SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General (Qld) v Yeatman* [2018] QSC 70
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **TRENT THOMAS YEATMAN** (respondent)
FILE NO/S:	No 187 of 2014
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED ON:	Date of Orders: 3 April 2018 Date of Publication of Reasons: 9 April 2018
DELIVERED AT:	Brisbane
HEARING DATE:	3 April 2018
JUDGE:	Davis J
ORDER:	**Date of Orders: 3 April 2018** **THE COURT being satisfied to the requisite standard that the respondent, Trent Thomas Yeatman, has contravened a requirement of the supervision order made by Justice Philippides on 30 June 2014, ORDERS THAT:** **1. The respondent, Trent Thomas Yeatman, be released from custody and continues to be subject to the supervision order made by Justice Philippides on 30 June 2014.**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where a supervision order was made with respect to the respondent under Division 3 of Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) – where it was alleged that the respondent had contravened a requirement of the supervision order – where a warrant was issued for the arrest

of the respondent pursuant to the Act and the respondent was detained in custody – where the applicant sought orders with respect to the respondent under s 22 of the Act – where the contravention was admitted by the respondent – where the applicant had previously contravened the supervision order but not committed any further serious sexual offences – whether the adequate protection of the community could, despite the contravention of the order, be ensured by the existing supervision order

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld) s 3, s 5, s 13, s 22

Attorney-General for the State of Queensland v Marama [2015] QSC 8, followed

Attorney-General for the State of Queensland v Yeatman [2014] QSC 144, cited

Attorney-General for the State of Queensland v Ellis [2012] QCA 182, cited

Attorney-General (Qld) v Fardon [2013] QCA 64, cited

Attorney-General v Francis [2007] 1 Qd R 396, cited

Attorney-General v Lawrence [2010] 1 Qd R 505, cited

Attorney-General (Qld) v Yeo [2008] QCA 115, cited

Fardon v Attorney-General (Qld) (2004) 223 CLR 575, cited

George v Rockett (1990) 170 CLR 104, cited

Kynuna v Attorney-General (Qld) [2016] QCA 172, cited

LAB v Attorney-General [2011] QCA 230, cited

Turnbull v Attorney-General (Qld) [2015] QCA 54, cited

COUNSEL: B Mumford for the applicant
J Benjamin for the respondent

SOLICITORS: G R Cooper, Crown Solicitor for the applicant
Legal Aid Qld for the respondent

[1] The Attorney-General sought orders under s 22 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) (the Act) consequent upon a breach by the respondent of a supervision order made by Philippides J (as her Honour then was) on 30 June 2014 (the supervision order).

[2] I heard the matter on 3 April 2018 and made the following order:

> THE COURT being satisfied to the requisite standard that the respondent, Trent Thomas Yeatman, has contravened a requirement of the supervision order made by Justice Philippides on 30 June 2014, ORDERS THAT:
>
> 1. The respondent, Trent Thomas Yeatman, be released from custody and continues to be subject to the supervision order made by Justice Philippides on 30 June 2014.

[3] I indicated to the parties that I would publish detailed reasons in due course. These are the reasons.

Statutory context

[4] The Act provides for the continued detention or supervised release of "a particular class of prisoner".[1] The objects of the Act are twofold, namely the protection of the community and the control, care and treatment of certain prisoners to facilitate their rehabilitation.[2] The prisoners the subject of the Act are those serving a term of imprisonment for a "serious sexual offence"[3] which is "an offence of a sexual nature … involving violence" or "an offence of a sexual nature … against a child".[4]

[5] Part 2 of the Act provides that the Attorney-General may apply to the Court for either a continuing detention order[5] or a supervision order.[6] A continuing detention order requires the detention in custody of the prisoner beyond the date of expiry of the sentence which they are then serving. A supervision order provides for the release of the prisoner under supervision notwithstanding the expiry of the sentence.

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1 *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) s 3.

2 Section 3 and see generally *Fardon v Attorney-General (Qld)* (2004) 223 CLR 575.

3 Section 5(6).

4 Sections 2 and the Schedule (Dictionary).

5 Sections 13, 14 and 15.

6 Sections 13, 15 and 16.

[6] A critical provision is s 13. Section 13 has significance to the present application as the provisions which deal with breaches of supervision orders[7] adopt terms and concepts included in s 13. The section is in these terms:

