SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v Fisher* [2018] QSC 074
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **TRAVEN LEE FISHER** (respondent)
FILE NO:	BS 5070 of 2007
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED ON:	16 April 2018
DELIVERED AT:	Brisbane
HEARING DATE:	9 and 12 April 2018
JUDGE:	Bowskill J
ORDER:	**The application for a further supervision order is dismissed.**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – application for a further supervision order under s 19B of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) – where the respondent was convicted of a serious sexual offence, namely digital rape of a two year old child, in 2003, as well an indecent sexual assault of an adult (not involving violence) and robbery with personal violence – where he was released from custody at the end of his term of imprisonment subject to the requirements of a supervision order for a period of 10 years – where the respondent has not reoffended sexually, but has been convicted of assault in a domestic violence context – where there is no evidence to make a diagnosis of paedophilia or any paraphilia, nor that the respondent harbours deviant sexual interests, but there is evidence of a likelihood of general criminal offending by the respondent, including violent offending in a domestic context – where the identified risk posed is that the respondent could commit a sexual offence in that context – where the Attorney-General applies for a further supervision order, for five years – whether the evidence as to the nature of the risk now posed by the respondent, and the likelihood of that risk eventuating,

	is of sufficient weight to justify the decision that the respondent is a serious danger to the community in the absence of a further supervision order
	Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)
	Attorney-General for the State of Queensland v Beattie [2007] QCA 96 *Attorney-General for the State of Queensland v Fisher* [2007] QSC 341 *Attorney-General for the State of Queensland v Foy* [2014] QSC 304 *Attorney-General for the State of Queensland v S* [2015] QSC 157 *Attorney-General for the State of Queensland v Travers* [2018] QSC 73 *Attorney-General for the State of Queensland v Van Dessel* [2006] QSC 16 *Nigro v Secretary to the Department of Justice* (2013) 41 VR 359
COUNSEL:	J Rolls for the applicant J Fenton for the respondent
SOLICITORS:	Crown Law for the applicant A W Bale & Son for the respondent

Introduction

[1] On 13 October 2004 the respondent was convicted, on his own plea of guilty, of rape, assault occasioning bodily harm and common assault (on dates between January and February 2003), an unlawful and indecent assault (on 8 February 2003) and robbery with personal violence (September 2003). He was sentenced to four and a half years' imprisonment for the rape and the robbery with personal violence, 18 months for the assault occasioning bodily harm and common assault and 12 months for the indecent assault.

[2] The earlier offences were committed when the respondent was 19 years of age. He is now 35.

[3] At the end of his sentence of imprisonment, on 22 November 2007 an order was made, under the *Dangerous Prisoner (Sexual Offender) Act* 2003, that the respondent be released under a supervision order for a period of 10 years.

[4] As described by Mackenzie J in the reasons given for making that order (*Attorney-General v Fisher* [2007] QSC 341):

> "[3] At the time of these offences he had a long criminal history for offences of dishonesty and public order offences, but none of a sexual nature. In that respect, the present case is unlike most that fall for determination under the *Dangerous Prisoners (Sexual Offenders) Act*. It is also a case where there is only one offence that fits the category of a serious sexual offence, the rape, which was digital penetration of a girl of two years of age. She suffered a complete tear to the posterior fourchette extending towards her

anus. There were other signs consistent with digital penetration of her vagina.

[4] The assaults occasioning bodily harm were committed in the same period as the rape and were evidenced by what appeared to be bite marks and other evidence of trauma visible on the children of the respondent's de facto wife. There was no allegation in the charges that these assaults had any sexual connotations.

[5] The unlawful and indecent assault occurred in an incident when the complainant and a friend were harassed near a night-club by the accused and friends of his, ostensibly to persuade them to give them cigarettes. During the course of the episode, the respondent made a lewd remark and gesture. The complainant walked away to take a phone call and while she was on the phone, the respondent approached her, "placed" his hand on her right breast and squeezed it. While the complainant was no doubt distressed by the incident, the level of violence was not such as to qualify it as a serious sexual offence for the purposes of the Act.

[6] The robbery, which occurred while the respondent was on bail for the other offences, was not alleged to have any sexual content, although involving a serious degree of violence."

[5] Although Mackenzie J referred to the respondent's "de facto wife", elsewhere in the material it is said the 2003 offences "occurred when he was 19 years old within the context of a brief intimate relationship characterised by heavy, regular substance abuse (alcohol and cannabis)". In relation to the rape offence, Mr Fisher is said to have acknowledged "forcefully penetrating 'poking' the female child's vagina, describing his behaviour as a form of parental discipline".[1] I note that the material indicates that, according to the respondent, the child was sitting with her legs apart; the respondent had remonstrated with her not to do so; and that his act of digitally penetrating her was a form of discipline, to get her to comply.[2]

Supervision order

[6] In *Attorney-General v Fisher* [2007] QSC 341, in determining that a supervision order should be made, Mackenzie J said:

"[26] The offence of rape for which the respondent is serving a sentence of imprisonment was a "serious sexual offence". It involved violence against a child. The violence was evidenced by the injuries suffered by the child. The next issue is whether the respondent is a serious danger to the community. The issue, according to s 13(2), is whether there is an unacceptable risk that the prisoner will commit a sexual offence if released from custody or, if released from custody without a supervision order being made. The issue is somewhat complicated in this case by the generally violent disposition that the respondent has demonstrated. The robbery for which he was convicted was a violent offence also. Also, the

---

1 See the psychological progress report dated 27 May 2016, at p 43 of the exhibits to Ms Berry's supplementary affidavit filed 31 January 2018.

2 See, for example, Dr Arthur's report at [51].

actuarial instruments are concerned primarily with violence of which sexual violence is a sub-set.

[27] However, it seems to be clear, in my view, from the evidence of the psychiatrists that there is a concern that the respondent has not benefited to the full extent from programs which would enable him to confront and understand that serious sexual offences ought not to be committed. Until that degree of insight is obtained, there is a risk that he will opportunistically commit such offences if released from custody. I am satisfied on this basis that there is an unacceptable risk that he will commit a serious sexual offence if released from custody or released from custody without a supervision order being made. His current inadequate understanding of the seriousness of such offences, as demonstrated by the factors referred to by the psychiatrists, is the reason for that conclusion. If the undertaking of further courses results in a proper understanding and acceptance of the seriousness of the offences and that they should not be committed, the risk may reduce to an acceptable level. At present, the risk that he will commit a further serious sexual offence is unacceptable.

