# SUPREME COURT OF QUEENSLAND

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| CITATION: | *Attorney-General (Qld) v Buckby* [2015] QSC 251 |
| PARTIES: | **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**<br>(applicant)<br>**v**<br>**DESMOND GEORGE BUCKBY**<br>(respondent) |
| FILE NO: | SC 11102 of 2006 |
| DIVISION: | Trial Division |
| PROCEEDING: | Application |
| ORIGINATING COURT: | Supreme Court at Brisbane |
| DELIVERED ON: | 27 August 2015 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 17 August 2015 |
| JUDGE: | Burns J |
| ORDER: | **On being satisfied to the requisite standard that the respondent, Desmond George Buckby, is a serious danger to the community in the absence of an order pursuant to Division 3 of Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003, it is ordered that:**<br>**1. the decision made on 7 December 2007 that the respondent is a serious danger to the community in the absence of an order pursuant to Division 3 of Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 be affirmed;**<br>**2. the respondent continue to be subject to the continuing detention order made on 7 December 2007.** |
| CATCHWORDS: | CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the respondent has a lengthy criminal history including sexual offences against children – where the respondent contravened a supervision order imposed in 2007 pursuant to Division 3 of Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 and was ordered to be detained in custody for an indefinite period – where the Attorney-General for the State of Queensland sought an annual review of the continuing detention order pursuant to |

s 27 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 – where the respondent accepts that he is a serious danger to the community in the absence of a Division 3 Part 2 order – whether the respondent should remain on the continuing detention order or be released from custody subject to a supervision order

*Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) s 13, s 27, s 30

*A-G for the State of Queensland v WW* [2007] QCA 334, cited
*Attorney-General v Francis* [2007] 1 Qd R 396; [2006] QCA 324, cited
*Attorney-General for the State of Queensland v Buckby* [2007] QSC 200, cited
*Attorney-General for the State of Queensland v Buckby* [2007] QSC 370, considered
*Attorney-General for the State of Queensland v Buckby* [2009] QSC 146, cited
*Attorney-General for the State of Queensland v Buckby* [2010] QSC 174, cited
*Attorney-General for the State of Queensland v Buckby* [2011] QSC 157, cited
*Attorney-General for the State of Queensland v Ellis* [2012] QCA 182, cited
*R v Buckby* [1996] QCA 26, cited

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| COUNSEL: | M Maloney for the applicant<br>K Prskalo for the respondent |
| SOLICITORS: | Crown Law for the applicant<br>Legal Aid Queensland for the respondent |

[1] This is an annual review[1] of the continuing detention order made by White J on 7 December 2007 in respect of the respondent, Desmond Buckby.

[2] The Attorney-General for the State of Queensland applies to the court for an order affirming White J's decision that Mr Buckby is a serious danger to the community in the absence of an order pursuant to Division 3 of Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003. If the court affirms that decision, the Attorney-General then seeks an order pursuant to s 30(3) of the Act that Mr Buckby remain subject to the continuing detention order or, in the alternative, that he be released from custody subject to a supervision order.

[3] For Mr Buckby, it was conceded that the evidence supports a finding that he is a serious danger to the community in the absence of a Division 3 order.[2] Such a concession was rightly made; there being ample evidence to satisfy the court of that

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1 Such a review is required by s 27(1B) of the *Dangerous Prisoners (Sexual Offenders) Act* 2003.
2 See Respondent's Outline of Submissions; paragraph 3.

particular matter and, it may be said, to the high degree of satisfaction required by s 30 of the Act.

[4] It follows that the sole issue for determination on the hearing of this review was whether Mr Buckby should continue in detention or, as his counsel submitted, be released on a supervision order.

**Background**

[5] Mr Buckby is 67 years of age and is currently an inmate at the Wolston Correctional Centre at Wacol.

[6] His criminal history includes many convictions for sexual offences against young children, predominantly prepubertal girls. Although his criminal history stretches back to 1974, his sexual offending commenced in 1981 in Victoria and, by 1990, he was serving a period of imprisonment imposed by the District Court at Brisbane for indecently dealing with a child under the age of 12 years.

