

CITATION: *The King v KMD & Ors (No 7)* [2025]
NTSC 64

PARTIES: THE KING

v

KMD

and

CHIEF EXECUTIVE OFFICER
DEPARTMENT OF HEALTH

and

CHIEF EXECUTIVE OFFICER
DEPARTMENT OF ATTORNEY-
GENERAL AND JUSTICE

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory
jurisdiction

FILE NO: 21319440

DELIVERED: 2 September 2025

HEARING DATES: 17 June 2024, 13 June 2025

JUDGMENT OF: Brownhill J

CATCHWORDS:

CRIMINAL LAW – Mental impairment – Part IIA of the *Criminal Code* 1983 (NT) – Periodic review under s 43ZH(2) of the *Criminal Code* – Supervised person seeking revocation of non-custodial supervision order – Whether supervised person is likely to endanger themselves or another

person because of their mental condition – Finding that risk is no more than merely possible – Supervised person is not likely to endanger themselves or another person because of their mental condition – Determination that supervised person should continue to be subject to non-custodial supervision order with varied terms

Criminal Code Act 1983 (NT) s 43A, s 43ZG, s 43ZH, s 43ZI, s 43 ZK, s 43ZL, s 43ZM, s 43ZN, s 43ZO.

NOM v Director of Public Prosecutions (2014) 36 VR 618, applied.

BXT17 v Minister for Home Affairs (2021) 283 FCR 248; *Chief Executive Officer, Department of Health v KMD* (2024) 388 FLR 266; *KMD v CEO (Department of Health NT)* (2025) 99 ALJR 474; *KMD v CEO (Department of Health NT)* [2024] HCASL 271; *Garlett v Western Australia* (2022) 277 CLR 1; *HFM043 v Republic of Nauru* (2018) 359 ALR 176; *The Queen v KMD (No 2)* [2017] NTSC 18; *The Queen v KMD (No 3)* [2017] NTSC 95; *The Queen v KMD (No 4)* [2021] NTSC 27; *The Queen v KMD & Ors (No 5)* [2022] NTSC 69; *The King v KMD (No 6)* [2023] NTSC 51, referred to.

REPRESENTATION:

Counsel:

Crown:	R Everitt
Supervised Person:	E Nekvapil SC
CEO Department of Health:	I Read SC with H Riley
CEO Department of Attorney-General and Justice:	K Bremner with E Farquhar

Solicitors:

Crown:	Office of the Director of Public Prosecutions
Supervised Person:	
CEO Department of Health:	Solicitor for the Northern Territory
CEO Department of Attorney-General and Justice:	Solicitor for the Northern Territory

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

The King v KMD & Ors (No 7) [2025] NTSC 64
No. 21319440

BETWEEN:

THE KING
Crown

AND:

KMD
Supervised Person

AND:

**CHIEF EXECUTIVE OFFICER
DEPARTMENT OF HEALTH**

AND:

**CHIEF EXECUTIVE OFFICER
DEPARTMENT OF ATTORNEY-
GENERAL AND JUSTICE**

CORAM: BROWNHILL J

REASONS FOR JUDGMENT

(Delivered 2 September 2025)

Introduction

[1] KMD is subject to a non-custodial supervision order ('NCSO') made under Part IIA of the *Criminal Code Act 1983* (NT) ('*Criminal Code*').

- [2] Section 43ZH of the *Criminal Code* permits the Court to conduct periodic reviews to determine whether a NCSO should be continued, varied in its conditions, varied to a custodial supervision order (‘CSO’) or revoked, releasing the supervised person unconditionally.
- [3] On this periodic review, KMD sought orders that the NCSO be revoked and she be released unconditionally. Ultimately, the Chief Executive Officer of the Department of Health (‘CEO Health’), with the support of the other parties, sought orders that the NCSO be varied to a CSO or, alternatively, that the conditions of the NCSO be varied to enhance, not reduce, their risk mitigation effects.

Procedural developments since the last periodic review¹

- [4] KMD was first arrested on 7 May 2013. She was the subject of various interim custodial orders until a CSO was first made on 3 June 2015. The CSO was continued following various periodic reviews undertaken by the Court.²
- [5] On 2 September 2022, I delivered my first decision on the last periodic review.³ In that decision, I found (at [144]), on the basis of the evidence then before me, that the degree of likelihood that KMD would act on her delusional belief system in a violent way in the community

¹ The prior procedural history of this matter is set out in *The Queen v KMD (No 5)* [2022] NTSC 69 (‘*KMD (No 5)*’) at [1]-[19].

² See *The Queen v KMD (No 2)* [2017] NTSC 18; *The Queen v KMD (No 3)* [2017] NTSC 95; *The Queen v KMD (No 4)* [2021] NTSC 27.

³ *KMD (No 5)*.

was low, but real rather than fanciful. Consequently, I found that whether the safety of KMD or the public would be seriously at risk if she were released on a NCSO depended significantly upon the terms of any such order and the mechanisms in place to support KMD to live in the community in compliance with such terms.

[6] On 16 June 2023, I delivered my second decision on the last periodic review.⁴ In that decision, I held (at [167]) that I was not satisfied that the safety of the public would be seriously at risk if KMD was released on a NCSO. Consequently, I held (at [168]) that I was obliged to vary the CSO to a NCSO.

[7] On 5 July 2023, I revoked the CSO and replaced it with the NCSO, which took effect from 12 July 2023. Essentially, the terms of the NCSO were as set out in the draft NCSO attached to the reasons in *KMD (No 6)*. One significant difference was that the role of the probation and parole officer was not ‘supervision’ of KMD as contemplated by the draft NCSO, but ‘monitoring’ of KMD via electronic monitoring and liaison with the Case Manager about relevant ongoing factors. These included supports for KMD, varying her curfew, seeking permission to stay at her parents’ properties or reporting concerns about KMD breaching the terms of the NCSO. Another difference was that KMD was not permitted to enter or remain at the

⁴ *The Queen v KMD (No 6)* [2023] NTSC 51 (*‘KMD (No 6)’*).

Coolalinga Shopping Centre, essentially because it was a place where the victims, RL and Mrs L, regularly attended.

[8] On 27 October 2023, the conditions of the NCSO were varied. The variations included to permit KMD to have overnight stays of up to two nights per week at her parents' properties without permission; to permit the Case Manager, rather than the probation and parole officer, to grant permission for KMD to have other overnight stays at her parents' properties, or elsewhere in the Territory or to travel outside the Territory; and to remove from the role of the probation and parole officer matters relating to KMD's mental state.

[9] Other less significant variations were made to the NCSO on 21 February, 6 March and 17 June 2024.

[10] On 7 July 2023, the CEO Health filed an appeal to the Court of Criminal Appeal of the Northern Territory against the orders I made on 5 July 2023.

[11] On 11 July 2023, the Court of Criminal Appeal refused an application by the CEO Health to stay the NCSO pending the appeal.

[12] On 17 June 2024, this periodic review commenced. There was a hearing at which various witnesses gave oral evidence. KMD filed written submissions. Orders were made permitting the parties to file further written submissions in relation to the periodic review, with no further

oral hearing contemplated. My decision was otherwise reserved. On 24 July 2024, KMD filed further written submissions.

[13] On 23 July 2024, the Court of Criminal Appeal, by majority, upheld the appeal.⁵ The NCSO was set aside and the CSO was confirmed. As a result, KMD was arrested and returned to custody at the Darwin Correctional Centre.

[14] On 23 August 2024, the periodic review was adjourned *sine die*.

[15] On 10 October 2024, the High Court granted special leave to KMD to appeal from the decision of the Court of Criminal Appeal.⁶

[16] On 27 February 2025, the High Court allowed KMD's appeal from the decision of the Court of Criminal Appeal, set aside the orders made by the Court of Criminal Appeal on 23 July 2024 and remitted the matter for hearing by a bench differently constituted for reconsideration in accordance with the High Court's reasons.⁷ The High Court also ordered that, subject to any further order of the Court of Criminal Appeal, the orders I made on 5 July 2023 (revoking the CSO and making the NCSO) were stayed for 14 days.

⁵ *Chief Executive Officer, Department of Health v KMD* (2024) 388 FLR 266.

⁶ *KMD v CEO (Department of Health NT)* [2024] HCASL 271.

⁷ *KMD v CEO (Department of Health NT)* (2025) 99 ALJR 474.

- [17] On 7 March 2025, the appeal was listed for hearing before the Court of Criminal Appeal on 16 April 2025. The NCSO was varied, in relatively minor respects, on 7, 12 and 17 March 2025.
- [18] On 13 March 2025, KMD was released from custody and was again the subject of the NCSO.
- [19] On 27 March 2025, the CEO Health discontinued the appeal.
- [20] On 24 April 2025, the periodic review proceedings were re-opened and a further oral hearing was listed for 13 June 2025, with orders for the filing of any further evidence and written submissions by the parties. Another relatively minor amendment was made to the NCSO.
- [21] On 13 June 2025, without any prior notice to the Court, the CEO Health sought an adjournment of at least eight weeks to obtain a report from a psychiatrist about: (a) their assessment of the likelihood and magnitude of the risk to members of the public of KMD being released from the NCSO or the subject of an NCSO; and (b) the minimum conditions of a NCSO necessary to safely supervise KMD in the community on the alternative assumptions that she would participate in any mandated psychiatric or psychological treatment, or that she would not do so.
- [22] I refused that adjournment, for reasons given orally at the time. The further hearing of the periodic review took place on 13 June 2025.

Current terms of the NCSO

[23] As at the date of the further hearing of the periodic review on 13 June 2025, the relevant conditions of the NCSO were in the following terms:

4. During the period of the [NCSO], KMD is subject to the following conditions:
 - (a) KMD will be under the care of and receive support from a support team comprising the following people:
 - (i) Janet Guy, social worker;
 - (ii) ... KMD's mother;
 - (iii) ... KMD's sister;
 - (iv) a General Practitioner nominated by KMD who has consented, in writing, to act in this capacity after being provided with a copy of the Court's reasons for decision in [*KMD (No 5)*] and [*KMD (No 6)*] and this [NCSO]; and
 - (v) a staff member of the Top End Mental Health Service ('TEMHS') or another person nominated by the CEO (Health) to act as the Case Manager, ('the Support Team').

...

- (e) If any of the members of the Support Team become unable or unwilling to act in this capacity, KMD or the CEO (Health) (as applicable) must nominate another person who is able and willing to act in this capacity. The nomination is to be made as soon as practicable with the applicable party to give written notice of the nomination to the Court, the other parties and the members of the Support Team. In the case of the General Practitioner, KMD will provide the Court with their written consent to act in this capacity.
- (f) KMD will undertake counselling with Janet Guy at least weekly, or at such longer intervals as Ms Guy considers appropriate, being not greater than fortnightly, and informs members of the Support Team in writing (which may include by email).
- (g) KMD will attend all medical appointments advised by the General Practitioner.

- (h) The role of the Case Manager is to:
 - (i) liaise with members of the Support Team on a regular basis to discuss KMD's mental state and progress in the community; and
 - (ii) be a point of contact for KMD's Probation and Parole officer and any member of the Support Team who has concerns about KMD's mental state to be able to raise those concerns with the Support Team for consideration of additional care, support or intervention to be provided to KMD; and
 - (iii) in their discretion, grant permission for the overnight stays referred to in condition 4(o); and
 - (iv) consult with KMD's Probation and Parole officer, other members of the Support Team and, if necessary, other members of the TEMHS regarding the need for any steps to be taken pursuant to ss43ZD or 43ZE of the *Criminal Code Act 1983* (NT) or Order 6; and
 - (v) report significant concerns to the Director of Public Prosecutions for consideration of the making of an urgent application to the Court pursuant to s 43ZE of the *Criminal Code Act 1983* (NT) and/or the Authorised Person referred to in Order 6. Significant concerns are concerns held by the Case Manager that KMD has breached or is about to breach the NCSO, or that there is a significant risk that KMD may harm herself or someone else, which may warrant the taking of the action referred to; and
 - (vi) liaise with KMD's Probation and Parole officer on a regular basis to discuss the matters set out in condition 4(l).
- (i) KMD will reside at [address].
- ...
- (k) KMD will be under the ongoing monitoring of a Probation and Parole officer, and must obey all reasonable directions of a Probation and Parole officer related to her monitoring.
- (l) The role of the Probation and Parole officer is to:
 - (i) monitor KMD as provided by condition 4(k) and this condition;

- (ii) facilitate the implementation of electronic monitoring pursuant to conditions 4(v) and 4(w) ...;
 - (iii) monitor KMD's compliance with her electronic monitoring;
 - (iv) liaise with the Case Manager in relation to KMD's general well-being and progress in the community and any matters of concern arising from the Probation and Parole officer's dealings with KMD;
 - (v) liaise with the Case Manager in relation to any request communicated by KMD to the Probation and Parole officer in relation to: (1) seeking permission to stay overnight at [her parents' properties] (additional to the stays referred to in condition 4(n)) (2) seeking permission to stay in the Northern Territory but outside the greater Darwin area; and (3) seeking permission to travel outside the Northern Territory; and
 - (vi) report any concerns that KMD has breached, or is about to breach, any condition of this [NCSO] to the Case Manager or the Northern Territory Police.
- (m) KMD will report to a Probation and Parole officer within two clear working days of today;
- (n) KMD may, without the permission of the Case Manager, have overnight stays of up to 2 nights per week at [her parents' properties] if:
- (i) she notifies the Probation and Parole officer of her intended stay;
 - (ii) the notice to the Probation and Parole officer must:
 - (1) be by phone;
 - (2) be given by 10.00am on the business day immediately preceding the intended overnight stay;
 - (3) identify the location of the intended overnight stay; and
 - (4) state the day she intends to return to the residence; and
 - (iii) she returns to the residence by 10.00pm on the nominated return day.
 - (iv) 'Overnight' means any period between the hours of 7pm and 7am.