> **"13 Division 3 orders**
>
> (1) This section applies if, on the hearing of an application for a division 3 order, the court is satisfied the prisoner is a serious danger to the community in the absence of a division 3 order (a serious danger to the community).
>
> (2) A prisoner is a serious danger to the community as mentioned in subsection (1) if there is an unacceptable risk that the prisoner will commit a serious sexual offence—
>
> (a) if the prisoner is released from custody; or
>
> (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—
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> (a) by acceptable, cogent evidence; and
>
> (b) to a high degree of probability;
>
> that the evidence is of sufficient weight to justify the decision.
>
> (4) In deciding whether a prisoner is a serious danger to the community as mentioned in subsection (1), the court must have regard to the following—
>
> (aa) any report produced under section 8A ;
>
> (a) the reports prepared by the psychiatrists under section 11 and the extent to which the prisoner cooperated in the examinations by the psychiatrists;
>
> (b) any other medical, psychiatric, psychological or other assessment relating to the prisoner;
>
> (c) information indicating whether or not there is a propensity on the part of the prisoner to commit serious sexual offences in the future;

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[7] Primarily see section 22.

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

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

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

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

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

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

(j) any other relevant matter.

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

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

(b) that the prisoner be released from custody subject to the requirements it considers appropriate that are stated in the order (supervision order).

(6) In deciding whether to make an order under subsection (5)(a) or (b)—

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

(b) the court must consider whether—

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

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

(7) The Attorney-General has the onus of proving that a prisoner is a serious danger to the community as mentioned in subsection (1)."

[7] Therefore:

(i) the test under s 13 is whether the prisoner is "a serious danger to the community"[8];

(ii) that initial question is answered by determining whether there is an "unacceptable risk that the prisoner will commit a serious sexual offence"[9] if no order is made;

(iii) if that conclusion is reached, then a supervision order (as opposed to a continuing detention order) can only be made where the adequate protection of the community can be ensured by the making of a supervision order;[10]

(iv) where "adequate protection of the community" can be ensured by a supervision order, then the making of a supervision order ought to be preferred to the making of a continuing detention order.[11]

[8] Breaches of a supervision order have consequences under s 22 of the Act. That provision is as follows:

> "**22 Court may make further order**
>
> (1) The following subsections apply if the court is satisfied, on the balance of probabilities, that the released prisoner is likely to contravene, is contravening, or has contravened, a requirement of the supervision order or interim supervision order (each the existing order).
>
> (2) Unless the released prisoner satisfies the court, on the balance of probabilities, that the adequate protection of the community can, despite the contravention or likely

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8 Section 13(1).

9 Section 13(1) and (2).

10 Section 13(6).

11 *Attorney-General v Francis* [2007] 1 Qd R 396 at [39]; *Attorney-General (Qld) v Yeo* [2008] QCA 115; *Attorney-General v Lawrence* [2010] 1 Qd R 505; *LAB v Attorney-General* [2011] QCA 230; *Attorney-General for the State of Queensland v Ellis* [2012] QCA 182; *Attorney-General (Qld) v Fardon* [2013] QCA 64.

contravention of the existing order, be ensured by the existing order as amended under subsection (7), the court must—

(a) if the existing order is a supervision order, rescind it and make a continuing detention order; or

(b) if the existing order is an interim supervision order, rescind it and make an order that the released prisoner be detained in custody for the period stated in the order.

(3) For the purpose of deciding whether to make a continuing detention order as mentioned in subsection (2)(a), the court may do any or all of the following—

(a) act on any evidence before it or that was before the court when the existing order was made;

(b) make any order necessary to enable evidence of a kind mentioned in section 13(4) to be brought before it, including, for example, an order—

(i) in the nature of a risk assessment order, subject to the restriction under section 8(2); or

(ii) for the revision of a report about the released prisoner produced under section 8A;

(c) consider any further report or revised report in the nature of a report of a type mentioned in section 8A.

(4) To remove any doubt, it is declared that the court need not make an order in the nature of a risk assessment order if the court is satisfied that the evidence otherwise available under subsection (3) is sufficient to make a decision under subsection (2)(a).

(5) If the court makes an order in the nature of a risk assessment order, the psychiatrist or each psychiatrist examining the released prisoner must prepare a report about the released prisoner and, for that purpose, section 11 applies.

(6) For applying section 11 to the preparation of the report—

(a) section 11(2) applies with the necessary changes; and

(b) section 11(3) only applies to the extent that a report or information mentioned in the subsection has not previously been given to the psychiatrist.

(7) If the released prisoner satisfies the court, on the balance of probabilities, that the adequate protection of the community can, despite the contravention or likely contravention of the

existing order, be ensured by a supervision order or interim supervision order, the court—

(a) must amend the existing order to include all of the requirements under section 16(1) if the order does not already include all of those requirements; and

(b) may otherwise amend the existing order in a way the court considers appropriate—

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

(ii) for the prisoner's rehabilitation or care or treatment.