[28] There are two things that emerge from the expert evidence about the offender. The first is that it is accepted that he is not in the category of offenders who appear to be intractable. The second is that he is a young man whose process of maturation and better understanding of the issues may result in his requiring less restraint than is currently appropriate. That is the tenor of the evidence of the psychiatrists. However, I am satisfied that as the matter stands, a Division 3 order should be made."

[7] Justice Mackenzie was satisfied a continuing detention order was not required, and that a supervision order was appropriate, to enable the respondent's integration into the community while achieving the dual aims of protecting the public by the restrictions in the order and by requiring him to take appropriate programs to achieve the degree of insight necessary to minimise the risk of further serious sexual offending (at [33]).

[8] The respondent has not committed another sexual offence of any kind since the supervision order was made. He has contravened the order, and as a result spent some time in custody. Consequently, the period of the order was extended, by operation of s 24 of the Act, as formalised by order of Boddice J made on 20 September 2017. The order expires on 24 April 2018.

[9] The Attorney-General now applies, under s 19B of the Act, for a further supervision order, for a period of five years. The making of a further order is opposed by the respondent.

Contraventions

[10] In March 2009 the respondent was returned to custody for an alleged breach of the supervision order, by removing his electronic monitoring device. There appears to have been some dispute as to how that may have occurred. He was in custody from 3 March until 15 April 2009, when he was released pending the hearing of the contravention proceedings. Those proceedings were dealt with by Margaret Wilson J, her Honour being satisfied the contravention was proved, but finding that adequate protection of the community could be ensured by continuation of supervision order: *Attorney-General (Qld) v Fisher* [2009] QSC 169.

[11] In July 2009, there was a further contravention, as a result of the respondent refusing to receive visits from Corrective Services officers and drinking alcohol. He was in custody from 23 July to 1 September 2009, with the contravention proceedings being dealt with on 11 March 2010. Once again, he was released on the supervision order. The material indicated the respondent was under unusual stress at the time of the contravention, as his father had died some three weeks earlier.[3]

[12] Almost six years later, in April 2015, the respondent was returned to custody, for an alleged breach of the order, by assaulting his (former) partner, Ms H. He was in custody from 9 April 2015, pending the hearing of the contravention proceeding. In the meantime, he was dealt with for the offending against his partner in the Magistrates Court, ultimately pleading guilty to one charge of common assault and one charge of contravening a domestic violence order, for which he was sentenced in August 2015 to one month imprisonment for each offence, suspended forthwith for an operational period of 6 months.

[13] On 18 August 2015, the respondent's Corrective Services officer gave him a direction not to have contact with Ms H.

[14] At the hearing of the contravention proceeding on 8 February 2016 the court was again satisfied that, despite the contravention, adequate protection of the community could be ensured by continuation of the supervision order.

[15] In 2016 there was a further contravention, which was dealt with by the Magistrates Court in March 2017, resulting in a sentence of 3 months' imprisonment, with parole release after 1 month. It appears this was a breach of the direction given by Corrective Services, that the respondent have no contact with Ms H. He was found to have had contact with her, but it was not alleged that there was any violent conduct or anything of that kind.[4] There were no contravention proceedings commenced in this court.

Relevant principles

[16] I considered the relevant principles on an application for a further order in *Attorney-General v DBJ* [2018] QSC 302 at [7]-[16]. The process reflects that which applies when the original order is sought.

[17] Relevantly, a further supervision order may only be made if the court is satisfied the released prisoner is a serious danger to the community in the absence of such an order (ss 13(5) and 13(1) and 19D(1)).

[18] A released prisoner is a serious danger to the community if there is an unacceptable risk that the released prisoner will commit another serious sexual offence if a further supervision order is not made (see s 19D(1)(f) and s 13(2)).

[19] As Davis J recently observed in *Attorney-General for the State of Queensland v Travers* [2018] QSC 73 at [30]:

> "It is important for present purposes that the issue is not one of risk of reoffending in general (or even of offending violently) but a risk of reoffending in a particular way, namely by the commission of 'a serious sexual offence'."

---

3 See reasons of Fryberg J, annexure RHB-19 to Ms Berry's affidavit, at p 281 of the exhibits.

4 See Ms Berry's affidavit at exhibits p 441 (defence counsel subs) and p 450 (Magistrates reasons).

[20] As defined in the schedule to the Act a "serious sexual offence" is, relevantly, an offence of a sexual nature, involving violence, or against a child.

[21] Importantly, the court may decide it is satisfied the person is a serious danger to the community only if it is satisfied:

(a) by acceptable, cogent evidence; and

(b) to a high degree of probability,

that the evidence is of sufficient weight to justify the decision (s 13(3)).

[22] This is a statutory expression of the principles in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362. As to this, in *Attorney-General v Van Dessel* [2006] QSC 16 at [17] White J said:

> "The Act requires the court hearing an application for a Division 3 order to be satisfied on acceptable and cogent evidence 'to a high degree of probability' that the evidence is of sufficient weight to justify the decision. In weighing the evidence and deciding whether to make an order the Act requires the court to have the protection of the community as the paramount consideration. The explanation in *Neat Holdings v Karajan Holdings* (1992) 110 ALR 449 at 450 of the test in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362 of the proper approach to the strength of evidence necessary to establish a fact or facts on the balance of probability may be kept in mind. In *R v Secretary of State; Ex parte Khawaja* [1984] AC 74 Lord Scarman observed at 113-4
>
> > 'The flexibility of the civil standard of proof suffices to ensure that the court will require the high degree of probability which is appropriate to what is at stake.'
>
> Here what is at stake is the fundamental legal right to the unfettered personal liberty of the respondent on the expiration of his term of imprisonment. The serious nature of the inquiry is underscored in the Act by the use of the expression 'high degree of probability'.

[23] Here, what is at stake is the fundamental legal right to unfettered personal liberty of the respondent, following the expiration of his term of imprisonment and a period of 10 years during which his liberty has been significantly curtailed by a supervision order under the Act, and during which he has not committed a serious (or any) sexual offence.

[24] The purpose of a supervision order is not punishment, but protection of the community against, and to facilitate rehabilitation for, certain classes of convicted sexual offenders.[5] The paramount consideration is the need to ensure adequate protection of the community (s 13(6)(a)).

[25] What constitutes an "unacceptable risk" is "a matter for judicial determination, requiring a value judgment as to what risk should be accepted against the serious alternative of the deprivation of a person's liberty".[6] The test is not satisfied by evidence of *any* risk that

---

5 See the objects of the Act, set out in s 3. See also *Fardon v Attorney-General for the State of Queensland* (2004) 223 CLR 575 at 597 [34] per McHugh J, at [216] per Callinan and Heydon JJ.