- (o) KMD may, with the prior permission of the Case Manager, have overnight stays: (1) at [her parents' properties] in addition to those referred to in condition 4(n); and (2) outside the greater Darwin area and within the Northern Territory.

...

- (q) KMD must not contact, directly or indirectly, or remain at any place where the victims, RL, Mrs L or Mr I, may be living working or visiting. KMD must not enter or remain at any place within 5 km of the residences of RL or Mrs L.
- (r) KMD must not enter or remain at any place within the Coolalinga Shopping Centre, being the area bounded by the Stuart Highway Service Road and Fairweather Crescent.
- (s) KMD is only permitted to have contact with the children R ... and M ... in accordance with any parenting plan or order made pursuant to the *Family Law Act 1975* (Cth).

...

- (u) KMD must not leave the Northern Territory without the prior permission of the Case Manager.
- (v) KMD must wear or have attached an approved monitoring device in accordance with the directions of a Probation and Parole officer, and allow the placing, or installation in, and retrieval from, the premises or place of residence of such machine, equipment or device necessary for the efficient operation of the monitoring device.
- (w) KMD must comply with the electronic monitoring rules as set out in the Rules for Electronic Monitoring document.
- (x) KMD must not possess, use or have access to any firearm.

Periodic review and the issues for the Court

[24] This is a periodic review of a NCSO pursuant to s 43ZH(1) and (3) of the *Criminal Code*. By s 43ZH(1), the review is to determine whether the supervised person may be released from the supervision order. By s 43ZH(3), on completing the review of a NCSO, the Court may: (a) confirm the NCSO; (b) vary the conditions of the NCSO; (c) vary the NCSO to a CSO and impose the conditions on the CSO the Court considers appropriate; or (d) revoke the NCSO and release the supervised person unconditionally.

‘Seriously at risk’ test does not apply

[25] Section 43ZH(3) does not itself contain any express condition upon the exercise of the Court’s discretion.

[26] Section 43ZH(3) is expressed differently to s 43ZH(2), which relates to a review of a CSO. Section 43ZH(2) directs the exercise of the Court’s power (by use of the word ‘must’) to either release a person on a NCSO or confirm or vary the CSO depending upon the Court’s satisfaction on the evidence available that the safety of the supervised person or the public will be seriously at risk if the person is released on a NCSO. If the Court is not so satisfied, the Court ‘must’ release the person on a NCSO and if the Court is so satisfied, the Court ‘must’ confirm or vary the CSO.

[27] By contrast, s 43ZH(3) expressly confers a discretion (by use of the word ‘may’) on the Court and does not itself expressly constrain the exercise of that discretion, either by reference to the Court’s satisfaction on the evidence available that the safety of the supervised person or the public will be seriously at risk or by reference to any other test.

[28] Similarly, where an application is made (outside of a periodic review) for the revocation of a supervision order, s 43ZD(4) expressly confers on the Court a discretion (by use of the word ‘may’) and does not itself expressly constrain the exercise of that discretion by reference to any test.

[29] Conversely, upon a major review at the end of the term fixed under s 43ZG, s 43ZG(6) and (7) direct the exercise of the Court’s power (by use of the word ‘must’) to either release a person unconditionally (s 43ZG(6)) or confirm or vary the supervision order depending upon the Court’s satisfaction that the safety of the supervised person or the public will or is likely to be seriously at risk if the person is released unconditionally. If the Court is not so satisfied, the Court ‘must’ release the person unconditionally and if the Court is so satisfied, the Court ‘must’ confirm or vary the supervision order, whether a CSO or a NCSO (s 43ZG(7)).

[30] It is unclear, therefore, whether the legislature has deliberately elected not to apply the ‘seriously at risk’ test to a periodic review of a NCSO under s 43ZH(3), or has inadvertently omitted it. Either way, the implication of the ‘seriously at risk’ test into s 43ZH(3) would not be an insertion of words in the case of a simple, grammatical, drafting error which, if uncorrected, would defeat the object of the provision; rather that insertion would fill a gap in the legislation or would make an insertion which is too big, or too much at variance with the language in fact used by the legislature.⁸

[31] Both parties took the approach that the ‘seriously at risk’ test does not apply to a periodic review of a NCSO under s 43ZH(3) (or an application for revocation of a NCSO under s 43ZD).

[32] Even so, if on a periodic review under s 43ZH(3), the Court were to be satisfied on the evidence before it that the safety of the supervised person or the public will or is likely to be seriously at risk if either the NCSO were continued, or the person were released unconditionally, that satisfaction would, as a matter of practicality, effectively drive the exercise of the Court’s discretion.

⁸ *Taylor v Owners – Strata Plan No 11564* (2014) 253 CLR 531 at [38] per French CJ, Crennan and Bell JJ. See also at [65] per Gageler and Keane JJ. See also *HFM043 v Republic of Nauru* (2018) 359 ALR 176 at [24] per Gageler and Nettle JJ; *BXT17 v Minister for Home Affairs* (2021) 283 FCR 248 at [93] per Markovic, O’Callaghan and Anastassiou JJ.

Matters the Court must take into account

- [33] Section 43ZM of the *Criminal Code* provides that, in determining whether to make an order under s 43ZH(3), the Court must apply the principle that restrictions on a supervised person's freedom and personal autonomy are to be kept to the minimum that is consistent with maintaining and protecting the safety of the community.
- [34] It is clear from the terms of s 43M that the provisions of Part IIA seek to strike a balance between the competing purposes of protecting the safety of the community and the rights of a supervised person to freedom and personal autonomy.
- [35] It is also clear from its terms that s 43M is directed to ensuring that any curtailment of a person's freedom and personal autonomy is no greater than necessary to maintain and protect the safety of the community.
- [36] The term 'community' is broad and directs attention to the risk of harm that the supervised person poses to the members of the organised society with whom he or she may happen to live from time to time, whether that be in the Territory or another State or Territory or outside Australia.⁹

⁹ *Garlett v Western Australia* (2022) 277 CLR 1 at [101] per Kiefel CJ, Keane and Steward JJ), referring to the word 'community' used in the *High Risk Serious Offenders Act 2020* (WA), which is a legislative scheme similar in nature to Part IIA of the *Criminal Code*.

[37] Section 43ZN(1) of the *Criminal Code* provides that, in determining whether to make an order under s 43ZH(3), the Court must have regard to: (a) whether the supervised person is likely to, or would if released be likely to, endanger themselves or another person because of their mental impairment, condition or disability; (b) the need to protect people from danger; (c) the nature of the mental impairment, condition or disability; (d) the relationship between it and the offending conduct; (e) whether there are adequate resources available for the supervised person's treatment and support in the community; (f) whether the supervised person is complying or likely to comply with the conditions of the supervision order; and (g) any other matters the Court considers relevant.

Reports under s 43ZN(2)

[38] Section 43ZN(2) of the *Criminal Code* provides that the Court must not make an order significantly reducing the supervision to which a supervised person is subject unless the Court has (relevantly):

- (a) obtained and considered two reports, each being prepared by a psychiatrist or other expert ('s 43ZN(2)(a)(i) reports'); and
- (b) considered the reports submitted to the Court under: (i) s 43ZJ ('initial reports'); (ii) s 43ZK ('periodic reports'); (iii) s 43ZL(1) ('victims' reports') and (iv) s 43ZL(3) ('KMD's family reports').

Initial reports

[39] The initial reports were referred to in *KMD (No 5)*.¹⁰

[40] In *KMD (No 6)*, I also referred extensively to the periodic reports and reports prepared under s 43ZN(2)(a)(i) prepared and tendered by the parties for the purposes of that period review.

[41] I have considered all of those reports for the purposes of this periodic review, but need not repeat their contents here.

Periodic reports and s 43ZN(2)(a)(i) reports

[42] The Court received the following reports, which comprised both periodic reports and s 43ZN(2)(a)(i) reports.

[43] Reports were received from KMD authored by Janet Guy and dated 17 May 2024 ('Ex SO70') and 30 May 2025 ('Ex SO84'). Ms Guy is the clinical social worker engaged by KMD to provide a periodic report for the last periodic review, which was based upon around 50 hours of counselling with KMD.¹¹ Under the NCSO, KMD is required to continue regular counselling sessions with Ms Guy, and Ms Guy is a member of the Support Team. In addition to her reports, Ms Guy gave oral evidence at the periodic review hearing.

¹⁰ See *KMD (No 5)* at [65], [70], [84]-[85], [91], [93]-[97], [110]-[113].

¹¹ See *KMD (No 6)* at [17]-[21]. Ms Guy's qualifications are there set out.

[44] Reports were received from the CEO Health authored by Matthew Chick and dated 17 May 2024 ('Ex SO77') and 30 May 2025 ('Ex SO81'), with an addendum report dated 11 June 2025 ('Ex SO81A'). Mr Chick is a registered nurse. He has a Bachelor of Nursing and has completed formal mental health first aid training and remote area nurse training. He has extensive experience working in prisons and detention centres in various jurisdictions including the Northern Territory, as a nurse, a health care manager and in executive or policy roles as part of the prison and Forensic Mental Health Team ('FMHT'). Since 2018, he has been employed in private practice in specialist support co-ordinator roles relating to the NDIS. Mr Chick has no qualifications in psychiatry or psychology.¹² Under the NCSO, Mr Chick is the Case Manager of the Support Team, engaged by the CEO Health, having commenced in that role on 23 June 2023. In addition to his reports, Mr Chick gave oral evidence at the periodic review hearing.

[45] These reports and the oral evidence of Ms Guy and Mr Chick are dealt with below.

Victims' reports

Mr I

[46] Mr I was the victim referred to in *KMD (No 5)* at [9]-[11] and [13]. He was notified of the periodic review hearing as required by s 43ZN(2)(b)

¹² Transcript, 17 June 2024, p 39.

of the *Criminal Code*. He elected not to provide a report under s 43ZL(1).

Mrs L

[47] Mrs L was the victim referred to in *KMD (No 5)* at [3]-[9].

[48] I received a report from Mrs L dated 10 May 2024 ('Ex SO78'). She said she cannot describe her fear and terror at being held at gunpoint by KMD in 2013. She said the impact KMD's actions had on her, her son and grandson, as well as their extended family, is horrendous. She said that if the NCSO is lifted, she will never be able to feel safe in her home, workplace or out shopping and would be constantly living in fear. She said her family should be protected and she sincerely hopes KMD will be continually supervised as per the original NCSO. She said her property and vehicles had been extensively refurbished with security cameras, lights and fencing to give some feeling of protection, but every time a car approaches her house she is in fear of who might be behind the wheel. She is 75 years old and wants to enjoy life with her adult sons and grandchildren. She asked the Court to consider the impact KMD's actions had, and is still having, on her life.

RL

[49] RL was the victim referred to in *KMD (No 5)* at [3], [6]-[11].

[50] I received a report from RL dated 6 May 2024 ('Ex SO79'). He said he does not believe that KMD is remorseful for her actions. He and his family are currently living on a knife edge, dreading the day KMD reoffends. He said his mental state worsens every time he hears of another review with the possibility that her restrictions will be lessened. He has very little protection from the system as it is. He referred to a contact with KMD at the airport in 2023 in respect of which he contacted Police, who took no action. He asked how he would be protected from any future incidents that may occur. He asked the Court to retain the current NCSO because lives are at stake.

[51] Consistent with my finding in *KMD (No 6)* at [47], I find that RL and Mrs L (and Mr I) have suffered significant and long-lasting adverse psychological and emotional consequences from the events of 7 May 2013. Further, I accept that they hold genuine concerns for their personal safety if KMD were to be released unconditionally.

KMD's family reports

Family background

[52] KMD's family background is set out in *KMD (No 6)* at [52]-[57].

KMD's family reports

[53] Section 43ZL(3)(a) refers to a report setting out the views of KMD's next of kin and the impact of KMD's conduct on the next of kin or

other members of KMD's family. Section 43ZL(3)(b) refers to a report setting out the views of the members of KMD's Aboriginal community.

