³⁵ He also stated that if a person starts a HISOP but does not complete it, the risk of recidivism is greater.³⁶ He considered that Mr Hynds's expressions of remorse and empathy for his victims was at an intellectual level, rather than an emotional level.³⁷

Dr Sundin's evidence

- [48] Dr Sundin provided a report dated 6 November 2008.³⁸ In that report, Dr Sundin stated that her diagnosis of Mr Hynds remained essentially the same as in 2007, that is, anti-social personality disorder, with alcohol abuse which was in remission while in prison. He was said to have made progress in the last 12 months, having benefited from the sessions with the psychologist in training. His risk for future recidivism was raised by his failure to undertake a HISOP. She also stated that Mr Hynds may suffer a previously undiagnosed post-traumatic stress disorder, related to his overseas military service. While his risk of recidivism remained moderate to high, Dr Sundin expressed the view that he had made sufficient progress over the

²⁹ Morris p 9.

³⁰ Morris p 11.

³¹ Morris p 14.

³² T 3-43.

³³ T 3-46 to 3-47.

³⁴ T 3-50.

³⁵ T 3-53.

³⁶ T 3-55 to 3-66.

³⁷ T 3-61 to T 3-62.

³⁸ Exhibit JS-2 to Dr Sundin's affidavit filed 11 February 2009 (*I Sundin*).

last year that he could now be managed within the community with an appropriate supervision order. She considered that he still needed to participate in a more intensive Sex Offenders Treatment Program, and she strongly recommended that he be referred to one within the community.³⁹ This report concluded with a statement that Dr Sundin genuinely held the opinion expressed in the report.

[49] As previously indicated, when the matter came on for hearing on 5 March 2009, I was informed that Dr Sundin would express a view different to that suggested by the November 2008 report. Dr Sundin has since provided a further report dated 18 March 2009.⁴⁰ In that report she stated that the opinion expressed in her November 2008 report was a consequence of her misunderstanding of the DPSOA; and that she had thought that the Court was now obliged to release Mr Hynds.

[50] In her March 2009 report, Dr Sundin stated that she considered little had changed since her first assessment of Mr Hynds late in 2007. She confirmed the diagnosis of an anti-social personality disorder which, while not at a level which would be described as psychopathic, was still significant, and which she considered might be underrated by reason of the limited information available about him. On this occasion she considered that post-traumatic stress disorder was a probable secondary diagnosis. This condition is untreated, and it increased the risk of violent behaviour, and the abuse of alcohol and other substances. Dr Sundin stated that the sessions with the psychologist in training were, she had been informed, simply intended as motivational and encouraging for Mr Hynds to consider joining the Sex Offenders Treatment Program; and that it was “indicative of Mr Hynds’s capacity to control his environment that he used these sessions as he did”; and that they “(speak) less to any real emotional or attitudinal change”. The only intervention which she considered to have a chance of creating any degree of real change in Mr Hynds was a HISOP in a prison setting. His release to a community-based sex offenders’ maintenance program should be predicated upon his prior participation in a sex offenders’ treatment program. She continued to assess Mr Hynds’s risk for recidivism as moderate to high, and that the risk would be reduced by participation in a sexual offenders’ treatment program.

[51] Dr Sundin’s oral evidence commenced with a confirmation that she held the opinions expressed in each of her reports, including an earlier report she had provided in November 2007. Dr Sundin then gave a modified diagnosis, on the basis of the reports of the other doctors. The modified diagnosis was that Mr Hynds suffered from a mixed personality disorder with anti-social narcissistic and paranoid traits.⁴¹ The fact that he possibly suffered from post-traumatic stress disorder related to his military service would increase the potential risk for violent behaviour by Mr Hynds, if released within the community.

[52] In cross-examination, Dr Sundin stated that she did not mean the statement which appears in her November 2008 report to the effect that Mr Hynds had made sufficient progress over the last year that he could now be managed within the

³⁹ Pp 11-12.

⁴⁰ Exhibit JS-4 to her affidavit filed 14 July 2009 (2 Sundin).

⁴¹ T 1-6.

community, subject to an appropriate supervision order. She sought to explain this statement on the basis of what she referred to as “a mistaken understanding of the law”.⁴² She subsequently said, apparently as an explanation of her statement previously referred to, and apparently on the basis that it meant what it said, that she wrote it believing that Mr Hynds would necessarily have to be released after one year.⁴³ However, in the meantime she had said that she held the beliefs stated in the November 2008 report.⁴⁴

- [53] Dr Sundin had given evidence before Fryberg J on 6 December 2007. The transcript of that evidence became an exhibit in these proceedings. There, Dr Sundin expressed the view that, in Mr Hynds’s case, the risk of recidivism was high. She did not think that the imposition of conditions would provide adequate protection to the community. She considered that Mr Hynds’s capacity to compartmentalise different parts of his life, meant that he was capable of deceiving people about them. She likened the task of trying to manage Mr Hynds’s conduct if released into the community to that of someone who was trying to defuse a bomb without having “the directions”. She considered his acknowledgement that he would be a danger to the community to be opportunistic, rather than demonstrating that he took responsibility for his actions. Dr Sundin also expressed doubt that Mr Hynds would obey conditions, if released under a supervision order. That evidence is markedly different to the view expressed in Dr Sundin’s November 2008 report.
- [54] In my view, in the November 2008 report, Dr Sundin clearly expressed the opinion that the risk that Mr Hynds might re-offend could be adequately managed if he were to be released into the community with an appropriate supervision order. It is not possible to read her expression of opinion as simply a statement reflecting a mistaken understanding that the law required Mr Hynds’s release from prison. Indeed, the opinion is based on an observation by Dr Sundin to the effect that Mr Hynds had made sufficient progress over the previous year to enable his conduct to be managed.
- [55] I do not accept Dr Sundin’s explanation given before me for the contents of her November 2008 report. It cannot be rationally reconciled with what she then wrote.
- [56] There is an obvious and major conflict between views expressed in the November 2008 report, and Dr Sundin’s statement in her supplementary report of 18 March 2009,⁴⁵ to the effect that “little has changed with Mr Hynds since I first assessed him in late 2007”. No credible explanation has been given by Dr Sundin for this conflict.
- [57] I also note when Dr Sundin gave her evidence-in-chief, she confirmed that each of her reports expressed her opinion. While she may have been lulled into doing this by the fact that the question came from Counsel for the Attorney-General, nevertheless, it shows a significant failure to appreciate the fact that she was giving

⁴² T 1-17.