6 *Attorney-General (Qld) v Sutherland* [2006] QSC 268 at [30] per McMurdo J; see also *Attorney-General (Qld) v Fardon* [2011] QCA 111 at [20] per Chesterman JA.

the released prisoner may commit a further serious sexual offence. What must be established by the Attorney-General, to the requisite standard, is an *unacceptable* risk, the determination of which involves a balancing of competing considerations.[7] The notion of an unacceptable risk recognises that some risk can be acceptable consistently with the adequate protection of the community.[8]

[26] In considering whether a risk is unacceptable it is necessary to take into account, and balance, the nature of the risk and the degree of likelihood of it eventuating, with the seriousness of the consequences if the risk eventuates.[9]

[27] As observed in *Nigro v Secretary to the Department of Justice* (2013) 41 VR 359[10] at [6]:

> "Whether a risk is unacceptable depends upon the degree of likelihood of offending and the seriousness of the consequences if the risk eventuates. There must be a sufficient likelihood of the occurrence of the risk which, when considered in combination with the magnitude of the harm that may result and any other relevant circumstance, makes the risk unacceptable."

[28] Section 13(4) sets out a number of matters the court must have regard to. As Boddice J observed in *Attorney-General (Qld) v Foy* [2014] QSC 304 at [18] the relevant factors to be considered in exercising the discretion under s 19D include the matters specified in s 13 but also factors since the making of the initial supervision order, such as the respondent's performance on the existing supervision order and the impact of the imposition of a further supervision order on him.

[29] The Attorney-General contends that the respondent still presents as an unacceptable risk that he will commit another serious sexual offence, if a further supervision order is not made, and relies upon the opinions expressed by three psychiatrists to support the application: Dr Harden, Dr McVie and Dr Arthur. There is also before the court material from Dr Lars Madsen, the respondent's treating forensic psychologist.

Relevant background

[30] The respondent is a 35 year old Aboriginal man. He is not married, but is the father of three young children, who are in the custody of his older brother. It is apparent from the psychiatrists' reports, as well as the Corrective Services case notes,[11] that establishing contact with his children is important to Mr Fisher. He has recently commenced supervised visits with them, after having completed a parenting program.

[31] He was born in Gympie, the youngest of eight children. He appears to have reasonably close contact with two of his older brothers, one of whom he has lived with in recent times and the other who has custody of his children. His mother passed away when he was 16, and his father in 2009. He identifies as a Wakka Wakka man, with both of his parents coming from Cherbourg. His surviving maternal grandfather, the elder for him

---

7 *Fardon v Attorney-General for the State of Queensland* (2004) 223 CLR 575 at [22], [60] and [225], referring to *M v M* (1980) 166 CLR 69; see also *Attorney-General (Qld) v S* [2015] QSC 157 at [40].

8 *Attorney-General (Qld) v Sutherland* [2006] QSC 268 at [29] per McMurdo J.

9 *Attorney-General (Qld) v Beattie* [2007] QCA 96 at [19] per Keane JA.

10 In an equivalent, but not identical, statutory context, being s 9(1) of the *Serious Sex Offenders (Detention and Supervision) Act* 2009 (Vic), which empowers the court to "make a supervision order in respect of an eligible offender only if the court is satisfied that the offender poses an unacceptable risk of committing a relevant offence if a supervision order is not made".

11 Annexed to Mr Tannock's affidavit filed 29 March 2018.

to talk to, lives in Cherbourg, but the respondent has been unable, whilst under the supervision order, to visit him (a matter identified by Dr McVie as something which should be allowed, to enable him to develop appropriate cultural connections).[12]

[32] Growing up, he was exposed to a number of "adverse developmental experiences", including violence and substance use in the family unit and accommodation instability, as well as being the victim himself of childhood sexual abuse.

[33] The respondent has been diagnosed with Antisocial Personality Disorder. He has scored relatively highly on the psychopathy checklist (without actually reaching the cut off for psychopathy), particularly associated with lack of concern for others and a criminal and antisocial lifestyle, although Dr Harden records that these have matured and are much less prominent now (at p 30).[13] He is described as having borderline to low average intellectual functioning.

[34] The respondent has a history of polysubstance abuse, primarily alcohol; and intoxication was a feature associated with his earlier offending. But he has not breached his supervision order in relation to substance use since 2009 (when he had consumed alcohol, shortly after the death of his father).

[35] On the other hand, he is presently taking suboxone. Although he is doing this as part of a supervised program under the direction of a medical practitioner, the psychiatrists express concern that he is using this drug for its psychotropic properties, as a way of emotional coping; rather than as a means of dealing with cravings with the goal of abstinence from some other drug addiction.

[36] As described by Dr Harden, "there has been a consistent pattern of difficulties in his relationships with female partners associated with jealousy, poor communication, insecurity and avoidance displayed by Mr Fisher in dealing with relationship complications. On more than one occasion in the past it has led to threatening and aggressive domestically violent behaviour towards his female partner and this pattern was associated with his previous offending. It appears that his insecurity and poor coping with regard to attachment difficulties in his relationships are now his most significant dynamic risk and treatment needs" (at p 29).

[37] The respondent completed the High Intensity Sexual Offending Program whilst he was in custody, between 2005 and 2006. As is apparent from the reasons given by Mackenzie J when making the supervision order in 2007, at that time there were concerns that he had not benefited to the full extent from that program.[14] He completed the Maintenance Program for Sexual Offending in 2017, although it seems he had been attending the program as early as October 2008.[15] As Dr McVie notes, this is despite having (at best) borderline intellectual functioning (at p 12).

Reports from the treating psychologist

[38] The material includes progress reports from Dr Lars Madsen and from Dr Shay Addison, forensic psychologists. Mr Fisher was referred to the Forensic Psychology Centre in 2009, and has had regular sessions, mostly with Dr Madsen, but sometimes with Dr Addison since then.

---

12 See Dr McVie's report at pp 4-5, 8 and 14.

13 Dr Arthur (at [273] of his report) and Dr McVie (at p 11, line 505 of her report) score Mr Fisher slightly higher than Dr Harden on the psychopathy checklist, but still below the cut off.

14 See also the summary in Dr Harden's report at pp 17-18

15 Dr Harden's report at p 21.

[39] In his report dated 10 March 2017,[16] Dr Madsen notes that, although Mr Fisher had been attending weekly psychological sessions, his engagement was "fairly superficial". He noted that Mr Fisher continued to be difficult to meaningfully engage in psychological treatment, and continues to exhibit an avoidant coping style, in the sense that he seems to avoid thinking about or meaningfully addressing problems in his life. Dr Madsen said Mr Fisher had unrealistic plans for the future, maintains a fairly suspicious and adversarial mindset towards others (especially Corrective Services and the Department of Communities), and displays very poor insight into the real concerns and issues that others have in relation to his supposed risk and also his and his partner's (or former partner) parental capacity.