[54] The Court received letters from KMD's aunt dated 15 May 2024 ('Ex SO71'), from KMD's mother dated 17 May 2024 ('Ex SO72') and from KMD's sister dated 17 May 2024 ('Ex SO73'). The parties accepted that these letters fell within s 43ZL(3) and they were received as such. KMD's mother and sister are members of the Support Team. KMD's sister replaced her aunt as a member of the Support Team when her aunt took some leave from Darwin.

[55] In Ex SO71, KMD's aunt said that after KMD's initial release from custody, KMD lived with her and her husband, and KMD's aunt was a member of the Support Team. She said that the Support Team met weekly for the first eight weeks, then fortnightly, then monthly. The meetings were video recorded and minutes were generated by the Case Manager. KMD's aunt referred to some issues of communication between KMD's family members and the Case Manager, which led her to feel that the Case Manager did not have KMD's interests at the forefront, with the consequence that the best outcomes for KMD were not always achieved. KMD had made considerable efforts to obtain employment, which were successful when she started work on 15 May 2024. KMD's aunt said that the electronic monitoring device KMD was required to wear may have hampered her efforts to obtain work, and its removal would also enable her to work remotely. She noted that KMD

had lived in KMD's aunt's unit alone from October 2023 to February 2024, and KMD had travelled outside the Territory three times. KMD's aunt reiterated her and the family's ongoing guidance and support for KMD. On behalf of KMD's family and friends, she asked the Court to release KMD from the NCSO unconditionally.

[56] In Ex SO72, KMD's mother said that KMD had made a remarkable way back into the community, had obtained employment, which had led her to be optimistic about her future endeavours towards a satisfactory lifestyle within the social norms of the wider community, and had goals to build her own house and start a small business on country, living and working on her country and among her family. On behalf of KMD's family, she asked the Court to release KMD from the NCSO unconditionally.

[57] In Ex SO73, KMD's sister said KMD had obtained employment and was looking for rental accommodation while she planned to build her own home on the family's property, which would permit her to be closer to family, live on her country and care for her aging parents into the future. KMD's sister referred to KMD's visit to see her in Brisbane, and KMD buying her own car. She said KMD is forward thinking, goal driven and determined to build her life and move from strength to strength. She referred to KMD's compliance with the conditions of the NCSO, the ongoing support of her family and asked that KMD be released from the NCSO unconditionally.

[58] Consistent with my findings in *KMD (No 6)* at [69], these letters confirm that KMD has a very supportive family who will continue to provide her with many of the things which are considered important in the rehabilitation of offenders and reduction of risk of reoffending in the ordinary criminal context (often called ‘protective factors’), such as stable housing, connection to culture and close familial bonds with people who live law abiding lives. Even in the present context of a periodic review under Part IIA of the *Criminal Code*, it was not disputed by any party that such matters are protective factors which reduce the risk of reoffending by a person who has committed acts of violence due to mental illness.

Letters from KMD’s GP

[59] The Support Team includes a General Practitioner (‘GP’) nominated by KMD who has consented in writing to act in the role. KMD’s initial GP retired in February 2024. Another GP, Dr Leanage, is now performing that role.

[60] A letter was received from Dr Leanage dated 16 May 2024 (‘Ex SO76’). Dr Leanage said that he had met with KMD once in person and four times over a telehealth link in 2024. He said KMD’s thought content and processing was intact, with achievable life goals and sound decision making. He said there were no fixed delusions or disturbances in perception currently, KMD’s insight and judgement were fair, her

mood was stable and there was no suggestion of any mental health disorder. He said KMD's risk to herself and others remains low. He said, on reflecting on past events, KMD was genuinely disappointed and regrets them. KMD's long term goals were to build a life with purpose and she was hopeful of putting her past behind her.

[61] Dr Leanage's oral evidence was that he had had discussions with KMD about her central or original diagnosis, and said that, in his interactions with KMD, he had not noticed anything that would warrant a referral to a psychiatrist.¹³

[62] A further letter was received from Dr Leanage dated 13 June 2025 ('Ex SO85'). Dr Leanage said that, since KMD's more recent release from custody, he had met with KMD twice over a telehealth link. He reported similar observations about KMD's mental state to those in Ex SO76, despite KMD's 'setback' in late 2024 (being returned to custody). He noted that KMD had obtained full time work and stable accommodation, rekindled former friendships and made new social connections and friendships.

Letters of support for KMD

[63] Other letters of support for KMD were received by the Court.

13 Transcript, 17 June 2024, p 32.

[64] A letter from her then employer dated 14 June 2024 ('Ex SO74') said that KMD's performance in her month of employment was exemplary, she had consistently exhibited the core values of the company, her work ethic, trustworthiness and reliability had been recognised by giving her the keys to the business, she had focussed on continuous improvement, sought innovative solutions and demonstrated keen attention to detail. The company was planning to promote her to a leading hand position in the future.

[65] Three letters from two friends of KMD were also received ('Ex SO75' and 'Ex SO86'). They attest to KMD's personal characteristics and strengths and to their ongoing support of her and her unconditional release.

KMD's 1st period in the community: July 2023 to July 2024

[66] KMD was released from custody on 12 July 2023 and returned to custody on 23 July 2024. From the time of her release, KMD resided at the home of her aunt and uncle, living with them, or living alone whilst they went travelling between November 2023 and February 2024.

Ms Guy's recommendations

[67] In Ex SO70, Ms Guy recommended that: (a) the NCSO be revoked unconditionally; (b) alternatively, the NCSO be revoked with a condition that KMD not have any contact with the victims; or

(c) alternatively, if the NCSO is to remain, that the Support Team's functions be redefined to ensure all members are placing KMD's best interests at the centre of decision making.¹⁴

Mr Chick's recommendations

[68] In Ex SO77, Mr Chick recommended that KMD remain on the current NCSO, but additionally be ordered to:¹⁵

- (a) engage fully with a psychiatrist to thoroughly explore 'the principal and differential diagnoses', in order to demonstrate 'her commitment to being unconditionally discharged';
- (b) undertake therapeutic counselling with an appropriately qualified forensically experienced practitioner to directly address the index offending behaviour and report to the Support Team and psychiatrist in writing; and
- (c) be prohibited from applying for or possessing an Australian passport.

Ms Guy's risk assessment

[69] In Ex SO70, Ms Guy wrote that, across the 77 hours and 50 minutes¹⁶ during which she had engaged in counselling with KMD, there had

14 Ex SO70, [30.3].

15 Ex SO77, [8].

16 Ex SO70, [3.2].

been no evidence of any mental health disorders,¹⁷ no evidence of depression, irritability, anxiousness, anger or malice towards anyone,¹⁸ KMD's mood had been normal and she had been able to regulate her mood and emotions,¹⁹ her thought processes and thought content were logical and sequential, with no evidence of delusional thoughts and no ideas or delusions of reference,²⁰ her thought processes and content were congruent with her ability to make plans, follow through on them, gather facts to make decisions, address issues and seize opportunities to achieve her goals,²¹ and there was no evidence of auditory or visual hallucinations or delusional beliefs.²²

[70] In Ex SO70, Ms Guy wrote that her discussions with KMD in their counselling sessions had been forward focussed, and KMD was managing her life appropriately.²³ She wrote that KMD had no hesitation in calling Ms Guy or receiving Ms Guy's calls, indicating an open and therapeutic relationship. During therapy with KMD, their discussions had explored the past within the context of KMD navigating her present circumstances and making realistic future plans. KMD is aware she cannot change the past or its outcome but can have,

17 Ex SO70, [6.2].

18 Ex SO70, [8.2].

19 Ex SO70, [9.1].

20 Ex SO70, [13.1].

21 Ex SO70, [13.3].

22 Ex SO70, [14]; Transcript, 17 June 2024, pp 22-23.

23 Ex SO70, [29.7].

and does have, control over herself. Ms Guy wrote that KMD was mindful of the harm she caused, and had not since her release attempted to engage with any of the persons she is not permitted to engage with, which shows that KMD makes good decisions about what is in her best interests, and that her ability to think about how she thinks is excellent, which should alleviate concerns about safety or risk issues.²⁴

[71] In Ex SO70, Ms Guy assessed KMD's risk to the safety and wellbeing of members of the community as low, given her behaviour in the community.²⁵ Ms Guy wrote that, after providing therapy and observing KMD's behaviour over the period since her release, KMD does not pose a risk to herself and is not a risk to the victims of the index offending or the community at large.²⁶ Ms Guy reasoned that if KMD did pose an unacceptable risk, she would have manifested it before now. Further, Ms Guy's opinion was that KMD does not require ongoing psychiatric or psychological treatment or services.²⁷

24 Ex SO70, [29.10].

25 Ex SO70, [21.1].

26 Ex SO70, [29.12].

27 Ex SO70, [30.6]; Transcript, 17 June 2024, pp 22-23.

Mr Chick's risk assessment

[72] In Ex SO77, Mr Chick wrote there has been no evidence of any kind since the commencement of the NCSO that KMD has in any way endangered any other person.²⁸

[73] Mr Chick wrote that KMD had relatively stable housing, connection to culture and a very supportive family, which offered a 'measurable reduction to the risk of reoffending in the ordinary criminal context'.²⁹ He wrote that connection to country and culture had proven to be a significant supportive factor for KMD and had a stabilising positive impact.³⁰ Her numerous stays at her parents' property of one to two nights and of more extended durations were reported to be without incident. No concerns had been raised by Community Corrections or the electronic management team, and they informed him that KMD had followed directions from the Probation and Parole officer.³¹

[74] In Ex SO77, Mr Chick wrote that:³²

The perpetual lack of treatment that KMD has received for her diagnosis, the ineffective nature of counselling from Ms Janet Guy and more particularly the decrease in family support (being left to live alone) and the emergence of chaotic behaviour are evidence that KMD remains a risk to her victims specifically, and the broader community more generally.

28 Ex SO77, [6.1].

29 Ibid.

30 Ex SO77, [5.27].

31 Ex SO77, [5.10].

32 Ex SO77, [6.7].

[75] In Ex SO77, Mr Chick wrote that:³³

[KMD's] refusal to acknowledge clinical diagnosis; refusal of pharmacological treatment; expressed grief, trauma, anxiety and feelings of panic, compulsion shock and weariness;³⁴ refusal of therapeutic counselling; refusal of psychiatric clinical assessment; withdrawal of direct family support; failure to secure employment; the emergence of chaotic daily schedules; the fragility of her housing options and failure to secure alternate accommodation; her repeated episodes of agitation and discontent as reported by Community Corrections; her misguided ruminations and agitation toward the process of the Support Team and Case Manager in particular; her willingness to ignore or give specific instruction for others to ignore supports (both on the phone and in person); her deliberate misrepresentation of communication with Community Corrections; her lie to both Batchelor and Adelaide River clinic staff specific to her residential address; her ability to provide different reasons for travel cancellations; her failure to resolve her GP nomination requirements within stipulated times; her request to have Corrections operational and procedural guidelines disregarded or request for individual Corrections staff to meet her requests; the identified propensity for systematised persecutory delusional ideation; and her solicitation of others to perpetuate many of these concerns all erode confidence that KMD poses little to no risk to her victim [sic] or the broader community.

It is my opinion that living alone during this reporting period and the emergence of hypervigilant and potentially persecutory related behaviours has increased KMD's overall risk.

I ... believe it is unreasonable for KMD to be unconditionally discharged.

Consideration of Mr Chick's risk assessment

[76] I will address each of the matters raised by Mr Chick in forming his opinion about the risk KMD presents to the victims and the community more broadly.

33 Ex SO77, [6.11].

34 Citing *KMD (No 5)* at [90].

Assertion of ‘withdrawal of direct family support’

[77] In Ex SO77, Mr Chick referred to KMD’s aunt taking leave from November 2023 to April 2024, leaving KMD living alone in her home.³⁵ Mr Chick attributed the ‘emerged chaotic nature’ of KMD’s activities to KMD’s aunt’s departure, stating that this chaotic nature provides evidence that KMD’s aunt’s direct supports were a protective factor.³⁶ The asserted ‘chaotic behaviours’ are dealt with below.