[7] In 1995, Mr Buckby was again convicted in the District Court at Brisbane of a number of serious sexual offences against children committed on various dates in 1993 and 1994. These offences included carnal knowledge of a child with a circumstance of aggravation, wilful exposure of a child under the age of 16 years to an indecent video tape with a circumstance of aggravation, wilful exposure of a child under the age of 12 years to an indecent video tape with a circumstance of aggravation and several charges of indecent dealing with a child under the age of 12 years. White J was later to summarise the circumstances of this offending in the following way:

> "The respondent had known two of the children's parents for some years. He was friendly with the parents of all of the children concerned. He had taken them on outings. He took photographs of the children. Some of the young girls slept over in his caravan on many occasions. It was alleged that he had shown them pornographic videos, had attempted to administer a stupefying drug and sodomised one of the children who was 15."[3]

For these offences, Mr Buckby was imprisoned for 10 years although, on appeal, his sentence was reduced to seven years.[4]

[8] After his release from prison, Mr Buckby once again committed offences against children. In a single episode on 9 May 2003, he indecently treated two children under the age of 16, administered a drug for the purpose of a sexual act and attempted to administer a drug for the purpose of a sexual act. In July 2004, he was sentenced in the District Court at Cairns with respect to these offences and received an effective head sentence of four years' imprisonment. White J also described the circumstances of that offending:

> "Those offences involved two girls aged 11 and eight who had been permitted by their parents to stay overnight in the caravan in which the respondent was living. In the course of the night, he fondled the children's genitals, took photographs of them in their underwear and aggravated the

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3 *Attorney-General for the State of Queensland v Buckby* [2007] QSC 370; [13].
4 *R v Buckby* [1996] QCA 26.

> offences by the use or attempted use of sedative drugs to produce a state of passivity or altered consciousness …"[5]

[9] When the full-time release date for this period of imprisonment was imminent, the Attorney-General brought an application for an order under Division 3 of Part 2 of the Act. That application was heard by the court on 12 April 2007. After being satisfied to the requisite standard that Mr Buckby was a serious danger to the community in the absence of an order under Division 3, the court ordered that he be released from prison subject to a supervision order which included strict conditions and was specified to be for a duration of 10 years.[6] Mr Buckby was accordingly released into the community on 14 May 2007, but that was not to last for long.

[10] On 4 October 2007, Mr Buckby was returned to custody for two contraventions of the supervision order, that is, having contact with children under the age of 16 and failing to comply with a reasonable direction given by his supervising corrective services officer not to have any such contact.[7] In particular, it was alleged that Mr Buckby was in his home unit in Townsville with five children under the age of 16 years without the prior written approval of an authorised corrective services officer. Further, it was alleged that he had not disclosed the terms of the supervision order and the nature of his offences to the father of the children. The supporting evidence was to the effect that Mr Buckby had befriended the father of the children who lived near his unit. On 1 October 2007, Mr Buckby was given a direction in writing that he was to have no contact with any child under the age of 16 years without written approval, and he signed that direction. Mr Buckby was also told that, if he was to have prolonged contact with the children in question, he was to disclose the terms of the supervision order and the nature of his offences to their father. He did neither. Two days later – 3 October 2007 – a corrective services officer made a random visit to Mr Buckby's home only to discover Mr Buckby sitting on a couch with the five children, the youngest of whom was six years of age and wearing a bikini.

[11] Contravention proceedings were then commenced by the Attorney-General pursuant to Division 5 of Part 2 of the Act. Those proceedings came on before White J on 4 December 2007 and her Honour handed down her decision three days later. The contraventions were found to be proved.[8] White J concluded that Mr Buckby had not discharged the onus of satisfying the court on the balance of probabilities that the adequate protection of the community could, despite those contraventions, be ensured by the supervision order. For that reason, her Honour rescinded the order and ordered that Mr Buckby be detained in custody for an indefinite term for control, care and treatment.[9]

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5 *Attorney-General for the State of Queensland v Buckby* [2007] QSC 370; [15].

6 *Attorney-General for the State of Queensland v Buckby* [2007] QSC 200.

7 The circumstances of these contraventions were not disputed by Mr Buckby and are set out in *Attorney-General for the State of Queensland v Buckby* [2007] QSC 370; [19]-[25].

8 Mr Buckby admitted that he had breached the supervision order but "protested that he [had] not deliberately [sought] out the children": *Attorney-General for the State of Queensland v Buckby* [2007] QSC 370; [26].