[40] In relation to risk, in the March 2017 report Dr Madsen said:

> "… prior to his incarceration [in context, this must be a reference to his incarceration in March 2017 referred to at [15] above] it would seem that the most likely and imminent risk would be of further 'intimate partner violence'. In this regard, Mr Fisher's recent presentation in sessions and current situation indicates that he possesses many of the factors associated with increased risk, these being '*recent relationship and employment problems'; 'personality disorder'; 'recent escalation of conflict'; 'extreme minimisation'* and '*attitudes that condone spousal assault'*. Obviously, he also has a history of interpersonal violence (sexual, domestic as well as general) and has previously violated community supervision and no-contact orders as well. Prior to his incarceration, his current partner R would appear to have been the most likely target/victim.
>
> In terms of sexual risk, this is harder to evaluate because Mr Fisher has limited contact (known) with children. Although evaluating dynamic factors indicates that he presents with many of these factors as well. He has few positive social influences and remains in a conflictual relationship. His recent history has indicated ineffective problem solving, impulsivity and poor cooperation with community-based supervision. In addition, he has displayed hostile attitudes towards women, and is very antisocial in his general attitude and thinking process."[17]

[41] Dr Madsen said that, upon his release it would be important to attempt to re-engage Mr Fisher and assist him with the many stressors that he struggles with. As a positive, Dr Madsen noted that Mr Fisher had acknowledged the problems he experienced with his partner, and the impact that has on his behaviour and emotional state. He also records that Mr Fisher "does appear to value the 'idea' of his children, and whilst he does not understand the concerns held by others, does at least intermittently appear motivated to engage with the Department of Communities and others to assist him with having some type of contact". He concludes by saying "it is important to recognise that despite his dishonesty, surly and manipulative behaviour, Mr Fisher has appeared at different times [over the many years of psychological treatment] to engage and also benefit from this".

[42] Dr Madsen prepared a further report, dated 14 July 2017[18] in which he observed that "much remains the same for him". Dr Madsen notes that Mr Fisher's presentation and

---

16 Commencing at p 51 of the exhibits to Ms Berry's supplementary affidavit filed 31 January 2018.

17 See pp 53-54 of the exhibits to Ms Berry's supplementary affidavit.

18 Commencing at p 58 of the exhibits to Ms Berry's supplementary affidavit.

profile shows that he possesses many of the risk factors associated with risk of general offending, noting that "he has few positive social influences and likely remains in a conflictual relationship with a partner that is a negative influence upon him. His recent history shows ineffective problem-solving, substance misuse, impulsivity and poor cooperation with community-based supervision. In addition, he has displayed hostile attitudes and is very antisocial in his general attitude and thinking process."

[43] Dr Madsen said that from a risk perspective, Mr Fisher is most at risk of engaging in general offending and/or domestic violence if he remains in a relationship with his partner R. Dr Madsen regards Mr Fisher as a high risk of engaging in future criminal activity and rule violations (such as breach of DPSOA conditions, substance misuse, dishonesty etc), but says "his risk of engaging in a sexual re-offence is less likely".

Nature of the risk

[44] The fact that the respondent has committed a sexual offence, involving violence, against a two year old child, remains a significant factor in terms of the assessment of the risk he poses.

[45] However, despite the victim of that offence being a child, as Dr Harden says, "there does not appear to be any convincing evidence of paraphilia" (at p 30). Dr McVie also says there is no evidence on which to make a diagnosis of paedophilia or any paraphilia (at p 13). Dr Arthur accepts that there is no compelling evidence that he harbours deviant sexual interests (at p 41).

[46] In terms of identifying the risk that Mr Fisher may pose now, it is important to note that none of the psychiatrists predict offending of that kind as likely to recur. Dr Harden said that, viewed in context, the rape offence is "more isolated" and said he did not think that the risk towards children is particularly great from Mr Fisher at this point in time.[19]

[47] There is an identified risk of general criminal offending (including possibly violent offending) by Mr Fisher. That is not the concern of this legislation. Relevantly for the purposes of this application the risk that is said to be posed by Mr Fisher is of committing a sexual offence involving violence, in the context of a domestically violent situation. The links in the chain of reasoning are that the rape of the child could be viewed as an aspect of domestic violence; Mr Fisher presents with an antisocial personal disorder and significant psychopathic traits, as well as substance misuse; he has a history of violent offending, generally; he presents with dynamic risk factors in the areas of relationship instability; he has a demonstrated pattern of domestically violent relationships with women; and within that context, it is reasonable to conclude that, in a situation of conflict, that could escalate to sexual violence in a domestically violent situation. So the relevant risk that is said to be posed by Mr Fisher is a risk that he could commit a serious sexual offence – that is, a sexual offence involving violence – in a domestic violence context.[20] This is on the basis of what Dr Harden described as a "general association" between general violence and sexual violence.[21]

[48] Dr Harden said he did not consider that risk could be quantified in Mr Fisher's case; acknowledging that it was a "long bow".[22] In his oral evidence Dr Arthur a number of times commented (or to this effect) that it is very difficult to understand or predict the

---

19 T 1-53.

20 See Dr Arthur at T 1-16; Dr McVie at T 1-38 and Dr Harden at T 1-52.

21 T 1-52.8.

22 T 1-53 to 1-54.

future risk of sexual violence in Mr Fisher's case, in part because of his reluctance to discuss these matters, which Dr Arthur said reflects avoidance. But he says there is clear evidence of a risk of violent reoffending, and given that the sexual offence (the rape in 2003) was associated with violent offending, "we have to tie those two together", although also acknowledging "the relationship [between the risk of violence generally and sexual violence] is not clear".[23] Dr Arthur said he did not "think we can discount the fact that this man still has some risk of sexually reoffending". Dr McVie describes Mr Fisher's risk of sexual offending as less clear (than his risk of general criminal offending, and domestic violence related problems). Dr Madsen also says the sexual risk is hard to evaluate, and less likely.

[49] In terms of the consequence of this risk, should it eventuate, it could of course potentially be very serious. As Dr McVie noted, the person at risk would be his partner, and domestic violence situations can lead to unwanted sexual assault or rape. Although, again, Dr McVie fairly added that although this "could" happen, "there's no history of it, so you can't predict it"; "he hasn't done that in the past".[24]

[50] Turning then to the psychiatrists' evidence in terms of the assessment of the degree of likelihood of this risk eventuating.