[78] I reject Mr Chick’s characterisation of KMD’s aunt taking leave and travelling for five months as a ‘withdrawal of direct family support’, which implies that KMD had no other ‘direct family support’ in her aunt’s absence and that KMD somehow contributed to her aunt’s ‘withdrawal’ from her life. Both implications are inaccurate. During this period, KMD was regularly staying at her parents’ properties, spending considerable time with her family in person, engaging daily with her mother and sister by phone,³⁷ and there is no doubt that she received much love and support from them during this time. Further, KMD’s aunt has reiterated her support for KMD and has continued to be present in KMD’s life upon her return to Darwin.³⁸

35 Ex SO77, [5.2].

36 Ibid.

37 Ex SO70, [28.1].

38 Ex SO71.

Asserted 'chaotic behaviours' and 'hypervigilant and potentially persecutory related behaviours'

[79] In Ex SO77, Mr Chick wrote that, following KMD's aunt's departure, electronic monitoring data of KMD's movements showed 'an increasingly chaotic pattern of daily activities'.³⁹ He referred to KMD's statements that, for her own peace of mind and safety, when she shops or exercises, she does not keep to a scheduled day or time, will vary her route when exercising and goes to different shopping centres to shop, to avoid running into ex-inmates, prison officers or other persons.⁴⁰ In Ex SO77, Mr Chick wrote that Support Team meetings about this behaviour had also 'revealed a perceived risk of random gender-based violence'.⁴¹

[80] The statements Mr Chick attributed to KMD were from a case note prepared by Ms Guy about a counselling session with KMD on 11 February 2024.⁴² KMD told Ms Guy that she had been approached by an off duty prison officer when she was socialising with a friend, who had asked her questions about her alcohol use, her time out of prison and what restrictions she had been placed on, which questioning made KMD feel uncomfortable. KMD also told Ms Guy that, while she was grocery shopping, she ran into a former inmate. It was in this

39 Ex SO77, [5.4].

40 Ibid.

41 Ex SO77, [5.4].

42 The case note was annexed to a report written by Ms Guy on 16 February 2024.

context that KMD told Ms Guy about being unpredictable in her shopping and exercise routines to avoid running into and having to give information about her NCSO to former inmates, prison officers, and people with whom she must not have contact under the NCSO.

[81] In cross-examination, Ms Guy said that it did not seem strange to her that a person would go to different places to avoid running into other inmates, that she did ask KMD about this behaviour, and that KMD had said she did not want to run into inmates who had seen her at a particular place previously, and wanted to avoid the risk of being assaulted whilst exercising by changing her routes and times.⁴³ Ms Guy said she did not feel that KMD was overreacting, being paranoid or feeling like she was being persecuted as she did not sound like that and her presentation was not like other people Ms Guy had dealt with who were having paranoid thoughts.⁴⁴ KMD did not say she was being followed, she simply said she did not want to run into people from the prison.

[82] Dr Leanage gave oral evidence that KMD going to different and distant shopping centres in order to avoid running into any prisoners with whom she had been in custody did not necessarily raise any alarm bells or red flags with him.⁴⁵

⁴³ Transcript, 17 June 2024, p 25.

⁴⁴ Transcript, 17 June 2024, p 25.

⁴⁵ Transcript, 17 June 2024, p 32.

[83] In Ex SO77, Mr Chick wrote that he had discussed this behaviour with Dr Parker, and those discussions supported earlier assessments that KMD suffers from systematized persecutory delusional ideation and ‘perhaps’ this was driving KMD’s ‘chaotic pattern’.⁴⁶ In cross-examination, Mr Chick agreed that what Dr Parker said to him in their discussion was that these thought processes and behaviours ‘*could* be consistent with persecutory ideation and paranoia’ and that excessively organised and disorganised behaviours ‘*may* be associated with significant mental illness’.⁴⁷ He agreed that the only basis for his statement Ex SO77 at [5.5] was Ms Guy’s record of the conversation with KMD and what Dr Parker said to Mr Chick.⁴⁸ Mr Chick said that, on the basis of his experience, he was qualified to express the opinion that the emergence of these ‘behavioural changes’ supports earlier assessments that KMD suffers systematised persecutory delusional ideation.⁴⁹

[84] Mr Chick gave oral evidence that KMD’s change in behaviour commenced after she lived alone, without her aunt present.⁵⁰ The change in behaviour that concerned Mr Chick was what he described as ‘very disorganised or chaotic and unreasonably thought-out travel

46 Ex SO77, [5.5].

47 Transcript, 17 June 2024, p 60.

48 Ibid.

49 Transcript, 17 June 2024, p 61.

50 Transcript, 17 June 2024, pp 34-35.

arrangements’ to do shopping or exercise.⁵¹ Mr Chick did not accept Ms Guy’s explanation of this behaviour as ‘satisfactory’.⁵² Mr Chick described this as behaviour reaching ‘a non-normal level of vigilance and anxiety’, which could be contrasted with ‘an ordinary explanation’ such as KMD just got out of prison and wanted to go shopping in different places.⁵³ Mr Chick said KMD’s explanation was irrational because going to different places would increase, not decrease, the risk of running into more people, and that irrationality elevated the risk of KMD causing harm to others.⁵⁴ The basis for that conclusion was Mr Chick’s conversation with Dr Parker.⁵⁵

[85] In cross-examination, Mr Chick acknowledged that neither Ms Guy nor Dr Leanage had reported any concerns as a result of this behaviour, or any conclusions that KMD was presenting with fixed ideas or persecutory ideation.⁵⁶ He also accepted that, after he read Ms Guy’s case note, he called Ms Guy to discuss the behaviour, but she was not persuaded by anything he said about needing to raise an issue or concern about the behaviour with anyone else.⁵⁷ He also accepted that ‘a woman of colour’, who has been imprisoned, might do things for her

51 Transcript, 17 June 2024, p 35.

52 Ibid.

53 Transcript, 17 June 2024, p 36.

54 Transcript, 17 June 2024, p 36.

55 Ibid.

56 Transcript, 17 June 2024, p 58.

57 Transcript, 17 June 2024, p 59.

own safety and peace of mind that ‘a white man’, who has not been imprisoned, might not understand.⁵⁸

[86] Dr Parker is a psychiatrist and, at least in 2015 and 2017, was the Director of Psychiatry in the Top End Mental Health Service who wrote reports about KMD in 2015 and 2017.⁵⁹ No report from Dr Parker was tendered by the CEO Health in this periodic review proceeding and he was not called to give evidence. His opinions have been relayed to the Court by Mr Chick, and KMD did not have the opportunity to cross-examine Dr Parker about these opinions. In those circumstances, they must be given little weight.

[87] Mr Chick was the only witness who considered that KMD’s variations to her exercise and shopping routines indicated any suggestion of persecutory ideation and paranoia or systematised persecutory delusional ideation. That view stemmed from Mr Chick’s perception that this behaviour was irrational. I do not accept that. KMD had encountered people she did not want to engage with during her routine activities, the engagements she had with those people made her feel uncomfortable, and she sought to avoid encountering those people again by varying her routines. Even if doing so had the practical effect that she might encounter other people with whom she did not want to engage, that does not make these variations so irrational as to disclose

58 Transcript, 17 June 2024, p 61.

59 See *KMD (No 5)* at [70]-[73].

persecutory ideation and delusion. Nor is it irrational for a woman regularly walking alone for exercise to make variations to her route and times because of a concern about ‘random gender-based violence’.

Assertion KMD lied to two health clinics about her residential address

[88] Mr Chick’s and the other evidence about this assertion is set out in the section immediately below. Essentially, in the context of the obligation on KMD in condition 4(e) of the NCSO to nominate a new GP as a member of the Support Team as soon as practicable after her initial GP retired, KMD contacted two health clinics seeking an appointment with a GP. She had previously been a patient at one of them, and they were both geographically proximate to her parents’ family home and properties.

[89] On the basis of the evidence referred to below, I accept that KMD told administrative staff at the Batchelor Clinic that she lived in Batchelor or at her parents’ properties. There is no evidence that KMD told anyone at the Adelaide River Clinic that she lived in those places. The evidence is that she sought an appointment and was told she could not be seen because she lived in Darwin.

[90] KMD was permitted to have overnight stays of up to two nights per week at her parents’ property, which is geographically proximate to Batchelor, and KMD was permitted to have additional stays there with permission. In addition, KMD’s parents continue to own the family

home in Batchelor.⁶⁰ I accept that KMD would naturally call both the family properties and the family home in Batchelor ‘home’ because they are ‘home’ to her.⁶¹ Noting that this evidence is a report of what KMD said to another person, and does not purport to quote her directly, I do not accept that this was a deliberate untruth told to deceive, ie a lie. Furthermore, even if it was deliberately untrue or a misrepresentation, it is an understandable thing to say given the difficulties KMD was having engaging a new GP to satisfy the conditions of the NCSO. In any event, even if it were a lie, there is nothing about that which suggests that KMD is a risk to the safety of anyone.

Assertion KMD ‘failed’ to nominate a new GP within ‘stipulated’ timeframes

[91] In SO77, Mr Chick wrote that he was notified on 10 November 2023 that KMD’s nominated GP intended to retire on 15 February 2024. He informed the Support Team that day and ‘KMD was told’ to locate and nominate a replacement. Mr Chick wrote that he raised the issue at every subsequent meeting of the Support Team until Dr Leverage indicated consent to act on 29 April 2024.

[92] Mr Chick wrote that Dr Crompton had indicated on 9 February 2024 that Dr Erickson had accepted the role, but when Mr Chick contacted

60 Ex SO71, p 2.

61 Ex SO71, p 2.

Dr Erickson on 12 February 2024, she had no knowledge of ‘the patient transfer or the weight or intrinsic significance’ attached to the role and she subsequently declined it. In cross-examination, Mr Chick agreed that he had explained to Dr Erickson that the role required being a member of the Support Team and providing reports to the Court, Dr Erickson said she would accept those requirements, Mr Chick sent Dr Erickson the ‘relevant documents appropriate to the Court order’, which I take to be a reference to *KMD (No 5)* and *KMD (No 6)* referred to in condition 4(a)(iv) of the NCSO. After Dr Erickson received those documents Mr Chick discussed the case with her, and after that conversation, Dr Erickson declined the role.⁶²

[93] In Ex SO77, Mr Chick wrote that he was contacted by Dr Kleinitz of the Batchelor Health Clinic on 27 February 2024. The progress notes written by Clinic staff were set out by Mr Chick⁶³ and some email correspondence was attached to Ex SO77.⁶⁴ Mr Chick wrote that KMD told staff of the Batchelor Clinic that she lived in Batchelor or at her parents’ property, whereas her address on the Territory health system was not in Batchelor. He also wrote that KMD had told staff of the Adelaide River Health Clinic the same thing the day before.⁶⁵

⁶² Transcript, 17 June 2024, p 57.

⁶³ Ex SO77, [5.25].

⁶⁴ Ex SO77, Annexure MC1.

⁶⁵ Ex SO77, [5.26].

[94] The annexed email correspondence, extracted Batchelor Clinic notes, and extracts from the PCIS and CCIS databases (explained below), read with Mr Chick's oral evidence, show the following:

On 26 February 2024, the Primary Health Centre Manager of the Adelaide River Clinic emailed the Clinic Manager of the Batchelor Clinic,⁶⁶ referring to KMD and stating that KMD is unknown to the writer but a former patient at Batchelor Clinic, she keeps ringing the Adelaide River Clinic and asking for a particular doctor, and was told that she is not eligible to be seen at the Adelaide River Clinic because she lives in Darwin. The writer also said 'PCIS⁶⁷ says she is a Forensic Mental Health P[atien]t' and asked if KMD was known to the Clinic Manager of the Batchelor Clinic.

[95] An extract of the PCIS database relating to KMD, identified as a 'PCIS Alert', referred to three 'Treatment Alerts'.⁶⁸ The first was dated 29 August 2014 and stated:

[KMD] is Case Managed by the Forensic Mental Health Team. Her CM is Yvonne Roberts Please call [phone number] (May 21 – continue to let Yvonne know anything re mental health) 29 Oct 21 DR BA – MSE when able + let FMHT know results)

[96] The second Treatment Alert is not relevant.

[97] The third Treatment Alert was dated 26 February 2024 and stated:

'External Case Manager contact' and gave Mr Chick's name and contact details. As to that entry, Mr Chick was not specifically aware

66 This was Mr Chick's oral evidence: Transcript, 17 June 2024, p 45.

67 'PCIS' is the Primary Care Information System used by and available to all health clinics operated by the Northern Territory Department of Health. This was Mr Chick's oral evidence: Transcript, 17 June 2024, p 45.

68 Ex SO80.

of it, but from the time of his engagement as the Case Manager, would have expected it to be there.⁶⁹

[98] About two hours later, the Clinic Manager of the Batchelor Clinic emailed Yvonne Roberts, a clinical nurse in the Top End Mental Health Service, based in Darwin.⁷⁰ The email was also copied to the Primary Health Centre Manager of the Adelaide River Clinic. The email forwarded the initial email, referred to KMD as ‘FMHT’s client’, said KMD ‘has an open case in CCIS⁷¹ with you’ and asked for advice as to ‘how this should be dealt with’.

[99] An extract of the CCIS database relating to KMD, identified as a ‘CCIS Alert’, included a tab headed ‘Update Person Risk’, which stated:

Please carefully refer to Documents titled Risk Formulation and Handover to Outsourced Case Manager.⁷² Serious offending history in the context of mental illness, mental illness continues to be untreated.

[100] Shortly thereafter, Ms Roberts emailed the Clinic Manager of the Batchelor Clinic and Mr Chick and copied in the Manager of the Adelaide River Clinic, stating that she was forwarding the emails to Mr Chick and stating:

69 Transcript, 17 June 2024, pp 51-52.

70 This was Mr Chick’s oral evidence: Transcript, 17 June 2024, p 46.

71 ‘CCIS’ is the Community Care Information System used by the Northern Territory Department of Health to record mental health information. It is not accessible by primary health clinics generally and is only accessible by mental health clinicians, but is accessible by a primary health clinic manager. This was Mr Chick’s oral evidence: Transcript, 17 June 2024, pp 47, 48, 54-55.