9 Ibid; [41].

[12] The decision of White J was affirmed by Mullins J on 9 June 2009,[10] Ann Lyons J on 21 May 2010,[11] Byrne SJA on 16 May 2011,[12] Boddice J on 18 June 2012[13] and Jackson J on 30 September 2013.[14] Further, on each such review, the court ordered that Mr Buckby continue to be subject to the detention order. In consequence, Mr Buckby has been held in custody since 4 October 2007, a period of almost eight years.

**The evidence**

[13] Mr Buckby swore a short affidavit for the purposes of this review hearing. In it, he deposed to having completed the High Intensity Sexual Offending Program over a 12 month period ending on 12 March 2015 and, for that purpose, he attended no fewer than 132 sessions. Mr Buckby swore that he had "put a lot of time and effort into" the HISOP and that he had "not been breached" while a prisoner at Wolston Correctional Centre. Mr Buckby also swore that he would comply with "all of the conditions of a supervision order", that he would "not have anything to do with children", that he did "not want to have contact with parents who have children", that he was "prepared to live where [he is] told to live" and that he was "willing to do further courses and undergo ongoing professional counselling to assist [him] to live in the community". Lastly, Mr Buckby pointed out that, having now been held in custody for almost eight years, he well understood the consequences of breaching a supervision order.

[14] The HISOP Completion Report prepared with respect to Mr Buckby is in evidence.[15] It confirms Mr Buckby's attendance at over 132 sessions, equating to "352.75 hours of treatment". The following is taken from the summary of his "treatment gains" appearing in that report:

> "Prisoner Buckby was considered to struggle to identify high risk factors relating to his offending as he repeatedly reiterated that he had not offended, sexually or otherwise, maintaining this for the duration of the program. He is considered to have demonstrated minimal insight into his offending or the factors leading to this and subsequently has minimal understanding of how to manage himself to reduce the risk of recidivism for the future. He reported that to prevent himself from further instances of 'getting in trouble with the law' he needed to avoid contact with children with this forming his only identified high risk factor. Whilst prisoner Buckby maintained his offending behaviours were not of a sexual nature, it is noted that in his final session of the program he reported having previously told himself 'lies' and 'justifying' his offending behaviour in order to make himself feel better. He was further seen to acknowledge having had an attraction and emotional connection to children with this playing a role in his offending behaviour. It is noted that as these were comments made in the final session of prisoner Buckby's time in the program and he has previously shown a tendency to make

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10 *Attorney-General for the State of Queensland v Buckby* [2009] QSC 146.
11 *Attorney-General for the State of Queensland v Buckby* [2010] QSC 174.
12 *Attorney-General for the State of Queensland v Buckby* [2011] QSC 157.
13 *Attorney-General for the State of Queensland v Buckby*; ex tempore reasons given on 18 June 2012.
14 *Attorney-General for the State of Queensland v Buckby*; ex tempore reasons given on 30 September 2013.
15 Affidavit of Hollie Fisher filed on 11 August 2015; Exhibit "HF-1".

> comments and then recant such, it was not able to be ascertained whether this was a genuine shift for him."

[15] Dr Sundin is a forensic psychiatrist. She interviewed Mr Buckby on 10 April 2015, although it is to be noted that she has interviewed Mr Buckby on several prior occasions. At the time of the interview, the HISOP Completion Report referable to Mr Buckby was not available but, by the date Dr Sundin came to provide her report – 1 June 2015 – she had considered its contents.

[16] In her report, Dr Sundin expressed the opinion that Mr Buckby's "insight and judgment with regard to his offence history remains reduced". Indeed, her impression was of "a man who remains in complete denial of his paedophilic cognitions". Dr Sundin wrote:

> "At best he may have learned the need to be compliant with the clauses of any supervision order, but even this is questionable given the rationalizations, minimizations and justifications he maintains."