Degree of likelihood of the risk eventuating

A preliminary issue – admissibility of the psychiatrists' reports

[51] Before doing so, it is appropriate that I record a submission on behalf of the respondent, made during the closing submissions, that the psychiatrists' opinion evidence is inadmissible. In submissions filed prior to the hearing, it had been conceded that they were admissible, but that concession was withdrawn in further submissions after hearing the oral evidence. The basis of the objection is that a fundamental link in the chain of reasoning towards a prediction of risk by the psychiatrists is not subject of a proper scientific foundation – namely, as to the effect of a lengthy period of time, in the community, without sexual reoffending, whilst subject of a supervision order. It was submitted that the current state of psychiatric research into predicting sexual recidivism in the case of offenders who have been released on lengthy supervision orders is insufficient to be characterised as a reliable body of knowledge or experience and as such the predictions (opinions) expressed by the psychiatrists are simply educated guesses, not admissible as expert opinion.

[52] I reject that submission. The evidence of the opinions held by the psychiatrists are admissible because, in each case, the psychiatrist is a person who, by reason of their training, study and experience, has expertise in an identified field of specialised knowledge; the opinions they have proffered are based on their expert knowledge; and the assumptions of fact on which their opinions are based are set out in their reports. There is recognised imprecision inherent in applying actuarial instruments to determine the degree of risk.[25] But the methodology adopted by the psychiatrists is not limited to the application of such instruments. The fact that there is no evidence-based research about the effect of a supervision order on the reduction of risk over a period of time does not render the psychiatrists' opinions inadmissible. It is a matter all the psychiatrists acknowledged as a gap in scientific knowledge. As the applicant submitted, it is a matter which may go to the cogency of the evidence, but not its admissibility.

---

23 T 1-12.45 to 1-13.2.

24 T 1-38.

25 See, for example *Attorney-General v Fisher* [2007] QSC 341at [17].

Dr Harden

[53] Dr Harden interviewed the respondent on 21 April 2017, and then prepared an assessment report dated 30 October 2017. Dr Harden had previously interviewed Mr Fisher in March 2009, December 2009 and October 2015, in the context of the previous contravention proceedings.

[54] It is necessary to read Dr Harden's report, in terms of his risk assessment analysis, in the light of his oral evidence, because Dr Harden said his views had changed somewhat, from what he wrote in October 2017, having regard to the evidence of the other psychiatrists, including at the hearing before me (Dr Harden was the last to give evidence).

[55] In his report, overall, Dr Harden assessed the respondent as still presenting a moderate risk of sexual reoffending, in the absence of a supervision order – on the basis of combined clinical and actuarial assessment.

[56] As Dr Harden explained, that conclusion is drawn from a number of elements.

[57] The first element is the static risk factors. Static risk factors are based on historical events for the individual which are not subject to change over time – the most significant of which, in the present context, is the commission of the rape offence against a child in 2003. Previously, the application of the static risk assessment instrument placed the respondent in the high risk group – that is, in the group of people at high risk of sexual reoffending. Now that he is over 35 that would come down to the moderate to high group.[26]

[58] Importantly, and relevantly again to this case, whilst there is evidence-based research for how a period of time in the community, without reoffending, affects (in the sense of reducing) this static risk; there is no such evidence-based research in respect of people who have been in the community on a strict regime of supervision such as applies under the *Dangerous Prisoners (Sexual Offenders) Act*. All psychiatrists agreed this represents a serious gap in the scientific knowledge in this area.

[59] Where a person has been in the community, without reoffending (other than subject to a supervision order), there is accepted to be an approximately 50% risk reduction about every five years. As Dr Harden notes, it may be expected that, in the case of a person who has been on a supervision order, and has not reoffended, their risk must have reduced to some extent, but he considers it could not be to the same extent as a person not on an order. The example he gives is, effectively, that in someone like Mr Fisher's case, 10 years offence free (on a supervision order) might equate to more like 4 years offence free (not on a supervision order). On this analysis, his static risk may be said to have dropped to the low to moderate risk group.[27]

[60] It was put to Dr Harden, by counsel for the respondent, that in the absence of scientific data, it could be possible that a person who has been on a supervision order could have an even greater reduction in their risk of recidivism, than a person who has not – due to benefits gained from that supervision order. Dr Harden cooperatively agreed that whilst

---

26 See also Dr McVie's report at p 11, line 515.

27 T 1-49.

that is not impossible, the other data (relating to offenders in the community without supervision) is premised on "opportunity to offend", which is something which is constrained by a supervision order – thus explaining Dr Harden's primary view that there would be a lesser reduction in the case of a person on a supervision order.[28]

[61] It was clear from all the psychiatrists that, in terms of how the static assessment instrument is applied, that is effectively done on the basis of an assumption that the person has just been released from custody (in Mr Fisher's case, not taking account of the 10 years he has been in the community, on a supervision order).[29] There is an inherent unfairness in this. Dr Harden's analysis is an attempt to address that unfairness, albeit in the absence of evidence-based research data.

[62] The next element is the dynamic risk factors – these are factors, not necessarily directly associated with sexual offending, but that are known, from evidence-based research, to be associated with an increased risk of sexual recidivism, that have the potential to change over longer periods of time (for example through successful treatment or other interventions). In terms of dynamic risk, Dr Harden describes Mr Fisher's case as complex. In so far as the Stable 2007 instrument is concerned, Dr Harden notes in his report (at pp 27-28) that, from 2009 to 2016, there was a significant improvement (in the sense that the dynamic risk factors have reduced significantly), but that he remains with one dynamic risk factor of significance, in relation to his capacity for relationship stability. Dr McVie says that he continues to present with significant problems in the field of relationship stability, impulsivity and poor problem-solving skills (at p 11).

[63] Taking the dynamic risk factors into account, in his report Dr Harden expressed the view that the risk posed by Mr Fisher may increase somewhat to moderate**.** But in his oral evidence, Dr Harden explained that given the complexities involved in Mr Fisher's case, this really means somewhere within the range of low/moderate to high/moderate – ultimately expressing the view that the risk is below moderate when one takes all the factors into account.[30]

[64] What Dr Harden said he had changed his view about was his recommendation for a further supervision order, for between three to five years, as necessary to reduce the respondent's risk of sexual recidivism to the low to moderate range (at p 31 of the report). In his oral evidence, Dr Harden said he agreed with Dr McVie, who says it is unlikely that another five years of supervision will necessarily result in much of a change of risk for Mr Fisher. In Dr Harden's words "the supervision order may reduce the risk or it may not", later saying that it may reduce the risk "slightly", by restricting his access to other people and his ability to interact with them, although again said it is hard to quantify. But what Dr Harden said he would support, clinically, is an order of one to two years to enable Mr Fisher to transition better to other care.[31]

Dr McVie

[65] Dr McVie was appointed by order under s 8 of the Act to provide a psychiatric assessment. She saw Mr Fisher, at the Wacol Reporting Centre, on 13 March 2018, and prepared a report dated 2 April 2018. She had not previously assessed Mr Fisher.