72 The content of those documents is unknown.

As you have gleaned there is much more to this case than meets the eye. [Manager, Adelaide River Clinic], please don't hesitate to let us know if there are any concerns that arise that are serious in nature.

[101] Mr Chick then received a phone call from the Manager of the Batchelor Clinic and a doctor at that Clinic, and had also called the Manager of the Batchelor Clinic, having a number of conversations of five minutes or less.⁷³

[102] Mr Chick then emailed Ms Roberts and the Batchelor Clinic Manager, copying in the Adelaide River Clinic Manager and saying:

Thank you for your concerns and passing the details through to me.

As mentioned, the person in question is being managed by the CEO of Health at this time and has the requirement to nominate a GP, hence the pursuit of [the doctor KMD had been asking for].

Thank you for clarifying with her the geographical requirements and current non availability of [the doctor KMD had been asking for].

I understand she may have been a little forceful or agitated regarding her inquiries and I would be grateful to receive case notes regarding her inquiry if they were made.

With regard to managing or dealing with contact in future, please maintain the geographical limitations (she is unable to relocate her physical address at this time), and as previously detailed to her – an invitation to find a GP in her local area.

If required – she can be directed to liaise (through her Support Team) to contact me.

...

73 Transcript, 17 June 2024, p 52.

[103] Mr Chick asked for the case notes so that he could compile more information about KMD being agitated.⁷⁴ He said the relevant firsthand records may include positive or negative information. I note that none of the case notes before the Court suggest any agitation or aggression on KMD's part.

[104] On 27 February 2024, Mr Chick received a phone call from a doctor at the Batchelor Clinic saying KMD had advised she lives in Batchelor or at her parent's station.⁷⁵ The case notes entered by the doctor of the Batchelor Clinic, as set out by Mr Chick, say that KMD called the Clinic seeking an appointment for an urgent medicolegal issue and was told the GPs were fully booked. She asked to be called if there was a cancellation. She said she lived in Batchelor or at her parents' station. After KMD was phoned to tell her that an appointment had become available, she presented at the Clinic, but the doctor told the Clinic staff to tell KMD that the doctor was not available on that day, so KMD left the Clinic. The case notes also say:

Appears not to be a resident (PCIS Address is [Darwin], unclear history of where she is living now)

Reviewed file briefly

Complex patient. If sees a Dr – not suitable for a training doctor, so not to be booked with GP registrar or RMO. RMP only.

However, can't be fitted in today, especially if not a resident and has such a complex history.

74 'PCIS' is the Primary Care Information System used by and available to all health clinics operated by the Northern Territory Government. This was Mr Chick's oral evidence: Transcript, 17 June 2024, p 45.

75 Ex SO77, [5.25].

Need to clarify if she has become a resident of Batchelor ...

[105] Mr Chick said the Clinic Managers of both Adelaide River and Batchelor Clinics had access to the CCIS database, had spoken to each other about KMD, and had also spoken to Mr Chick about KMD.⁷⁶

[106] In cross-examination, Mr Chick agreed that, for each of the three GPs KMD had tried to engage to comply with the NCSO, Mr Chick had had a conversation with them.⁷⁷ Asked if each had declined to be KMD's GP after that conversation, he said Adelaide River and Batchelor Clinics had declined because KMD did not reside within their geographical areas. He disagreed that it was not surprising that KMD struggled to find a GP to undertake the role of member of the Support Team, adding that any doctor in the Northern Territory who ran a private clinic would not have access to the PCIS and the CCIS databases.⁷⁸

[107] In re-examination, Mr Chick said that the PCIS and CCIS alerts are safeguards built in to the systems to ensure continuity of care and clinician safety, and there are rules requiring a patient to be a resident of a clinic's immediate catchment area.⁷⁹

76 Transcript, 17 June 2024, pp 55-56.

77 Transcript, 17 June 2024, p 57.

78 Transcript, 17 June 2024, pp 57-58.

79 Transcript, 17 June 2024, p 69.

[108] That may be so but, contrary to Mr Chick's assertion about this 'failure' to nominate a GP in stipulated timeframes:

- (a) There is no specific timeframe stipulated by condition 4(e) of the NCSO for the nomination of a new GP. The requirement is for a nomination 'as soon as practicable' after a member of the Support Team becomes unable or unwilling to act.
- (b) With knowledge of the nature of the role and the requirement to submit reports to the Court, Dr Erickson was willing to accept the role, but declined to do so after receiving the decisions and speaking to Mr Chick.
- (c) The information about KMD on the PCIS and CCIS databases was accessible to all Territory government health clinics. That information caused the two clinics KMD approached to contact Mr Chick about KMD's request for an appointment with a GP.
- (d) After communications with Mr Chick, those two clinics refused to see KMD, without giving her the opportunity to explain that she spent a significant part of each week staying at her parents' properties, such that she may have been considered by them to satisfy the residence requirement.

(e) Mr Chick instructed those clinics to ‘maintain the geographical limitations’ to KMD but had no authority to dictate to them how to run their medical practices.

[109] Despite the difficulties in appointing a new GP, Dr Leanage’s consent to act was received around two months after Dr Crompton retired. In the context of consultations approximately every two months,⁸⁰ this is not a significant delay, let alone a ‘failure’ to comply with the NCSO, which required a nomination as soon as practicable after a person became unable or unwilling to continue to act as a member of the Support Team.

Assertion of ‘misrepresentation’ of communications with Community Corrections

[110] In Ex SO77, Mr Chick wrote that KMD had repeatedly made a false statement to members of the Support Team to the effect that she had been told by Community Corrections (in the context of KMD’s interstate travel) that they could refit her electronic monitoring device after hours and did not have a problem with her catching ‘red eye’ flights.⁸¹

[111] In Ex SO70, Ms Guy wrote that KMD did travel to Brisbane on a ‘red eye’ flight in April 2024, and her electronic monitoring device was

80 Dr Leanage had seven consultations with KMD over around 13 months: Ex SO76 and Ex SO 85.

81 Ex SO77, [5.22].

removed by after hours Corrections officers at her home some five hours before the scheduled flight.⁸²

[112] Mr Chick's assertion that KMD made a false statement is inconsistent with the evidence of Ms Guy about how Community Corrections facilitated KMD's travel on a 'red eye' flight, and there is no other evidence to support that assertion, let alone that KMD 'repeatedly' made this statement.

Assertion of 'agitation' towards the Support Team, particularly Mr Chick

[113] None of the numerous matters referred to by Mr Chick in Ex SO77 identify an instance of KMD exhibiting 'agitation' towards the Support Team generally. I reject that assertion.

[114] In Ex SO77, Mr Chick wrote that KMD had expressed 'extreme frustration' after a hospital nurse had contacted Community Corrections about an upcoming medical appointment for KMD.⁸³ Mr Chick wrote that KMD had focussed her frustrations on him, believing that he was responsible, but he had no awareness of medical appointments made at the hospital for KMD.⁸⁴

[115] In oral evidence, Mr Chick described this as 'unreasonable persecutory ideation' because KMD 'appeared to fixate rather demonstratively'

82 Ex SO70, [29.3].

83 Ex SO77, [5.14].

84 Ibid.

towards himself and the probation and parole officer monitoring KMD in relation to that incident.⁸⁵

[116] In cross-examination, Mr Chick agreed⁸⁶ that, at the time he wrote about this incident in Ex SO77, he was aware that, on 27 October 2023, after Mr Chick had included the same information in an earlier report, I stated in Court that I accepted KMD's evidence that she was concerned that her personal privacy had been breached and that Community Corrections was seeking to be involved in or control her physical medical health regime, which was upsetting to her.⁸⁷ Mr Chick said that it was unreasonable to him, having worked in the Department of Health, or as a general citizen, that a person could reasonably have the opinion that someone working with the Department of Health would breach confidentiality in the way that KMD believed had occurred.⁸⁸

[117] In Ex SO77, Mr Chick wrote that he had not met KMD and had only been in her presence once, which was on 6 March 2024 at Court. He went to greet other members of the Support Team who were present and KMD told him to stay away from members of her family.⁸⁹ In oral

85 Transcript, 17 June 2024, p 35.

86 Transcript, 17 June 2024, p 42.

87 Transcript, 27 October 2023, p 16.

88 Transcript, 17 June 2024, p 42.

89 Ex SO77, [3.1].

evidence, Mr Chick described this as KMD ‘clearly’, not ‘aggressively’, telling members of her family to stay away from him.⁹⁰

[118] Mr Chick said this was not ‘normal social behaviour’ and ‘a piece of a much larger puzzle’.⁹¹

[119] I do not resile from my earlier conclusion that KMD’s ‘agitated’ response to the contact from the hospital to Community Corrections about a physical medical appointment was understandable in the circumstances. I do not accept that it is evidence of unreasonable persecutory ideation. KMD’s perception that her right to confidentiality of personal medical information had been breached was not unreasonable or illogical in the circumstances.

Assertions of ‘agitation and discontent’ and ‘aggression’ regarding Community Corrections

[120] In Ex SO77, Mr Chick wrote that KMD had argued with Community Corrections about their interpretation of the NCSO conditions and made ‘unreasonable requests’ about procedural or operational protocols.⁹² He gave the example that KMD had argued against the airport being an exclusion zone for electronic monitoring purposes,⁹³ and got ‘quite

90 Transcript, 17 June 2024, p 44. In Ex SO77, Mr Chick described this as KMD telling him to stay away from members of her family: [3.1].

91 Transcript, 17 June 2024, p 44.

92 Ex SO77, [5.11].

93 Ex SO77, [5.12].

aggressive’ when Community Corrections phoned KMD’s mother, instead of KMD, about a low battery alert on KMD’s device.⁹⁴

[121] On 27 October 2023, after this incident had been included in an earlier report by Mr Chick, I found that the electronic monitoring device had not vibrated to alert KMD that it had a low battery, and that she had provided her own mobile number to the probation and parole officer so she could be contacted in such an event, but he had not passed it on to the electronic monitoring service.⁹⁵

[122] In cross-examination, Mr Chick said that the issue that concerned him about this was KMD’s ‘aggressive’ response to the probation and parole officer, and he thinks KMD has a propensity for aggression.⁹⁶ That view is based upon the reports of other people made to him about their interactions with KMD, and upon his only meeting with KMD which occurred at Court, as described above.

[123] Mr Chick gave oral evidence that the probation and parole officer had had many interactions with KMD that were not ‘pleasant’ for him, and that if someone stands their ground or is difficult, this does not really indicate a willingness to comply with the supervision order or an understanding of process.⁹⁷

94 Ex SO77, [5.13].

95 Transcript, 27 October 2023, p 16.

96 Transcript, 17 June 2024, p 44.

97 Transcript, 17 June 2024, p 35.

[124] Mr Chick appeared also to rely on matters relating to KMD making travel arrangements. These matters are dealt with separately below.

[125] Aside from the single encounter in person in Court, Mr Chick relied on what other people had said to him about KMD's conduct and behaviour. Those people did not provide any evidence and were not called at the hearing. KMD did not have the opportunity to cross-examine those other people. Consequently, this evidence must be given little weight.

[126] I do not accept that these matters are evidence of 'aggression' or a 'propensity for aggression'. In my observation of KMD whilst representing herself before me on a number of occasions, she is an intelligent, articulate woman, forthright, determined and strong in character, and not afraid to stand up for herself and speak her mind. I am aware from evidence received across the course of my involvement in this matter that she is perceived as difficult by public servants, correctional officers and administrators because she can be resistant to bureaucracy and policies and procedures. Those personal traits are not evidence of an unwillingness to comply with a supervision order or a lack of understanding of process and, even if they were, that is not evidence of a propensity for aggression.

Assertion of a willingness to ignore specific instructions

[127] It is not clear what Mr Chick was referring to when he identified this as a factor contributing to risk. Aside from the matters referred to above

and below, no specific instance of a failure to follow a specific instruction has been identified. In any event, this matter seems to be a repetition of the factor referred to immediately above.

Solicitation of others to perpetuate many of Mr Chick's concerns

[128] Again, it is not clear what Mr Chick was referring to when he identified this as a factor contributing to risk. There is no specific instance referred to of KMD 'soliciting' others to do something.

Assertion of failure to secure employment

[129] In Ex SO77, Mr Chick wrote that KMD was currently unemployed, but her employment opportunity was 'measurable'.⁹⁸ Nevertheless, he cited this as a factor contributing to risk.

[130] KMD obtained employment and commenced work in around May 2024.