Dr Sundin was of the opinion that, despite his completion of the HISOP, Mr Buckby still "represents a very high unmodified risk for future sexual recidivism". Further, she wrote this:

> "Mr Buckby's exit report is entirely consistent with his presentation to me. The prominent features of his presentation are his absolute maintenance of a stance of innocence, his continuing perception of himself as an unfortunate, martyred victim who only sought to help children; a complete absence of empathy for the victims combined with a lack of appreciation of the consequences of his offending behaviours upon the victims. He continues to rationalise, minimise and justify all of his actions.
>
> His attitude brings me back to the opinion of the Honourable Justice Byrne on 16 May 2011, who commented on Mr Buckby's problems with non-compliance with supervision orders where he opined that '*mere inclusion in the supervision order of restrictions upon contact with children are of themselves most unlikely to adequately protect the community against the serious risk he presents of sexual offending against children*.'
>
> Whilst no expert can provide the Court with absolutes, my judgement of Mr Buckby even after the completion of the HISOP; is that he is far more likely than not to breach any supervision order within the community.
>
> Even high levels of supervision have not been sufficient to prevent Mr Buckby from having unsupervised contact with children and given his perception that he poses no risk and is the aggrieved victim in this situation; I think it likely that such behaviour will be repeated in the future.
>
> I am therefore respectfully of the opinion that Mr Buckby is an unsuitable person to be released into the community even on a high intensity supervision order. I think he poses a grossly unsatisfactory risk to the community.
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> His victims would once again be female, pre-pubescent children whom he seeks to groom and against whom he inevitably will offend. He would

> once again justify his actions and deny any paedophilic intention. Clearly, the consequences of his behaviour for the victims are profound."

[17] Dr Sundin expanded on her written report in her oral evidence. After referring to the HISOP Completion Report, she said:

> "In my opinion … that report was very helpful in that it demonstrated features over a period of over 350 hours of therapy that Mr Buckby's insight into his sexual offending remains extremely poor, that he continues to minimise the seriousness of his past sexual offending, that he consistently denied responsibility for his sexual offending, that he transiently acknowledged sexual attraction towards prepubertal female children and then quickly recanted from that acknowledgement. He's unable to demonstrate an understanding of his offending pathway, his high risk factors or management strategies. All of these attitudes were reiterated in my interview with him and, whilst I state in my report … at the very best, he may, and I emphasise the word 'may', have learned the need to be compliant with a supervision order, I have grave doubts as to his capacity to be compliant given the extent of his rationalisations, minimisations and justifications for his past offending and his continuing very low levels of insight.
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> …
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> My concern is that if Mr Buckby is released into the community that – particularly once he's out of the precinct, that his risk of sexually reoffending against a child is high. Now, I acknowledge that Mr Buckby is a groomer and that his pattern has not been one of opportunistic offending, but he is a man capable of building trust in caregivers for children. In my opinion, when you have someone who has such a lack of insight, as demonstrated by Mr Buckby, one is almost guaranteed that he will be driven to reoffend at some point in the future because of the extent of the underlying paraphilia."[16]

[18] Dr Sundin agreed under cross-examination that Mr Buckby's increasing age is a moderating factor when considering the risk of reoffending against children, that he dislikes being incarcerated and that he may have learned to be compliant. She regarded Mr Buckby's willingness to participate in the HISOP as a "step in the right direction" and agreed that, from an actuarial perspective, this lowered the risk. However, Dr Sundin pointed out that the facilitators of that program had characterised Mr Buckby as a "minimally engaged participant". She accepted that a "highly regulated, closely managed supervision order does have the potential to mitigate the risk" and that, although Mr Buckby's participation in the HISOP might be regarded as a "positive shift", she considered that any such shift "needs to be enduring" which, based on her other evidence, in her opinion it was not.

[19] So far as future treatment is concerned, Dr Sundin recommended "individual one-on-one counselling from an appropriately qualified forensic psychologist to begin to unpack the nature of the paraphilic cognitions that have driven the offending behaviour". She confirmed that such treatment is available to Mr Buckby in custody.

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16 Transcript of proceedings; 1-9 and 1-10.