(8) The existing order may not be amended under subsection (7)(b) so as to remove any requirements mentioned in section 16(1)."

[9] Therefore, once a contravention is proved, the Court shall rescind the supervision order and make a continuing detention order[12] unless the prisoner satisfies the Court that their continuation on supervision in the community will ensure the adequate protection of the community.[13] It is well established that the concept of "the adequate protection of the community" in s 22(7) has the same meaning as it bears in s 13.[14] Therefore, a prisoner facing an application under s 22 must prove that the supervision order will ensure adequate protection of the community by removing unacceptable risk that they will commit a serious sexual offence. Here, as I explain later, the respondent has breached the supervision order on four occasions and was held in custody pursuant to sections 20 and 21 of the Act pending determination of applications brought under s 22. There must at least be a suspicion here that if released the respondent may again breach the supervision order. However, the issue under s 22 of the Act is not whether there is

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[12] Section 22(2).

[13] Section 22(7).

[14] *Kynuna v Attorney-General (Qld)* [2016] QCA 172 at [60]; see also *Turnbull v Attorney-General (Qld)* [2015] QCA 54 at [36].

an unacceptable risk that the respondent will breach the supervision order. The issue is whether there is an unacceptable risk that he will commit a serious sexual offence.[15]

Background

[10] The respondent was born on 17 March 1979. He is an Aboriginal man.

[11] The respondent's criminal history commences with convictions in the Yarrabah Magistrates Court on 8 May 1996. He was convicted on that occasion of an offence of break, enter and steal which was committed only weeks after his 17th birthday. He was fined. A breach of the *Bail Act* 1980 (Qld) (the *Bail Act*) was also established; again, a fine was imposed. There were then further appearances in the Yarrabah Magistrates Court on 15 July 1998, 4 November 1998, and 16 February 1999. These appearances concerned relatively minor offences and none involved violent or sexual offending. The only custodial sentence which was imposed was one month's imprisonment on 16 February 1999 and that was for breach of the *Bail Act*.

[12] In a period from July to September 1988 the respondent's offending escalated. At that time he was 19 years of age. On 16 July 1999 the respondent was convicted of three counts of entering a dwelling and committing indictable offences,[16] assault occasioning bodily harm whilst armed,[17] deprivation of liberty,[18] and rape.[19] Those offences were committed against a young Aboriginal girl. That conduct culminated in her being abducted at knife point and then raped. For those offences the respondent was sentenced to an effective sentence of seven years imprisonment. On 6 April 2000, the respondent was convicted of one count of common assault and one count of rape. Each of these charges involved the same complainant who was a different complainant to the offences for which he was convicted in July 1999. The assault was committed in September

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[15] *Attorney-General (Qld) v Francis* [2012] QSC 275 at [64]-[67].

[16] *Criminal Code* (Qld) s 419(4).

[17] Section 339(1) and (3).

[18] Section 355.

[19] Section 348.

1998 and the offence of rape was committed in October 1998 at a party at Yarrabah. The victim was again a young Aboriginal girl. The respondent pushed her into a public toilet block, where he raped her. He was sentenced to eight years' imprisonment, cumulative on the sentence imposed on 16 July 1999. The effect of all those sentences was a term of 15 years from 16 July 1999, with 80 per cent to be served before the respondent was eligible for parole.[20]

[13] The respondent was not granted parole, but on 30 June 2014 he was released subject to the supervision order, which contained 32 requirements and which remains in force until 5 July 2024.[21]

[14] When the respondent was released, he was accommodated at "the Precinct," an area reserved for prisoners under supervision orders. The respondent broke a rule applying to his accommodation at the Precinct, which then triggered a breach of the supervision order and he was returned to custody in November 2014. That breach was found proved by Burns J on 13 April 2015 and the respondent was released from custody on the supervision order without amendment.[22]

[15] In July 2015, the respondent was again returned to custody when it was alleged that he was likely to commit an indictable offence which would then constitute a breach of the supervision order. Both s 20 of the Act (which provides for a warrant to be issued for the arrest of the prisoner) and s 22 (set out earlier) provide for action to be taken where "the released prisoner was likely to contravene, is contravening, or has contravened, a requirement of the supervision order". Indeed, all s 20 requires is that a police officer or Corrective Services officer "**reasonably suspects**[23] a released prisoner is likely to contravene, is contravening, or has contravened, a requirement of the released

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[20] Pursuant to *Penalties and Sentences Act* 1992 (Qld) pt 9A.