---

28 T 1-55.

29 See, for example, Dr McVie at T 1-36 and 1-40.

30 T 1-51.

31 T 1-51 and 1-54.

[66] On the basis of his history and risk assessment, Dr McVie considers that the respondent is at considerable risk of future criminal offending and domestic violence related problems. She acknowledges his risk of sexual offending is less clear. She says he continues to present with some risk of re-offending, but that risk is difficult to quantify. She considers it is likely to be greater with relapse of substance use (particularly alcohol), lack of meaningful activity or employment, and association with antisocial peers. She considers that he has ongoing treatment needs, including problems related to being the victim of childhood sexual abuse, problems in relationships, and problems related to his avoidant coping style and poor problem solving skills.

[67] In her report, Dr McVie says that overall, she considers Mr Fisher still to be at moderate risk of further sexual violence, if released without a supervision order – on the basis of a pure risk assessment scale. She considers the potential sexual violence could occur in the context of a domestic violence situation, although notes that arguments with previous partners about infidelity have not resulted in sexual assaults (at pp 13-14).

[68] In her oral evidence, Dr McVie explained that just looking at the respondent clinically, in terms of sexual reoffending, she would have regarded the risk as low – given that he has been in the community for 10 years, and even though he has managed to form two relationships, and get into trouble with domestic violence, there was never any suggestion of any inappropriate behaviour with children (nor, I would add, any suggestion of sexual offences in the context of domestic violence). However, when factoring in the actuarial instruments (both in terms of static and dynamic factors), the risk is increased to moderate, on the basis that those dynamic factors that he presents with have been identified as combining to predict risk of sexual recidivism; and they are matters that he needs to continue his treatment with the psychologists for.

[69] Dr McVie says that, having regard to his progress to date, and his level of intellectual impairment, it is unlikely an order continuing in the same manner as the current order will ultimately result in any significant decrease of risk in five years. She does not think continuing the current order is going to change what the situation is, noting that there is some risk, but it is impossible to quantify what that risk is.[32] Dr McVie recommends a shorter-term order to facilitate transition to independent and unsupervised living, and further recommends that Mr Fisher: continue to attend his psychologist regularly; be supported to cease his suboxone; become engaged in suitable employment; continue supervised visits with his own children; remain abstinent from alcohol and illicit substances; be supported to re-establish relationships with his extended family; and be allowed to visit his grandfather in Cherbourg and to develop appropriate cultural connections. She also recommends he be released from the requirement for electronic monitoring as this impacts negatively on his self-esteem and his attitudes towards supervision and support (at p 14). She noted, however, that what she recommends does not fit with the strict legislative requirements.[33]

Dr Arthur

[70] Dr Arthur was also appointed, by order under s 8 of the Act, to provide a psychiatric assessment. He saw Mr Fisher in his rooms in Wickham Terrace on 22 February 2018, and prepared a report bearing the same date. He had also not previously assessed Mr Fisher.

---

32 T 1-41.10.

33 T 1-41.2.

[71] One of the matters highlighted at the commencement of Dr Arthur's oral evidence was Mr Fisher's reluctance to discuss the "index offence", which is the rape offence, and refusal to discuss the other index offence, which is the sexual assault. He described him as an extremely difficult historian. This was a matter Dr Arthur regarded as relevant to his assessment of the risk posed by Mr Fisher, because it reflects avoidance and denial. He said it is also relevant because it makes it more difficult to determine the risk posed by Mr Fisher, if he refuses to discuss plainly uncomfortable and difficult things. As explained by Dr Arthur, that is an important part of a person effectively engaging in therapy – to reflect on the offending, and the reason for it, in order to gain a better understanding of themselves, and why the offences occurred, and what they can do to make sure it does not happen again.

[72] Dr Arthur acknowledged that Mr Fisher's refusal to discuss the offences could be attributable to shame, or to a failure to build a decent rapport with Dr Arthur; also that it could be a reflection of a man of limited intelligence not realising the importance of engaging in a detailed discussion about the previous offences. But Dr Arthur said it could also be a reflection of a man with an anti-social personality disorder, who does not wish to discuss anything that is unpleasant to him and therefore minimises it and gets angry and shuts down the examiner to avoid talking about it. This is a matter also referred to in the reports from Dr Madsen, a person with whom Mr Fisher has spent quite a deal of time.

[73] On the other hand, the Corrective Services case notes reveal that the respondent became upset and frustrated when served with the current application; was reluctant to engage with psychiatrists appointed to assess him for that purpose and, in relation to Dr Arthur in particular, felt stressed during the interview, in part because he had an appointment with Legal Aid straight afterwards about issues concerning his children.[34]

[74] In his report, Dr Arthur expresses the opinion that:

> "285 Utilising structured professional judgement and incorporating the above instruments, I estimate that Mr Fisher's future risk of sexual offending were he not on a supervision order has lessened but is still within the moderate range. This is based on the presence of his static risk factors and ongoing dynamic variables.
>
> 286. It is difficult to predict the nature and type of offences Mr Fisher is likely to commit should the risk manifest. There is no compelling evidence that he harbours deviant sexual interests. If he does reoffend it is likely to be in an unplanned/opportunistic manner in the context of heightened emotional states. The descriptions of Mr Fisher's previous violent offences and domestic violence behaviours display his propensity towards physical dominance; whilst I do not think that he would specifically target children, they would certainly be more vulnerable to such behaviour in a domestic setting. The most likely trigger for sexual violence would be interpersonal conflict within close relationships which would lead into sexual violence against his partner or those close at hand.
>
> 287. With the continuation of a supervision order, Mr Fisher's risk of sexually reoffending would be reduced to low–moderate. The

---

[34] See the case notes annexed to Mr Tannock's affidavit filed 29 March 2018 at pp 41, 45, 50, 56 and 57.

> conditions of his current order have proven to be sufficient in that there has been no suggestion of sexual reoffending or heightened sexual preoccupation/acting out over the previous 10 years."

[75] He considers a further supervision order should be of a duration between 3 and 5 years, to give Mr Fisher the opportunity to develop a closer therapeutic relationship with his treating psychologists, and to develop a better understanding and skillset to manage his intimate relationships (at [289]). In addition, Dr Arthur recommends he be weaned of the suboxone ([291]).