[20] Mr Buckby was also the subject of a psychiatric opinion from Dr Harden. Dr Harden interviewed Mr Buckby on 15 May 2015 for the purposes of a report which he provided on 7 July 2015. Like Dr Sundin, Dr Harden had interviewed Mr Buckby on a number of previous occasions. Dr Harden offered the following opinion about Mr Buckby in his July 2015 report:

> "He appears to, extremely slowly, be developing some insight into his sexual offending. There is some, albeit inconsistent, acknowledgement of sexual motivations and sexual attraction to prepubertal female children. This is patchy and unreliable however it shows increasing insight. He has, however, markedly increased his insight and understanding into the need to avoid all contact with children in the future as a major risk reduction strategy.
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> …
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> The actuarial and structured professional judgement measures I administered would suggest that **his future unmodified risk of sexual reoffence is high**. I have previously said it was extremely high. My assessment of this risk is based on the combined clinical and actuarial assessment. This assessment takes into account all information made available to myself. This has altered for the first time since I saw him in 2008. The alteration in risk is associated with his development of some limited insight, completion of the program (even with caveats) and ability to identify the simple need to avoid all contact with children lifelong.
>
> If he were to reoffend based on his past behaviour it would most likely be in the context of forming a relationship with the caregivers for prepubertal girls. He appears to be extremely adept at doing this which suggests a high level of interpersonal skills and ability to identify vulnerable adults and girls.
>
> As previously suspected he has confirmed repeatedly now that he identifies strongly with girls of this age and finds them more easy to relate to than adult females. He has also confirmed his sexual attraction to prepubertal females.
>
> He has a much better understanding of his relapse prevention plan even though there are still clear deficiencies in such a plan and it is simplistic in nature.
>
> It is now possible that he might meaningfully participate in a supervision program to reduce his risk. He is after many years able to articulate the need to avoid all contact with children of any kind regardless of any rationalisation or justification he might otherwise make. It now seems to me, for the first time in the many times that I reviewed him, that a strict supervision program in the community might reduce his risk somewhat. The quantum of risk reduction would be unclear given his previous difficulties in effectively complying with the supervision program in 2007. If pressed I would give the opinion that the risk would reduce to moderate with a strict supervision program."[17]

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17 Emphasis appears in the original report.

[21] In oral evidence before me, Dr Harden identified the crucial issue as being the "prevention of victim access". Of this, he said:

> "It's the single most important risk reduction strategy with regard to him if he were to be in the community, which means preventing contact with girls under about 14 years of age probably. He has consistently in the past denied that there was any problem with him having such contact. He has now acknowledged that there is a problem with him having such contact and he has accepted a need to avoid contact with them or their parents, partly on the basis of his desire not to be re-incarcerated, in my view, but partly on the basis of an acceptance that he has got into trouble and gone to jail on a number of occasions because of such contact regardless of his rationalisations."[18]

[22] Otherwise, Dr Harden regarded the outcome of the HISOP as "mixed". He then explained that he thought the program had likely been of "significant benefit" and noted that it "started with significant handicaps in terms of his fluctuating level of acceptance of responsibility for previous offending, and his fluctuating level of agreement that he has paedophilia and that he has committed previous sexual offences". Dr Harden noted that Mr Buckby has "lots of limitations" so far as what would be regarded as "responsivity factors in terms of treatment" and that, for many years, Mr Buckby had refused to acknowledge that he had any problem or that he should do such a program. He agreed with Dr Sundin's recommendation for Mr Buckby's future treatment.

[23] Dr Harden agreed when cross-examined that, after almost eight years in custody, Mr Buckby had eventually formed the view that he should comply with any supervision order if he was to ever have a chance of being released into the community. When taken to the terms of the proposed supervision order,[19] Dr Harden considered that those terms put "quite a number of barriers in the path of Mr Buckby being able to successfully have ongoing contact with the caregiver for a young person and then contact with the young person in order to offend against them". On the basis of those conditions, Dr Harden agreed that the risk of Mr Buckby committing a serious sexual offence would be reduced and that his participation in, and completion of, the HISOP showed a "shift" in his attitude.

**Consideration**

[24] Independently of the concession made on behalf of Mr Buckby by his counsel, I have considered the whole of the material and, in particular, had regard to the matters mentioned in s 13(4) of the Act as well as the psychiatric reports in evidence before me. Having done so, I am satisfied by acceptable, cogent evidence and to the high degree of probability required by s 30 of the Act that the decision made by White J on 7 December 2007 that Mr Buckby is a serious danger to the community in the absence of a Division 3 order should be affirmed.

[25] The question then is whether Mr Buckby should continue to be subject to the continuing detention order or, alternatively, be released from custody subject to a supervision order.

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18 Transcript of proceedings; 1-15.