[21] Order of Philippides J, 30 June 2014, CFI 29.

[22] Order of Burns J, 13 April 2015, CFI 48.

[23] My emphasis. See *George v Rockett* (1990) 170 CLR 104 at 115–116.

prisoner's supervision order…". On 22 August 2016, Holmes CJ ordered that the respondent be released from custody on the supervision order without amendment.[24]

[16] In December 2016, the respondent was returned to custody again. There were two breaches alleged: that the respondent had consumed cannabis and that he had not submitted appropriately to drug testing. Those breaches were found proved. On 8 May 2017, Burns J ordered the respondent to be released on the supervision order without amendment.[25]

[17] The Attorney-General's present application alleges two breaches, namely: (i) contravention of condition (ix) of the supervision order, being that he "comply with every reasonable direction of a Corrective Services officer that is not directly inconsistent with the requirement of the order" and (ii) he was likely to contravene condition (xv) of the supervision order namely that he "not commit an indictable offence during the period of the order".

[18] The second ground, namely the likelihood of contravention of condition (xv) has been abandoned.[26] The alleged contravention of condition (ix) of the supervision order concerns an incident on 14 December 2017. The respondent was in conversation with an Aboriginal woman with whom he has a relationship. He was at that time under the observation of Corrective Services officers. There was some argument between the respondent and the woman. It seems common ground that he was aggressive in his attitude to her. A Corrective Services case manager, Emma Colmer, gave a direction to the respondent not to contact the woman. However, the respondent telephoned her and spoke to her in an aggressive way.[27]

[19] The respondent has admitted the breach. I find the breach proved.

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[24] Order of Holmes CJ, 22 August 2017, CFI 85.

[25] Order of Burns J, 8 May 2017, CFI 114.

[26] Outline of submissions on behalf of the applicant at [5].

[27] Affidavit of Timothy Briggs filed by leave on 3 April 2018 at [7]–[8].

Psychiatric evidence

[20] Dr Donald Grant, a consultant forensic psychiatrist, prepared a report dated 31 January 2018.[28] Dr Grant has had a good deal of professional contact with the respondent and has prepared previous reports. Dr Grant is the only psychiatrist to have provided a report in the present application. He was not cross-examined and his evidence was therefore untested. Dr Grant is a psychiatrist with very significant experience in the field of forensic psychiatry generally and dangerous prisoners in particular and I have no hesitation in accepting his evidence.

[21] In Dr Grant's opinion:

(i) The respondent has "a severe Personality Disorder with prominent antisocial traits, including prominent psychopathic personality traits" (fall just short of a firm diagnosis of Psychopathic Personality Disorder). In addition he has borderline personality traits, which are indicated by his quite severe addictive instability".[29]

(ii) There is no evidence to suggest that he suffers from sexual paraphilia.[30]

(iii) He has past alcohol abuse and dependence and cannabis abuse and dependence both of which are in remission, although the cannabis abuse resurfaced, causing the previous contravention of the supervision order.[31]

(iv) Any sexual reoffending is likely to occur during intoxication with drugs and alcohol, and in a period of emotional destabilisation.[32]

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[28] Exhibited to his affidavit filed 27 February 2018, CFI 124.

[29] Affidavit of Donald Archibald Grant filed 27 February 2018, CFI 124, Exhibits at 11 ('Grant Exhibits').

[30] Ibid.

[31] Ibid.

[32] Grant Exhibits at 12.

(v) There are various characteristics of the respondent which make management and rehabilitation challenging including his severe deafness,[33] impulsiveness, suspicion of those supervising him and aggressive attitudes to women.[34]

(vi) A supervision order is a suitable means of managing the respondent's risk.[35]

The real contest on the application

[22] The Attorney-General concedes that a continuing detention order is not warranted. That concession is properly made. While the offences in 1998 were clearly sexual offences and were of a very serious nature, they were committed almost 20 years ago. The respondent has been in the community on the supervision order on and off since June 2014. While there have been breaches of the supervision order, there have been no offences committed of a sexual nature and no instances of domestic violence against sexual partners.[36] While there are obvious difficulties in managing the respondent, the question is whether the respondent has satisfied me that the adequate protection of the community can be ensured by releasing him upon the supervision order.[37] I am so satisfied.

[23] There was dispute between the parties though about the terms of the order. The Attorney-General pressed for the addition of a further condition upon the supervision order, namely, "not to engage in or demonstrate interpersonal violence against any other person, excluding acts of self-defence". The respondent resisted the addition of such a condition.

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[33] At 11.