⁴³ T 1-19.

⁴⁴ T 1-18.

⁴⁵ See 2 Sundin p 1.

evidence on oath. Nor do the reports and her explanation of the November 2008 report, when considered together, engender confidence in her opinions.

- [58] To the extent that Dr Sundin has expressed views to the effect that the community would not be adequately protected if Mr Hynds were released from prison subject to a supervision order, I am not prepared to act on her evidence.
- [59] The remaining question is what weight should be given to the opinion expressed in Dr Sundin's November 2008 report. There are a number of difficulties with it. The first is that, as I understand Dr Sundin's final position in evidence, she does not maintain the opinion there expressed. The second is that it is in marked contrast with the views expressed by Dr Sundin before Fryberg J. No significant basis for the change in opinion is apparent. The third difficulty flows from the general problem which emerges with Dr Sundin's credit, for reasons previously discussed. Those difficulties mean that it is hard to give significant weight to this opinion.

Treatment programs

- [60] It is apparent that Dr Harden and Professor Morris considered that Mr Hynds might well benefit from a treatment program. Professor Morris seemed to be of the view that such a program could be conducted in the community. Dr Madsen, a clinical psychologist, was called to give evidence about the treatment for sexual offending behaviour, provided by psychologists outside the prison environment, at the centre where he works. That centre provides one-to-one treatment for sexual offenders. Dr Madsen was asked questions which sought to elicit a comparison between such treatment and a HISOP offered in prison. He considered the treatment offered at his centre to be less suitable for dealing with an offender who is very hostile or in significant denial or who has "cognitive distortions in relation to their offending behaviour". He stated that the centre would not be able to provide the kind of intense therapy that a correctional-based HISOP could. He did not consider it to be a substitute for doing such a program, nor would treatment at his centre provide the comprehensive treatment provided by a group-based program within a prison.
- [61] Mr Hynds has expressed a willingness to undertake a HISOP in prison. However, there are only two places where such a program is offered. One is at Lotus Glen in North Queensland, and is typically offered to indigenous offenders. The other is conducted at Wolston Park. As noted, Mr Hynds is unwilling to participate in this program because most of the other participants have committed sexual offences against children. It was submitted that his attitude reflected an attempt by Mr Hynds to "manipulate the process"; and that he seeks to put impossible conditions on his participation.
- [62] I am not prepared to be critical of Mr Hynds's attitude to undertaking the program at Wolston Park. It may be the case that Mr Hynds in truth is not prepared to undergo such a program, and that his conduct is simply designed to give as good an appearance as possible to his conduct. On the other hand, there may well be rational bases for his position. One may be that if he commences the program, and does not

complete it, his position may be worse. Another may be that if he undertakes the program, but is not released, life in prison may become more difficult for him.

Disposition

- [63] It is a very serious matter to continue Mr Hynds's detention indefinitely. Nevertheless, the task which I am required to carry out is specified by the DPSOA.
- [64] The first question to be determined is whether Mr Hynds would be a serious danger to the community, in the absence of a Division 3 order. As noted, there is no real dispute about this matter. The evidence generally confirms that this is so; indeed, there is no evidence to suggest that Mr Hynds would not be a serious danger to the community if released, without being subjected to a supervision order.
- [65] The second question is whether Mr Hynds should be subjected to a continuing detention order or a supervision order. In deciding that question, the DPSOA specifies that the paramount consideration is to be the need to ensure adequate protection of the community.
- [66] I am conscious that Mr Hynds has taken a number of steps which are directed to his rehabilitation, including undertaking the courses previously mentioned. As I have indicated, I do not propose to make a finding critical of Mr Hynds's attitude to participating in a HISOP at Wolston Park. However, the fact that he has not undertaken such a program is an important part of the background against which the second question is to be answered.
- [67] In my view, the effect of Dr Harden's opinion is that if Mr Hynds were released subject to a supervision order, the community would not be adequately protected. The effect of Professor Morris' evidence was that there was some scope for his release, if he could undergo high intensity treatment while in the community. However, this has not been shown to be possible. It would follow that the effect of his evidence is that if Mr Hynds were released subject to a supervision order, adequate protection would not be provided to the community.
- [68] Because of the difficulties I have identified with the view expressed in Dr Sundin's November 2008 report, and because it is in conflict with the views of the other medical experts, I am not prepared to act on the view expressed in that report.
- [69] I am also conscious of the nature of Mr Hynds's offending conduct; the difficulties that arise from his versions of it; and the inability of the psychiatrists to identify triggers for it, which could be addressed.
- [70] In light of these matters, and the views of the psychiatrists which I have accepted, I am satisfied that the risks associated with Mr Hynds's release are, at this stage, such as to warrant a continuing detention order.

Conclusion

- [71] I propose to affirm the decision of Fryberg J that Mr Hynds is a serious danger to the community in the absence of a Division 3 order. I propose to order that Mr Hynds continue to be subject to a continuing detention order. I shall hear submissions from the parties as to the terms of the orders.