19 Exhibit 1.

[26] In deciding which of those two alternative orders should be made, the paramount consideration is the need to ensure adequate protection of the community.[20] Further, the court must consider whether adequate protection of the community can be reasonably and practicably managed by a supervision order and whether the requirements under s 16 of the Act can be reasonably and practicably managed by corrective services officers.[21]

[27] It may be observed that these considerations are the same as those appearing in s 13(6) of the Act. Given the objects of the Act[22] and the feature that both provisions appear in Part 2,[23] they should be interpreted and applied consistently.[24] As such, the question is not whether a supervision order will adequately protect the community from the risk that Mr Buckby will commit any offence at all; it is whether the supervision order will adequately protect the community from the risk that Mr Buckby might commit a serious sexual offence within the meaning of the Act.[25] In Mr Buckby's case, the relevant risk is the risk of future sexual offending against children.

[28] When considering whether a supervision order will adequately protect the community from the risk that Mr Buckby might commit such an offence, the court should not conclude that supervision will not be made sufficiently available in the absence of clear evidence to that effect and an explanation as to why its provision is to be regarded as unreasonable or impracticable,[26] and there is no such suggestion to either effect in this case. Also, it must be kept in mind that the Act does not contemplate that "arrangements" addressing risk need to be "watertight" before an order for supervised release is made;[27] the essential question is whether *adequate* protection of the community can be ensured.

[29] For Mr Buckby, it was submitted to be significant that he has been on a continuing detention order for almost eight years, that he now understands the need to comply with any supervision conditions if released into the community and the consequences if he fails to do so, that he has completed the HISOP, that he is willing to engage in treatment on release and that his level of insight has increased markedly including as to the need to avoid all contact with children. Because of these various factors, it was submitted that a supervision order on the terms proposed[28] would be adequate to protect the community from the risk that Mr Buckby might offend against children in the future. Lastly, it was submitted that, under the terms of the proposed supervision order, any future contact with children on Mr Buckby's part is "likely to be detected and therefore be effective in managing his risk within the community".

[30] In support of these submissions, particular features of the proposed supervision order were highlighted. These features included: the performance of random visits; the monitoring of Mr Buckby's movements; the obligation to disclose to a corrective services officer upon request the name and address of each person with whom

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20 See s 30(4)(a) of the *Dangerous Prisoners (Sexual Offenders) Act* 2003.
21 Ibid; s 30(4)(b).
22 See s 3 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003.
23 As well, it may be noted, as the provision governing review hearings: s 30(4).
24 See *Attorney-General for the State of Queensland v Ellis* [2012] QCA 182, [83] per White JA (with whom Margaret Wilson AJA agreed). And see at [24] per McMurdo P.
25 See *A-G for the State of Queensland v WW* [2007] QCA 334, [15] per Jerrard JA (with whom Holmes JA and Jones J agreed).
26 See *Attorney-General v Francis* [2007] 1 Qd R 396, [37].
27 Ibid; [39].
28 In Exhibit 1.

Mr Buckby associates along with a description of the activities undertaken and whether the associate has knowledge of his prior offending behaviour; and the obligation, if directed by a corrective services officer, to make complete disclosure of the terms of his supervision order and the nature of his past offences to any person nominated by that corrective services officer.

[31] However, I do not think that it can be concluded with any degree of confidence that the conditions under the proposed supervision order are such that, in Mr Buckby's case, any future contact with children is likely to be detected. Nor am I persuaded that the proposed conditions, strict and contact intense though they undoubtedly are, will be capable of functioning in Mr Buckby's case as an early warning mechanism such that any future sexual offending against children is only likely to be committed after a detectable breach of one of those conditions.[29]