Assertion of 'fragility' of housing options and 'failure' to secure alternative accommodation

[131] In Ex SO77, Mr Chick wrote that KMD's housing was not stable.⁹⁹ He said KMD's aunt felt 'stressed' having KMD stay with her, referring back to a part in his report where he said KMD's aunt had said in Support Team meetings that 'the arrangement' caused her significant stress.¹⁰⁰ The context of that statement indicates that KMD's aunt was

98 Ibid.

99 Ex SO77, [5.7].

100 Ex SO77, [5.2].

stressed by being a member of the Support Team. That inference is confirmed by KMD's aunt's letter to the Court, in which she said that she welcomed with open arms, respect and love her appointment to the Support Team. As meetings progressed, she requested many times that the minutes (taken by Mr Chick) be amended as they did not truly reflect what was said. She also said she and KMD's mother were constantly being challenged about the length of KMD's stays at the properties and the amount of time it took to travel there. Her perception was that situations with KMD were continuously misinterpreted by Mr Chick.

[132] On the basis of this material, I reject Mr Chick's assertion that KMD's aunt felt stressed at having KMD stay with her.

[133] In Ex SO77, Mr Chick went on to say that the unit in which KMD was living was flooded by stormwater in January 2024, which required repair, which 'precipitated [KMD's aunt] giving notice to KMD to vacate the property for repairs', and KMD had been searching unsuccessfully for suitable alternative accommodation since that time.¹⁰¹ In the context of the clearly loving relationship between KMD and her aunt, I do not accept Mr Chick's representation of the situation as a formal transaction in which KMD's aunt demanded that KMD vacate the premises.

101 Ex SO77, [5.7].

[134] In any event, KMD secured rental accommodation around the time that she secured employment, in May 2024.

[135] In cross-examination, Mr Chick was asked if he would qualify anything about his risk assessment in Ex SO77 and he said that since he wrote the report, KMD had obtained employment, which would have resolved some of the ‘chaotic daily schedule’, and the need to find alternative accommodation had been temporarily resolved.¹⁰²

Assertion of propensity for systematised persecutory delusional ideation

[136] It is not entirely clear what Mr Chick was referring to in this factor contributing to risk. It appears to be the following matters.

[137] In Ex SO77, Mr Chick wrote that Community Corrections had received a ‘perplexing’ phone call from KMD on 11 October 2023 in which she appeared to be talking to herself and contesting her exclusion zone in Coolalinga.¹⁰³ He wrote that KMD was reminded of the boundaries of the exclusion zone and disconnected the call without disclosing any further information. Mr Chick said that the probation and parole officer had noted that the initial conversation was ‘abnormal’ as KMD took approximately five seconds to introduce herself.¹⁰⁴

102 Transcript, 17 June 2024, pp 65-66.

103 Ex SO77, [5.15].

104 Ibid.

[138] Mr Chick wrote that a Support Team meeting had established that KMD was with her aunt at the time and likely talking to her ‘while ignoring’ the phone call.¹⁰⁵

[139] In cross-examination, Mr Chick agreed that this matter was one of the factors he relied on when expressing his conclusions about the risk KMD poses to the safety of the public in Ex SO77.¹⁰⁶ He also agreed¹⁰⁷ that, at the time he wrote about this incident in Ex SO77, he was aware that, on 27 October 2023, after Mr Chick had included the same information in an earlier report, I stated in Court that I accepted KMD’s and her aunt’s statements that, at the beginning of the phone call, KMD and her aunt were discussing with each other where their car was in relation to the exclusion zone boundaries.¹⁰⁸ Mr Chick said that this phone call demonstrated to him ‘a lack of forethought and planning amongst other things perhaps’.¹⁰⁹ He accepted that KMD and her aunt were together at the time and talking about where they were going, but thought it was relevant to include in his risk assessment because ‘[t]his is a very big puzzle that has lost pieces’.¹¹⁰

[140] I do not resile from my finding that this was nothing more than a conversation between KMD and her aunt as they were driving and

105 Ex SO77, [5.16].

106 Transcript, 17 June 2024, p 42.

107 Transcript, 17 June 2024, p 43.

108 Transcript, 27 October 2023, p 17.

109 Transcript, 17 June 2024, p 43.

110 Transcript, 17 June 2024, p 43.

trying to ensure they were not entering the exclusion zone, which occurred as and very shortly after KMD's phone call to Community Corrections to confirm the boundary, was answered. Even if it did demonstrate a lack of forethought and planning, which I do not accept, there is nothing about that which indicates or suggests systematised persecutory delusional ideation.

[141] In Ex SO77, Mr Chick wrote that KMD's requests for travel over Christmas 2023 'provide evidence of chaotic thoughts complicating planning process'.¹¹¹ The 'evidence' cited by Mr Chick was that KMD was unable to make the same date travel request on consecutive occasions, and had attempted to 'circumvent the approval process entirely' by claiming to have booked an outbound flight but no return booking had been made. KMD was reminded of the approval process, including that a return date was required, and that any itinerary needed to be vetted before permission would be granted.¹¹² KMD subsequently cancelled her request to travel at this time.

[142] Mr Chick wrote that KMD's requests for travel after Christmas 2023 'again precipitated extensive discussions between the Case Manager [ie, himself], the Support Team and Community Corrections' because KMD made multiple requests for travel on different dates, without address and itinerary details, 'failed to support' a notification process

111 Ex SO77, [5.18].

112 Ex SO77, [5.19].

for itinerary variations, ‘contested’ the proposed electronic monitoring device disconnection and re-connection times and requested that they occur at times outside operational and procedural guidelines, and asked to drive from Cairns to Darwin.¹¹³

[143] Mr Chick wrote that KMD made a request for travel in April 2024 which ‘followed previous patterns of persistent date changes’ and requests for electronic monitoring device disconnection and reconnection outside procedural and operational guidelines.¹¹⁴

[144] It was put to Mr Chick in cross-examination that these matters were irrelevant to risk and he responded that: ‘It leads to congruence of thought and forward planning’.¹¹⁵ I assume Mr Chick meant to say ‘*incongruence of thought and lack of forward planning*’.

[145] In the context of travel restrictions, electronic monitoring, Community Corrections’ policies and procedures about both, flight schedules, the cost of interstate travel, family and accommodation arrangements, and purchasing a vehicle, difficulties identifying a fixed travel itinerary that complies with the policy and procedures are understandable. I do not accept that they demonstrate or suggest ‘chaotic thoughts’ or a propensity for systematised persecutory delusional ideation.

113 Ex SO77, [5.20].

114 Ex SO77, [5.21].

115 Transcript, 17 June 2024, p 65.

[146] The remaining basis, then, for Mr Chick’s assertion of a propensity for systematised persecutory delusional ideation is the psychiatric evidence which was before the Court in *KMD (No 5)* and *KMD (No 6)*, all of which I took into account when determining that I was not satisfied that the safety of the public would be seriously at risk if KMD was released on a NCSO.

Rejection of diagnosis and refusal of psychiatric clinical assessment or treatment

[147] Similarly, in coming to those conclusions, I took into account KMD’s longstanding rejection of her diagnosis of a delusional disorder and refusals to engage in psychiatric clinical assessment or treatment.¹¹⁶

[148] In Ex SO77, Mr Chick wrote that KMD’s persistent resistance to engaging with ‘the therapeutic process’, and her ongoing lack of insight and paranoia, meant ‘it is unreasonable to consider KMD being unconditionally discharged from her [NCSO] without opinion from a forensically trained specialised psychiatric assessment, and an accompanying thorough treatment plan’.¹¹⁷ In oral evidence, Mr Chick said that KMD’s unwillingness to engage in ‘testing’ of her mental illness, her insight into her offending behaviours, or her triggers that might exacerbate irrational thinking, were a concern because, if there

116 See *KMD (No 5)* at [42]-[43], [56]-[68], [74]-[76], [139], [147] and *KMD (No 6)* at [102]-[110], [152], [161], [166(e), (i), (j)].

117 Ex SO77, [6.4, last dot point], [6.9].

were no issues, a person would engage effectively to demonstrate that there were no issues.¹¹⁸

[149] Mr Chick’s opinion that it is ‘unreasonable to consider’ KMD being discharged from the NCSO without a psychiatric assessment and treatment plan is potentially inconsistent with the High Court’s decision in *KMD v CEO (Department of Health NT)*.¹¹⁹ The High Court held (at [25]) that KMD was under no statutory obligation to cooperate with medical experts (ie, to undertake a psychiatric assessment), nothing in Part IIA of the *Criminal Code* makes such cooperation a prerequisite to the conduct of a periodic review and the evaluation of the evidence on a periodic review is not precluded by the failure to cooperate with psychiatric assessment. On that basis, the High Court upheld KMD’s appeal from the decision of the Court of Criminal Appeal. I do not accept Mr Chick’s proposition as a statement of principle, or the approach the Court should take.

[150] In Ex SO77, Mr Chick wrote that, as at 17 May 2024, Dr Das had recommended that KMD undertake psychodynamic therapy, cognitive behaviour therapy, grief counselling and trauma therapy.¹²⁰

[151] Dr Das wrote reports and gave evidence in the last periodic

118 Transcript, 17 June 2024, pp 36-37.

119 *KMD v CEO (Department of Health NT)* (2025) 99 ALJR 474.

120 Ex SO77, [6.5].

review.¹²¹ The CEO Health did not tender any new reports written by Dr Das in this periodic review, or call him to give any evidence. No evidence was received by him about the underlying bases of his recommendations, why he made them, or how the recommendations would reduce risk. KMD did not have the opportunity to cross-examine Dr Das about these matters. Consequently, little weight can be given to these recommendations as expressions of expert opinion.

[152] In cross-examination, Mr Chick said that he and Dr Das had talked through things that KMD could do if she was ‘committed to demonstrating her resolve to put these matters behind her’, and engaging in *some or* all of these therapies ‘would be beneficial to satisfying the Court that’ the index offending was behind her.¹²²

[153] In cross-examination, Mr Chick denied that Ms Guy had provided KMD cognitive behaviour therapy, and when referred to her statement to that effect in Ex SO70,¹²³ he said: ‘I think in her mind that she has, yes.’¹²⁴ He also denied Ms Guy had provided KMD grief counselling, and when

121 See *KMD (No 5)* at [24], [31]-[36], [39], [44], [46]-[49], [54]-[68], [74], [77]-[82], [88]-[89], [103]-[104]; *KMD (No 6)* at [6]-[8], [93]-[99], [152], [155].

122 Transcript, 17 June 2024, p 61.

123 Ex SO70, [27].

124 Transcript, 17 June 2024, p 62.

referred to her statement to that effect in Ex SO70,¹²⁵ he said:

‘Episodically, yes’.¹²⁶

[154] Mr Chick’s comments provide no basis to disregard Ms Guy’s evidence, which I accept, that she has undertaken cognitive behaviour therapy and grief counselling with KMD. Consequently, KMD has recently engaged in two of the four therapies recommended by Dr Das.¹²⁷

[155] If one accepts Mr Chick’s proposition that engagement in some or all of these recommended therapies is a basis for the Court to accept KMD’s commitment to ‘putting these matters behind her’, she has so engaged and her commitment is demonstrated.

Expressions of grief, trauma, anxiety and feelings of panic, compulsion, shock and weariness

[156] The basis in Ex SO77 for this risk factor is a reference to *KMD (No 5)* at [90].¹²⁸ This passage was dealing with a submission by KMD that she did not have a mental illness in May 2013 because her actions were a response to her feelings of grief, anxiety, panic, compulsion, shock and weariness.

125 Ex SO70, [21.2].

126 Transcript, 17 June 2024, p 62.

127 See also *KMD (No 6)* at [18] and [114], which refer to Ms Guy’s evidence about cognitive behaviour therapy with KMD.

128 The citation in Ex SO77 is to *KMD (No 6)* at [90], but is clearly intended to refer to *KMD (No 5)* at [90].

[157] Mr Chick did not explain how KMD’s feelings in 2013 bore on his assessment of her risk in 2024. There is therefore no basis upon which to accept that these feelings do so bear.

Assertion of ‘ineffective’ counselling with Ms Guy

[158] In Ex SO70, Ms Guy wrote that she had undertaken mental state examinations and provided counselling utilising psychoanalysis, motivational interviewing, cognitive behavioural therapy, narrative therapy and humanistic therapy during 77 hours and 50 minutes of therapeutic interaction via telephone calls or teleconferencing which permitted face to face contact and views of KMD’s living environment.¹²⁹ Their discussions have explored the past within the context of KMD navigating her present circumstances and making realistic future plans.¹³⁰

[159] In Ex SO77, Mr Chick wrote that Ms Guy ‘continued to describe KMD as “guarded”’ and to say that any attempt to initiate therapeutic discussions or reflect on the events surrounding the index offending were met with immediate defensive prohibitive responses’.¹³¹ Mr Chick wrote that this has prevented ‘measurable progress’ by meaningful

129 Ex SO70, [3.2], [5.2], [27].

130 Ex SO70, [29.7].

131 Ex SO77, [5.2].

exploration of the underlying issues and has impeded KMD's ability to reflect on and process her experiences.¹³²

[160] There is no indication in Ex SO77 of where Mr Chick heard or found Ms Guy describing KMD as 'guarded'. There is no such statement in Ex SO70 or in any of the case notes annexed to that report of Ms Guy's seven counselling sessions with KMD between 29 February and 14 May 2024.