[76] I am inclined to prefer the opinions of Dr Harden and Dr McVie, to that of Dr Arthur, where they differ, which is more a matter of degree than substance. Without discounting the relevance of the respondent's reluctance to engage openly, a matter referred to by all the psychiatrists and Dr Madsen as well, I was left with the impression, from Dr Arthur's oral evidence, that this may have led him to place more emphasis on the static risk assessment, notwithstanding that a major determiner of that is the commission of the rape offence in 2003, which none of the psychiatrists predict as likely to recur,[35] and which does not factor into account the 10 years he has been in the community, on a supervision order. In saying this, I am not suggesting that I read Dr Arthur's evidence as based solely on that assessment; it expressly is not.

Consideration

[77] I have had regard to the matters set out in s 13(4), in the course of reviewing the evidence, as summarised above.

[78] I do not consider the material supports a finding that there is a *propensity* on the part of the respondent to commit serious sexual offences in the future (s 13(4)(c)). The risk that has been identified is based upon extrapolation from the risk posed by the respondent of general criminal offending, including violent offending – given the "general association", to use Dr Harden's words, between violent offending and sexual offending, particularly in a domestic violence context. That is not indicative of a propensity. No such propensity is identified in so far as sexual offending against a child is concerned.

[79] On the other hand, as Dr Arthur said, it cannot be discounted that the respondent still has some risk of sexually reoffending (s 13(4)(h)). There is uncertainty about this – with all the psychiatrists describing it as difficult to predict. Each of the psychiatrists (consistently with Dr Madsen) are clear that sexual offending against a child does not present as likely. It is the risk of sexual offending, in a domestic violence context, that is identified – although the likelihood of that risk eventuating was said to be difficult, indeed impossible, to quantify.

[80] There is not a pattern of offending behaviour on the part of the respondent, in so far as his prior sexual offences are concerned (s 13(4)(d)).

[81] The respondent has participated in rehabilitation programs, both whilst he was in custody, and since his release, and has also engaged in psychological counselling whilst on the supervision order (s 13(4)(e)). As to whether those things have had a positive effect on him (s 13(4)(f)), the material is mixed. It is relevant to note Dr Harden's observation of improvement in some of the dynamic risk factors previously present in Mr Fisher, and improvement in his ability to comply with rules and directions; and also

---

35 See, eg at T 1-16.11 and .43 ("all we have to go on, really, is that static risk").

Dr Madsen's observations in his July 2017 report of greater acknowledgment of his relationship problems, and motivation to work with authorities in the context of trying to achieve a relationship with his children. On the other hand, Mr Fisher's low intelligence, and anti-social personality disorder have, on the material, plainly impacted on his ability to meaningfully engage in the rehabilitation and treatment he has been exposed to. He has not, however, committed a further sexual offence of any kind since 2003, having been in custody until 2007, and subject of a supervision order from then until now.

[82] His antecedents and criminal history (s 13(4)(g)) have been addressed above. They support the view expressed as to the risk the respondent poses of general criminal offending.

[83] In so far as there are uncertainties about the respondent's circumstances, and therefore the assessment of the risk he poses, the applicant relies upon the observations of McMurdo J (as his Honour then was) in *Attorney-General v S* [2015] QSC 157 at [40], a case in which there was uncertainty as to some material facts about the prisoner, which affected the question whether a continuing detention order was required to ensure the adequate protection of the community. Relevantly, there was uncertainty as to whether there was, in that prisoner's case, sadism or even paedophilia; although all the psychiatrists recognised that it was at least a real possibility (with one of the doctors describing it as "highly likely"). McMurdo J observed that the risk to be considered has a content not only from what can be found as a fact about the prisoner, but also from what constitute real possibilities.

[84] The applicant also submitted that one of the difficulties associated with the assessment of the respondent was that he was not overly communicative, particularly with Dr Arthur, but also Dr McVie. The applicant submits "such reticence cannot be used as a means to escape an order by rendering an assessment more difficult".

[85] The applicant submits that ultimately, notwithstanding the relative uncertainties that are attendant upon the assessment of the risk, taking into account the nature of the risk predicted (that the respondent, being in a relationship which is volatile, becomes violent, which could encompass sexual violence), the risk posed by the respondent is unacceptable. It is submitted that this risk would be moderated to low should a further supervision order be made.

[86] The respondent submits that the evidence relied upon to support the application is not acceptable, cogent evidence, establishing to a high degree of probability, that the respondent is a serious danger to the community in the absence of a further supervision order. As submitted for the respondent, the difficulty with the opinions of the psychiatrists, as to the nature of the risk posed by the respondent, is that he has never been convicted or charged or alleged to have committed a sexual offence against a female adult sexual partner; he has not committed a sexual offence in 15 years and all psychiatrists agree that he does not have a deviant sexual interest in children (respondent's submissions at [3]). Further, for the respondent it is submitted that "the best predictor of future behaviour is past behaviour" and "the material is littered with references to his adult sexual partners. At no time has he ever been alleged to have committed sexual violence against those partners" (at [9] and [16]). In the further submissions for the respondent, the point is made that the psychiatrists "equate a risk of domestic violence with a risk of sexual re-offending in the absence of any history of the respondent doing such things" (at [27]).

[87] For the respondent it is also submitted that the psychiatrists' views about clinical transition are irrelevant – that the *Dangerous Prisoners (Sexual Offenders) Act* has no relevance to the therapeutic treatment of the respondent, but only in managing his risk of reoffending (further submissions at [25]). On the other hand, the applicant emphasises the objects of the Act, in s 3, which are, relevantly, to provide for the supervised release of a particular class of prisoner to ensure adequate protection of the community and to provide continuing control, care or treatment of a particular class of prisoner to facilitate their rehabilitation.

[88] In relation to this, it may be accepted that rehabilitation is a relevant aspect of the regime under the *Dangerous Prisoner (Sexual Offenders) Act*. The reference to rehabilitation in the objects makes this plain, and it is confirmed by reference to the explanatory memorandum to the Bill which became the Act in 2003, which refers to the growing community concern about the release of convicted sex offenders, because of lack of evidence that some offenders have been rehabilitated, and stating that serious sex offenders who are not rehabilitated remain a significant danger to the community after their discharge from custody. But the primary focus of the Act is not upon rehabilitation; it is upon ensuring the adequate protection of the community, from the serious danger presented by some convicted sex offenders – as is clear from s 13(6). A supervision order cannot be made under the Act (simply) to facilitate the further rehabilitation of a convicted sex offender. A supervision order can only be made if the court is satisfied, to a high degree of probability, that the offender is a serious danger to the community in the absence of such an order, because there is an unacceptable risk that he will commit a serious sexual offence if released without such supervision.