[32] That is in part because, despite his completion of the HISOP, Mr Buckby still lacks an appropriate degree of insight into his offending behaviour let alone into the high risk factors that are likely to spark such offending. Although Dr Harden recognised a shift in Mr Buckby's attitude and an increased level of insight, his overall performance on the HISOP was considered by Dr Harden to be "mixed". Further, although Dr Harden was of the opinion that Mr Buckby had finally acknowledged his attraction to prepubertal girls, this was also considered to be "patchy and unreliable". Dr Sundin was even more damning. She regarded Mr Buckby's acknowledgement of responsibility in the final session of the HISOP with understandable cynicism given Mr Buckby's history of recanting such statements. To the extent there is any substantial difference in the opinions expressed by Drs Harden and Sundin on this topic, I prefer the opinion of Dr Sundin for the reason that I consider it far too early to draw any firm conclusion as to the extent to which the HISOP has effected any permanent shift in Mr Buckby's attitude or degree of insight. More likely it is, at this stage, that Mr Buckby remains in substantial denial about his paedophilic urges and that the "one on one" treatment recommended by both psychiatrists will first need to be pursued and advanced while Mr Buckby is in detention before any reliable conclusion may be drawn. Until the point is reached when it can be confidently stated that Mr Buckby is genuinely accepting of the grave risk he poses for children, it can hardly be thought that he has been rehabilitated to the extent necessary for the court to contemplate his supervised release. That point has not been reached.

[33] In saying that, I do not overlook what Mr Buckby has sworn in response to this application. Nor do I disregard the presence here of a number of factors which will have a moderating effect on the risk that he might offend against children if released. These include his advancing age and the important factor that, at last, he has undertaken the HISOP. Nor do I ignore what may be described as the aversion effect his long period in detention since the contraventions has, and may in the future have, on his willingness to comply with any supervision conditions. In that regard, I accept that it is probably the case that the thought of being returned to custody reduces to some extent the risk of child sexual recidivism, but I am not persuaded that such a reduction reduces that risk to an acceptable level, whether alone or in combination with the other moderating factors to which I have referred.

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[29] As to which, see *Attorney-General for the State of Queensland v WW* [2007] QCA 334, [20] per Jerrard JA (with whom Holmes JA and Jones J agreed), where the supervision conditions imposed were "intended to alert a supervising corrections officer to an increasing risk of re-offending" and were accepted by the primary judge (and the Court of Appeal) as being capable of operating in accordance with that intention.

[34] It is important also to appreciate that, based on Mr Buckby's past pattern of behaviour, any reoffending would most likely be in the context of forming a relationship with the adult caregivers for prepubertal girls. As Dr Harden reported, Mr Buckley "appears to be extremely adept at doing this which suggests a high level of interpersonal skills and ability to identify vulnerable adults and girls". Although the conditions proposed in Exhibit 1 might go some distance towards preventing Mr Buckby from having any direct contact with children and, further, would empower corrective services officers to require Mr Buckby to disclose his offending behaviour to adults, I am by no means satisfied that the combination of conditions so proposed will be such as to ensure the adequate protection of the community. The obvious risk is that Mr Buckby will find a way to work around the conditions of the proposed supervision order in order to ingratiate himself with caregivers, just as he did within six months of his release on the original supervision order. Despite its strict conditions, Mr Buckby still managed to gain the confidence of the father of the five children concerned and brazenly defied directions given to him by a corrective services officer only two days previously.

[35] Dr Sundin was in no doubt about such a conclusion. She was of the opinion that Mr Buckby poses a "grossly unsatisfactory risk to the community" if released, even on a high intensity supervision order. As for Dr Harden, he did not recommend that Mr Buckby be released on a supervision order. All that he was prepared to say was that it "is now possible that [Mr Buckby] might meaningfully participate in a supervision program to reduce his risk" and that a strict supervision program in the community "might reduce his risk somewhat". The extent to which that risk would be reduced was, according to Dr Harden, "unclear", but he said that, "if pressed [he] would give the opinion that the risk would reduce to moderate". This was hardly a ringing endorsement of the case for release on supervision.

[36] As Byrne SJA observed when conducting the 2011 review, a "highly pertinent consideration of the circumstances in this case is the question whether [Mr Buckby] could be reasonably and practicably managed by a supervision order in the community".[30] At this stage, I do not consider that Mr Buckby can be so managed or, at least, not to the extent the Act so clearly requires to ensure the adequate protection of the community.

**Conclusion**

[37] I am satisfied by acceptable, cogent evidence and to the high degree of probability required by s 30 of the Act that the decision made by White J on 7 December 2007 that Mr Buckby is a serious danger to the community in the absence of a Division 3 order should be affirmed. I am not satisfied that the adequate protection of the community can be reasonably and practicably managed by a supervision order. For these reasons, Mr Buckby should continue to be subject to the continuing detention order.

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30 *Attorney-General for the State of Queensland v Buckby* [2011] QSC 157, at 1-3.