[161] In cross-examination, Ms Guy was asked if she had told Mr Chick that she had tried to investigate KMD's thoughts about the past and KMD became very defensive and did not want to do so, and Ms Guy said:¹³³

Each time I had contact with KMD, we did discuss different aspects of her past at different times. And on occasion, it wasn't that sort of defensive, but [she was] wanting to move forward and not dwell on the past. She ... didn't want to relive all the things from the past.

... She [was not] being defensive or – she was quite open about what had happened, and she has got an understanding that she can't change the things that happened. ...

[162] Ms Guy said she *was* able to delve into what were the causes of KMD's mental state at the time of the index offending, which KMD had discussed with her in the therapy, and they had also discussed that

132 .

133 Transcript, 17 June 2024, p 26.

KMD had not had any contact with her sons, and how KMD was dealing with that.¹³⁴

[163] In Ex SO77, Mr Chick wrote that Ms Guy ‘appears ineffective’ in providing ‘any genuinely therapeutic clinical counselling’, and her mental state reports were done ‘anecdotally rather than formally’.¹³⁵ Mr Chick described the behaviour referred to in paragraphs [79] to [83] above (ie, the ‘chaotic’ behaviours and daily schedule) as ‘apparent hypervigilant, obsessive and consuming thoughts which are significantly affecting KMD’s behaviour’.¹³⁶ He said it was ongoing and underreported, which demonstrated that Ms Guy’s counselling was ineffective. Mr Chick said this was because KMD was ‘obstructive’ to resolving feelings of extreme grief, trauma, anxiety or compulsions that contributed to her index offending; the counselling with Ms Guy was ‘forward looking rather than forensic’; and there had been little to no therapeutic progress in meaningfully exploring open and honest retrospective therapy.

[164] I do not accept Mr Chick’s assertion that Ms Guy’s counselling with KMD has been ‘ineffective’. I have already rejected his assertion about KMD’s ‘chaotic behaviours’. I also reject that Ms Guy ‘failed’ to ‘report’ these ‘behaviours’ to the Support Team, given that they were

134 Transcript, 17 June 2024, p 27.

135 Ex SO77, [6.4].

136 Ex SO77, [6.3].

contained in her case notes which have all been provided to Mr Chick and the Support Team. I also reject his assertion that KMD is ‘obstructive to resolving’ her feelings of grief, trauma, anxiety or compulsion that contributed to her index offending, and that the counselling is not ‘forensic’, as they are inconsistent with Ms Guy’s evidence as just referred to. Nor is there any identified basis for Mr Chick’s assertion that there had been ‘little to no therapeutic progress in meaningfully exploring open and honest retrospective therapy’. It is not known how he would measure KMD’s ‘therapeutic progress’. The bases for Mr Chick’s assertion of ineffectiveness are therefore not made out.

[165] In cross-examination, Mr Chick agreed that ‘therapeutic’ is about healing, and when it was put to him that Ms Guy’s approach was therapeutic, he said: ‘I think ... Ms Guy is over-invested’.¹³⁷

[166] Mr Chick’s characterisation of Ms Guy as ‘over-invested’ is met by Ms Guy’s characterisation of her relationship with KMD as ‘open and therapeutic’¹³⁸ and her interactions with KMD as ‘therapeutic’.¹³⁹

137 Transcript, 17 June 2024, pp 62-63.

138 Ex SO70, [29.7].

139 Ex SO70, [3.2].

Mr Chick's approach to his assessment of KMD's risk

[167] In cross-examination, Mr Chick maintained that each of the matters referred to in the passage from Ex SO77 set out in paragraph [75] above was relevant to risk.¹⁴⁰ Asked if he had marshalled all of the matters referred to in this passage to try, on behalf of the CEO Health, and make a case against KMD's application for revocation of the NCSO, Mr Chick said: 'It's my position that the NCSO should be continued. Yes.'¹⁴¹

[168] Another example of this approach is as follows. In Ex SO77, Mr Chick wrote that he had received correspondence from RL and Police after RL had seen KMD at the Darwin airport on the day she travelled to Brisbane to visit her sister.¹⁴² RL was recorded as being 'quite shocked', 'a bit irate' and 'gravely concerned' that KMD's electronic monitoring device had been removed for the purposes of that travel without him being informed. Mr Chick wrote that, while KMD 'strenuously denied' having seen RL, as reported at Support Team meetings, RL advised that KMD 'definitely saw him'.¹⁴³ Whether KMD saw RL or not is unnecessary to decide and, other than these conflicting hearsay reports, there is no evidence upon which I could do so.

140 Transcript, 17 June 2024, p 65.

141 Transcript, 17 June 2024, p 70.

142 Ex SO77, [6.17].

143 Ibid.

[169] In cross-examination, Mr Chick agreed that in an earlier report to the Court referring to RL being at the airport on this occasion, he had concluded that ‘KMD managed the event appropriately through immediate avoidance action and the likelihood of a recurrence is extremely negligible’.¹⁴⁴ Asked if his conclusion made what was set out in Ex SO77 about this encounter irrelevant to risk, he said: ‘Not according to the victim impact statements’.¹⁴⁵

[170] In re-examination, Mr Chick said that if he had been able to interact with KMD directly he would have ‘a much better sense of things as they really are’ through a thorough clinical assessment of his own, rather than receiving information about KMD from others.¹⁴⁶

[171] This appears to be an attempt to explain Mr Chick’s extensive reliance upon matters that are trivial, or for which there is an obvious and less sinister explanation, and an acknowledgement that he has relied on matters that may well be irrelevant to risk, as I have found that the vast majority of them are.

[172] Ultimately, Mr Chick concludes that:

(a) KMD ‘remains a risk’ (paragraph [74] above); and

144 Transcript, 17 June 2024, pp 64-65.

145 Transcript, 17 June 2024, p 65.

146 Ex SO77, [6.11].

(b) the factors he listed ‘erode confidence that KMD poses little to no risk’ (paragraph [75] above),

to the victims and the broader community.

[173] As I observed in *KMD (No 6)* (at [164]-[165]), in cases of this kind, where a supervised person has committed an act of violence for which they were found not guilty by reason of mental impairment, the limb of risk associated with the magnitude of harm is virtually static and will effectively remain indefinitely, so there will always be some element of risk. This means a satisfaction that there is no risk is not attainable. Furthermore, the statute does not prescribe any specific test for the continuation or revocation of a NCSO and does not prescribe the test as being whether there is ‘little to no risk’.

[174] For all of the above reasons, Mr Chick’s conclusions are of little assistance in this periodic review.

KMD’s return to custody: July 2024 to March 2025

[175] KMD was returned to custody on 23 July 2024 and released from custody on 13 March 2025.

[176] In Ex SO81, Mr Chick wrote that upon KMD’s arrest, she was described as ‘co-operative with police and engag[ing] well’.¹⁴⁷

¹⁴⁷ Ex SO81, [5.1].

[177] In Ex SO84, Ms Guy wrote that KMD's behaviour after hearing of the Court of Appeal's revocation of the NCSO reflected a high level of self-regulation under extreme stress.¹⁴⁸

[178] In Ex SO81, Mr Chick wrote that, at the prison, KMD was placed 'at risk' and housed in the 'at risk' cells at the prison due to concerns about the impact of the revocation of the NCSO on her mental state and the 'high risk' to her safety and the safety of others. She was thereupon described as 'very guarded when asked questions, not wanting to express much emotion'. KMD reportedly told staff that she did not need to engage with prison health staff.

[179] In Ex SO84, Ms Guy wrote that the classification of KMD as 'at risk' was at the 'directive' of Mr Chick.¹⁴⁹ It is unknown where Ms Guy obtained that information and she is not in a position from which she would necessarily have it. I cannot accept this assertion.

[180] In Ex SO81, Mr Chick wrote that, on 24 July 2025, KMD did not acknowledge or make eye contact with the prison psychiatrist or nursing staff and rolled her eyes when asked if she would be happier going off 'at risk'.¹⁵⁰ She reportedly said the psychiatrist was 'a spy for FMH' and that she would not talk further. Mr Chick wrote that KMD

148 Ex SO84, [8].

149 Ex SO84, [10].

150 Ex SO81, [5.2].

refused to interact with ongoing efforts to engage with her about
'affective / psychotic disturbance, self harm ideation or behaviour'.¹⁵¹

[181] In Ex SO84, Ms Guy wrote that, during this time, KMD felt repeatedly pressured to engage in assessment, felt distrustful of the psychiatrist, and was told she would not be moved to the general population accommodation until she submitted to a psychiatric evaluation.¹⁵²

[182] Mr Chick wrote that, on 25 July 2024, the psychiatrist determined that KMD should be taken off 'at risk'.

[183] Mr Chick wrote that Corrections Officers reported that KMD refused to leave the 'at risk' cells.¹⁵³ On 30 July 2025, KMD said to a mental health nurse that she did not want to speak to them and did not want to see anyone from FMHT and asked that they respect her wishes and go away, then lay back on the mattress and faced the wall.¹⁵⁴ KMD maintained that attitude during all medical and support staff engagements and refused to leave the 'at risk' cells.¹⁵⁵ Mr Chick described KMD as being 'passive aggressive and curt'.

151 Ex SO81, [5.3].

152 Ex SO84, [13].

153 Ex SO81, [5.4].

154 Ex SO81, [5.5].

155 Ex SO81, [5.6].

[184] On 2 September 2024, KMD was placed in the general women’s section of the prison.¹⁵⁶ She refused to engage with mental health supports for the duration of her time in custody.¹⁵⁷

[185] Mr Chick wrote that, on 11 November 2024, KMD was reported by Corrections staff to be making ‘multiple demands, complaints and accusations’.

[186] In Ex SO84, Ms Guy wrote that, when received into custody, KMD was issued an orange remand shirt, signifying she had been classified as having been charged with a new offence or had breached her NCSO, and she protested that she had not done so and asked for a review of her classification.¹⁵⁸

[187] While KMD was detained, all counselling sessions with Ms Guy were suspended.¹⁵⁹

[188] Mr Chick wrote that KMD’s refusal to engage with clinical support during her time in custody perpetuates the concern that she is ‘perpetually unwilling to engage in the recommended pathway to become unconditionally discharged from her NCSO’ and her remaining

156 Ex SO81, [5.8].

157 Ex SO81, [5.9], [5.10].

158 Ex SO84, [11].

159 Ex SO81, [5.11].

in the ‘at risk’ cells was ‘an attempt to further exert control over her circumstances’, which ‘reinforces previous psychiatric opinion’.¹⁶⁰

[189] Ms Guy wrote that, following her return to custody, KMD remained composed and, despite the adverse and disorienting circumstances and emotional strain of her re-detention, conducted herself with dignity, patience and integrity, including representing herself in the appeal to the High Court.¹⁶¹ Ms Guy described KMD’s behaviour as a ‘principled refusal to engage’ with the Forensic Mental Health Team ‘under coercive circumstances’ which was conducted ‘calmly, without escalation’.¹⁶² She wrote that KMD demonstrated ‘psychological resilience under extremely challenging conditions’.¹⁶³

[190] In *KMD (No 5)*, I noted the evidence that KMD had never, during her time in custody, expressed ideas of self-harm.¹⁶⁴ In *KMD (No 5)* and *KMD (No 6)*,¹⁶⁵ I found that there is no risk that KMD would endanger herself. Similarly, I noted the evidence that, during her time in custody, KMD had never acted violently towards, or threatened, another person.¹⁶⁶ Neither at the time of her arrest, nor at the time of her receipt into custody, was there any suggestion by her conduct that KMD

160 Ex SO81, [7.3], [7.6].

161 Ex SO84, [2.3].

162 Ex SO84, [3.2].

163 Ex SO84, [3.3].

164 *KMD (No 5)* at [77].

165 *KMD (No 5)* at [139(b)]; *KMD (No 6)* at [147].

166 *KMD (No 5)* at [79]; *KMD (No 6)* at [166(n)].

intended to harm herself or another person. It is therefore likely that being placed into the ‘at risk’ cells, and being prevailed upon to engage with members of the FMHT as a consequence, came as a surprise to KMD and upset or annoyed her. I therefore find that her refusal to leave the ‘at risk’ cells after she was permitted to do so was a form of passive protest against being placed ‘at risk’ in the first place. Mr Chick appears to accept as much by characterising this as ‘an attempt to further exert control over her circumstances’. Mr Chick did not explain how that attempt ‘reinforces previous psychiatric opinion’ or what opinion in particular he was referring to.

[191] This aspect of KMD’s behaviour upon her return to custody therefore adds nothing to the risk factor comprising her pre-existing and ongoing unwillingness to engage with psychiatric assessment and treatment.

KMD’s 2nd period in the community: March 2025 to present

[192] KMD was released from custody on 13 March 2025 and was again subject to the conditions of the NCSO.