[89] On balance, having had regard to the matters set out in s 13(4), I am not satisfied to a high degree of probability that the respondent is a serious danger to the community in the absence of a further supervision order. I am not satisfied the evidence is of sufficient weight to support a finding that there is an unacceptable risk that the respondent will commit a serious sexual offence if no further supervision order is made. That is a conclusion readily reached, in so far as the category of sexual offences against a child are concerned, given the evidence of the psychiatrists. In so far as sexual offences involving violence are concerned, in my view, the evidence as to the likelihood of that eventuating is not of sufficient weight, to justify the conclusion that the respondent is a serious danger to the community in the absence of a further supervision order. I refer in particular to [48] above, and also to the evidence of Dr Harden and Dr McVie regarding the likelihood of the identified risk eventuating, as well as their evidence that the risks presented by the respondent are not likely to be affected to any particular extent by continuation of a supervision order in the current terms (and in fact, as Dr McVie says, that some aspects of the current order may have a deleterious effect).

[90] The *Dangerous Prisoners (Sexual Offenders) Act* is not concerned with persons who pose a risk of general criminal offending, nor general violent offending, even in a domestic violence context. That is the primary risk that the respondent poses. The legislation is only concerned with the adequate protection of the community from the unacceptable risk of commission of serious sexual offences. In my view, the evidence before the court does not support a finding, to the requisite high degree of probability, that the respondent is a serious danger to the community in that respect. I am not satisfied that the evidence is of sufficient weight to justify the decision to impose a further supervision order on the respondent, in circumstances where he has been subject of such an order for the last 10 years and has not sexually reoffended in that time.

[91] I accept the force of what both Dr McVie and Dr Harden say, in terms of the benefits, from a clinical perspective, of a short transitional period during which the respondent has the benefit of some ongoing support, whilst adjusting from being subject to the strict regime of a supervision order under the Act, to ordinary life in the community. As Dr McVie said, what she recommends is more clinical supports than "correctional supervision order containment". Dr McVie expressed the view that if "everything was just removed", the respondent is likely to get himself into trouble fairly quickly, expressing concern about general criminal behaviour, about domestic violence, and about relationships. That is concerning, but it is not the function of this legislation to make orders to protect the community from that kind of anti-social behaviour.

[92] It might be considered desirable if the Act did provide, in appropriate cases, for the making of orders, by the court, to give effect to a transitional arrangement, where management of a supervision order by Corrective Services has not facilitated that transition, during the term of the order. But there is presently no power under the Act for the court to do that.

[93] The only power of the court is to make a further supervision order, which must contain all the same requirements of an original order, made at the time of a person's release from custody. This is because the making of a further supervision order is treated as the making of a new order, rather than an extension of the existing order. There is no discretion conferred on the court in terms of what requirements ought to be included in a further supervision order. In my view, for reasons explained below, this is unsatisfactory.

[94] An example which arose in this case demonstrates this. It was apparent that the continued imposition of the electronic monitoring requirement on the respondent has been a particular source of frustration on his part. Dr McVie said she did not think there were any good clear indications for continuation of electronic monitoring, and in fact said it was having a negative impact on him. Dr Arthur also noted it has been a source of difficulty for him; and said Dr McVie's recommendation, that he be released from that requirement is not unreasonable. Dr Harden was not asked about this. The applicant accepted that, on the evidence before the court, it was reasonable to conclude that such a requirement did not need to form part of any further supervision order – although submitted the court did not have any discretion in that regard.

[95] Section 16 applies, for the application and the operation of any further supervision order (s 19D(1)(h)). Section 16(1) sets out a number of requirements that, relevantly, a further supervision order must contain, one of which is a requirement that the released prisoner comply with a curfew or monitoring direction (s 16(1)(da)). Under s 16A(2), a discretionary power is conferred on a corrective services officer to give a curfew direction and/or a monitoring direction. The effect of these provisions is that the further supervision order must contain a requirement to comply with such a direction (if one is made); but it is not mandatory that such a direction be given – that is a matter within the discretion of the corrective services officer.

[96] An issue raised during the hearing was whether there was scope, in the context of determining an application for a further supervision order, for operation of the power conferred on the court, by s 19A(2), to remove the requirement to comply with a curfew direction or monitoring direction. I accept the submissions of the Attorney-General that there is not.

[97] Section 19A provides, in part, as follows:

> "(1) This section applies to a requirement of a supervision order … that a released prisoner comply with a curfew direction or monitoring direction.
>
> (2) The court may, on application by the released prisoner, remove the requirement if the released prisoner satisfies the court on the balance of probabilities that the adequate community can be ensured without the requirement.
>
> (3) An application under subsection (2) may only be made –
>
> (a) for the first time, after 2 years from the date the requirement was included in the order; or
>
> (b) if paragraph (a) does not apply, after 1 year from the date an application by the released prisoner under this section was last decided."

[98] Supervision order is defined, in the schedule to the Act, to mean a supervision order made under s 13(5)(b) or a further supervision order.

[99] As a matter of construction, the reference in s 19A(3) to "the order" is a reference to "the supervision order" in s 19A(1). Given that the making of a further supervision order is a new order (not an extension of the term of the existing order), when applying s 19A(1) to a further supervision order, the effect of s 19A(3) is that an application may only be made to remove the requirement to comply with a curfew or monitoring direction 2 years after the further supervision order was made.

[100] The lack of flexibility available to the court, particularly on an application for a further supervision order, is in my view unsatisfactory. There may well be cases where the court is satisfied, to the requisite high degree of probability, that a person remains an unacceptable risk, such that a further supervision order is warranted, but where the court is also satisfied that both from the perspective of the community's protection and the released prisoner's rehabilitation, it is desirable that the requirements of such a further supervision order are varied to some extent. Removal of a requirement to comply with a curfew or monitoring direction is an obvious example. There may be others.

[101] Counterintuitively, there is greater flexibility available to the court where it is dealing with a contravention proceeding, than when it is dealing with an application for a further supervision order. For example, on a contravention proceeding it is open to the court to consider amending the supervision order to extend the term of it; and it is also open to the court to consider an application under s 19A at the same time: see, for example, *Attorney-General v Francis* [2012] QSC 275 per Byrne SJA.

[102] In any event, as I have said, having regard to what is at stake for the respondent, given the mandatory terms of any further supervision order, I am not persuaded, on the material before the court, that the Attorney-General has discharged the onus of establishing, to a high degree of probability, that the respondent is a serious danger to the community, in the sense that he presents as an unacceptable risk that he will commit a serious sexual offence, in the absence of a further supervision order.

[103] In the circumstances, the application is dismissed.