[34] At 12.

[35] At 13.

[36] At 9.

[37] Section 22(7) of the Act.

[24] Dr Grant in his report mentioned that the respondent had a high risk "for general interpersonal violence".[38] After Dr Grant's report was received by the Attorney-General, an email was sent to Dr Grant suggesting that a condition be inserted in the supervision order that the respondent "not to engage in or demonstrate interpersonal violence or aggression against any other person, excluding acts of self-defence". [39] Dr Grant responded with a letter of 11 February 2018 in these terms:

> "I understand that it is proposed that an extra clause be inserted into Mr Yeatman's proposed Supervision Order - "not to engage in or demonstrate interpersonal violence or aggression against any other person, excluding acts of self-defence".
>
> I would be supportive in principle of the insertion of a clause prohibiting acts of physical violence, but there could be argument about the definition of "aggression".
>
> For example, is it just physical or also verbal aggression and what would be the threshold? If the word aggression is to be used Mr Yeatman would need a clear explanation of that clause and what behaviour might be seen as breaching it. Supervisors would need to have a clear idea of what is meant and I don't think it should be left to each individual supervisor to decide on any particular occasion.
>
> It is rather complicated and may need careful thought. It might be better to exclude the words "or aggression"."[40]

[25] It seems that consequent upon the receipt of Dr Grant's letter the words "or aggression" were deleted from the extra condition proposed in the email of 7 February 2018 and the submission was made to me that an extra condition in the terms I have set out in paragraph [23] of these reasons be inserted.

[26] Dr Grant was clearly right to make the point that the introduction into the supervision order of a prohibition against "aggression" is likely to cause confusion and uncertainty. This is especially so, given the difficulties described by Dr Grant in managing the respondent.

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[38] Grant Exhibits at 12.

[39] At 18.

[40] At 19.

[27] While Dr Grant is supportive of the supervision order forbidding physical violence, it is not necessary to insert a further provision. Any physical violence against any person would no doubt constitute an offence unless the respondent had a defence, and "self-defence" is not the only defence to a charge of assault.[41] If any "interpersonal violence" committed by the respondent is authorised, justified or excused by law, then the respondent should not be liable to proceedings for breach of the supervision order consequent upon such violence. If any violence is not authorised, justified or excused by law, then the doing of violence would constitute the commission of an indictable offence[42] and the respondent would be in breach of condition (xv) of the supervision order as it presently stands. The supervision order should not be amended.

Section 17 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld)

[28] During the hearing, I indicated to the parties that I intended to order the respondent to be released upon the supervision order in its current form. I also informed the parties that, given the respondent's long history under the supervision order, it was appropriate for me to deliver detailed reasons, in case the Court at some later stage was again called on to consider the respondent's performance under the supervision order. That raised an issue as to whether I could make orders without at the same time delivering reasons. The question arose because of s 17 of the Act.

[29] Section 17 of the Act is in these terms:

> **"17 Court or relevant appeal court to give reasons**
>
> (1) If the court or a relevant appeal court makes any of the following orders, it must give detailed reasons for making the order—
>
> (a) a continuing detention order;
>
> (b) an interim detention order;
>
> (c) a supervision order;
>
> (d) an interim supervision order.

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41 See, eg, *Criminal Code* (Qld) s 269.

42 *Criminal Code* (Qld) ch 30.

(2) The reasons must be given at the time the order is made."

[30] Each of a "continuing detention order", an "interim detention order", a "supervision order" and an "interim supervision order" are orders made under Divisions 1 or 3 of Part 2 of the Act.

[31] If, under s 22, the supervision order was revoked and a continuing detention order was made then s 17 would clearly be engaged; I would be "making" a continuing detention order.[43] However, an order releasing the respondent under the existing supervision order is not the "making" of a supervision order. It is an order made under s 22 releasing the respondent. Therefore, s 17 is not engaged. The making of an order under s 22 on 3 April 2018 without at that time delivering reasons did not offend s 17 of the Act. This reasoning is consistent with that of Applegarth J considering a related issue in *Attorney-General for the State of Queensland v Marama*.[44]

[32] The order of the Court made on 3 April 2018 was as follows:

THE COURT being satisfied to the requisite standard that the respondent, Trent Thomas Yeatman, has contravened a requirement of the supervision order made by Justice Philippides on 30 June 2014, ORDERS THAT:

1. The respondent, Trent Thomas Yeatman, be released from custody and continues to be subject to the supervision order made by Justice Philippides on 30 June 2014.

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[43] Section 17(1)(a).

[44] [2015] QSC 8 at [32]–[37].