Ms Guy’s recommendations

[193] In Ex SO84, Ms Guy essentially repeated her recommendations from Ex SO70, as set out in paragraph [67] above.¹⁶⁷

¹⁶⁷ Ex SO84, [91], [94].

Mr Chick's recommendations

[194] In Ex SO81, Mr Chick repeated his recommendations from Ex SO77, as set out in paragraph [68] above.

[195] In addition, he recommended re-constitution of the Support Team by:

- (a) exploring some alternative case management process (not identified) due to KMD's refusal to engage with any representative of the CEO Health; and
- (b) addressing (in some unidentified way) that KMD's family members 'no longer have any immediate proximity to KMD' and have demonstrated a failure to recognise or reluctance to report the emergence of the 'potentially clinically significant' chaotic behaviour.

[196] In Ex SO81.A, Mr Chick wrote that the ongoing constitution of the Support Team 'is untenable' because of: (1) Ms Guy's failures (referred to below) to report in her case notes or notify the Case Manager of three breaches of the conditions of the NCSO and her apparent support for further breaches; (2) KMD's mother's lack of clinical forensic expertise and regular unavailability for meetings; (3) KMD's sister's location interstate meaning she is unable to provide 'any real time concerns (if any) about KMD's mental state or needs'. Mr Chick wrote that KMD and the other members of the Support Team

‘have complete disregard for the significance of breaches of Order 4(s)’. He recommended that ‘breach[es] be recorded against KMD of’ conditions 4(s) (contact with her children) and 4(q) (not entering within 5km of the residences of RL and Mrs L).

Ms Guy’s risk assessment

[197] In Ex SO84, Ms Guy essentially repeated the matters referred to in Ex SO70, noting that previous psychiatric risk concerns have not manifested, even under stressful conditions or during her recent incarceration and release.¹⁶⁸

Mr Chick’s risk assessment

[198] In Ex SO81, Mr Chick essentially repeated the matters referred to in Ex SO77. He added that nothing he has observed since his appointment as Case Manager had dissuaded his concurrence with KMD’s previously identified propensity for systematized persecutory delusional ideation and diagnosis.¹⁶⁹

168 Ex SO84, [84].

169 Ex SO81, [7.6].

Employment, housing, family support

[199] In Ex SO81, Mr Chick wrote that KMD had secured full-time employment in an office administration role, and she had secured ‘relatively stable housing’.¹⁷⁰

[200] In Ex SO84, Ms Guy stated that, by recommencing with her employer shortly after her release (on 7 April 2025), KMD demonstrated a high degree of adaptability and self-direction.¹⁷¹

[201] Mr Chick wrote that the Support Team reported KMD had experienced significant stress following her release due to damaged or lost belongings and housing and financial insecurity, but Mr Chick noted that KMD had re-engaged well with her family.¹⁷²

Counselling with Ms Guy

[202] In Ex SO81, Mr Chick wrote that KMD’s counselling sessions with Ms Guy did not resume until 4 April 2025, for reasons unknown.¹⁷³ He wrote that Ms Guy’s reports provide no indication that there has been any therapeutic discussions or reflection on the events surrounding the

170 Ex SO81, [6.6], [7.10].

171 Ex SO84, [4.2], [26].

172 Ex SO81, [6.7].

173 Ex SO81, [6.3].

index offending, which remains a significant barrier to ‘measurable progress’.¹⁷⁴

[203] In Ex SO84, Ms Guy wrote that, during her counselling sessions with KMD, which had by then amounted to around 80 hours,¹⁷⁵ she had utilised a variety of therapeutic approaches including psychoanalysis, motivational interviewing, cognitive behavioural therapy, narrative therapy and humanistic therapy.¹⁷⁶ Ms Guy wrote that KMD engages in self-reflective therapy and recognises the impact of past trauma without fixating on what cannot be changed.¹⁷⁷

[204] My findings set out above as to Mr Chick’s views that the counselling with Ms Guy is ‘ineffective’ are equally applicable here.

Support Team meetings resumed

[205] In Ex SO81, Mr Chick wrote that the reinstatement of the Support Team meetings was complicated by engagement or response failures from all members.¹⁷⁸ Meetings were recommenced on 22 April 2025 and had been held fortnightly since then.

174 Ex SO81, [6.10].

175 Ex SO84, [4(b)].

176 Ex SO84, [64].

177 Ex SO84, [90].

178 Ex SO81, [6.5].

Earlier assertion of 'chaotic' behaviours

[206] In Ex SO81, Mr Chick wrote that Ms Guy's reports suggested that KMD's daily routine had been significantly more stable than as reported in Ex SO77 and electronic monitoring data had been sought to confirm that.

[207] Regardless, my findings set out above as to Mr Chick's assertion of 'chaotic' behaviours are equally applicable here.

NCSO breach by entering exclusion zone on 11 April 2025

[208] In Ex SO81, Mr Chick reported that, on 11 April 2025, KMD was a passenger in her employer's company car when it entered the Coolalinga Shopping Centre car park. The driver was not aware of the exclusion zone and did not tell KMD about the planned stop to purchase food. KMD remained in the car and immediately contacted Community Corrections to self-report the breach.

[209] This evidence establishes that KMD's entry into the exclusion zone was unintentional and occurred through no fault of KMD.

[210] I find that it was not a breach of the conditions of the NCSO.

NCSO breach by having unplanned contact with M

[211] A statutory declaration made on 10 June 2025 by JC, KMD's former partner and the father of her son, M, was received into evidence ('Ex SO83'). M is now 14 years old.

[212] In Ex SO83, JC said that, around two to three months before, he had run into KMD and she asked if she was able to see M, JC had said that M does not know KMD, and JC did not want 'the boat rocked' as it had just been him and M while KMD was in custody. JC told KMD that he would speak to M and that he understood KMD is M's mother. JC was not willing to give KMD his phone number, but he accepted KMD's phone number so M could call her if he wished. JC told KMD he did not want anything to do with her and KMD told JC the same thing, saying she just wants to see M. JC then left.

[213] JC said that, the next morning, he told M that he bumped into M's mother, had her phone number and M could have it if he wanted. JC told M he would not stop M from calling her. JC said that M told him to keep KMD's number as he just wanted to leave things how they are because he does not know KMD. They did not speak about that again.

[214] In Ex SO83, JC said that, a short time later, he and M were at a shopping centre when KMD came running up from behind them, ran in front of them and stopped, raising both arms out in front of her and pleading for a hug from M as she looked at JC. He understood KMD to

be asking JC if she could hug M. JC said he was standing there in shock and nodded his head. He felt very awkward and thought M did too. M gave KMD a hug, looking at JC in a way that conveyed to JC that M felt very awkward. JC felt that KMD was very loving. She asked M if he knew who she was and M said: ‘Yeah, you are my mum.’ They all stood there for a bit and then JC said goodbye to KMD and walked away with M. As they walked away, M told JC that it was a very awkward situation. JC said he did not feel angry or happy about this encounter, but felt that KMD should not have done what she did. JC said that, since that encounter, every time they go to that shopping centre, M asks JC if his mother is going to ‘jump out of the bushes today’.

[215] In Ex SO84, Ms Guy wrote that KMD had had ‘meaningful and positive’ contact with M during an unplanned encounter at a shopping centre.¹⁷⁹ Ms Guy wrote that when KMD asked M for a hug, M smiled at her and said she could. Ms Guy also wrote that JC’s acceptance of KMD’s phone number suggested his willingness to support ongoing contact and potentially re-establish a relationship between KMD and M.¹⁸⁰

[216] It is apparent that what Ms Guy wrote about the encounter recounted what KMD had told her about it. It reflects KMD’s perception of it.

179 Ex SO84, [4].

180 Ex SO81, [5].

[217] Although the contact between KMD and M was unexpected, rather than planned, it was intentional in the sense that KMD could have avoided any contact and walked away when she saw JC and M at the shopping centre. KMD's actions were clearly intentional, not accidental. She must also be taken to have been aware of the condition that she not have any contact with M except in accordance with a parenting plan or order under the *Family Law Act 1975 (Cth)* ('*Family Law Act*'). Consequently, I find that it was an intentional breach of the conditions of the NCSO.

[218] The breach, and the earlier provision of KMD's phone number to facilitate contact with M, were explainable by the lack of any contact between KMD and M for many years and KMD's wish to have contact with M as relayed to JC in her encounter some months before, and JC's response to that expressed wish, which was to accept KMD's phone number for the purposes of contact with KMD if M wanted that to occur. M did not want to take up the offer, but KMD was not informed of that directly. That M did not want to have contact could have been inferred by KMD from the lack of contact from him thereafter, but it would have been a difficult inference for KMD to draw and understandable that she did not.

[219] Understandably, this encounter after many years of non-contact made M feel awkward. It is possible that his comments to JC when they have been to the same shopping centre since then demonstrate some anxiety

on his part about any further encounters with KMD. To date, his decision has been that he does not want further contact with KMD at this stage and his wishes must be respected.

NCSO breaches by having contact with R

[220] A statutory declaration made on 10 June 2025 by R, KMD's son with RL, was received into evidence ('Ex SO82'). R is now 18 years old, turning 19 soon.

[221] In Ex SO82, R said that, on 3 June 2025, he was driving in RL's car on the Stuart Highway when he heard a beeping noise, looked out the window and saw a blue SUV car which sped up parallel to him and he saw a woman in that car by herself. The woman waved and a short time later drove off. R was wondering who the woman was and then realised that it was probably his mother as she was a dark-skinned female with curly hair. R called RL and told him what had happened, not because R was concerned or bothered by it, but because he thought RL would be concerned. He and RL went to the Police Station a couple of hours later to report what had happened.

[222] R's evidence establishes that a dark-skinned woman with curly hair in a blue SUV beeped her horn, drove up next to the car R was driving, waved at him and then drove off. The woman might have been KMD, because she arguably fits that description, but in the absence of any other evidence, it cannot be inferred on the balance of probabilities that

it was KMD. Consequently, I do not accept that KMD engaged in this conduct.

[223] In Ex SO82, R also said that, several months previously, KMD had requested to be his friend on Facebook. R did not see the request straight away as he does not use Facebook much. When he did see it, he ignored it as he did not care to accept the request.

[224] In Ex SO84, Ms Guy wrote that R had initiated online contact by adding KMD as a friend on social media, along with KMD's mother.¹⁸¹

[225] As regards to who initiated this contact, Ms Guy's version of events is not consistent with R's. He said KMD made the request. I accept his evidence that KMD did so.

[226] In Ex SO81.A, Mr Chick noted the reference in Ms Guy's report (Ex SO84) to KMD having contact with her son, R, and said that clarification is required as to the operation of condition 4(s) of the NCSO, given that R is no longer a child.¹⁸²

[227] Condition 4(s) provides that KMD is only permitted to 'have contact' with the children in certain circumstances.

[228] Making a friend request of a person on Facebook can fall within the term 'contact', but barely so, given that the person to whom the request

181 Ex SO84, [6].

182 Ex SO81.A, [1.6].

is made can choose to accept that request or ignore it. If they ignore it, no further contact can be engaged in through Facebook.

[229] Condition 4(s) of the NCSO refers to ‘the children’ and contact only in accordance with a parenting plan or order made under the *Family Law Act*. At the time of these contacts, R was not a child and could not have been subject to any parenting plan or order. The CEO Health argued that the reference to ‘children’ was by way of identification rather than an intent that the condition only apply when R was a child, with the effect that after he turned 18 and could not be the subject of any parenting plan or order, the prohibition on contact was absolute. KMD argued that, in its terms, condition 4(s) ceased to apply to R when he turned 18 because he no longer fell within the word ‘children’.

[230] As these submissions demonstrate, condition 4(s) is ambiguous in its terms, with the effect that KMD may well have believed that she was not breaching the condition by reaching out to R on Facebook (or by waving at him from a car).

[231] In any event, it is unnecessary to decide which is the ‘correct’ construction when the likelihood is, and I am satisfied, that any breach was unintentional.

Asserted 'failures' by Ms Guy to report these contact breaches

[232] In Ex SO84, Ms Guy referred to the contact with KMD's children as set out above, but wrote that KMD had consistently complied with all NCSO conditions.¹⁸³

[233] In Ex SO81.A, Mr Chick noted references in Ms Guy's report (Ex SO84) to KMD having contact with her sons, R and M.¹⁸⁴ He wrote that these contacts were not noted in Ms Guy's case note of her counselling session with KMD on 28 May 2025, or reported by Ms Guy in the Support Team meeting on 6 June 2025.¹⁸⁵ Mr Chick wrote that when he raised the contacts in the Support Team meeting, Ms Guy 'continued to support KMD re-establishing a relationship with her sons, notwithstanding the NCSO conditions'.¹⁸⁶ Mr Chick wrote that Ms Guy did not express any concern that these contacts contravened, and any future contact would further contravene, the condition of the NCSO.¹⁸⁷ He also wrote that Ms Guy's reporting of these matters was 'consistent with a significant assessment bias'.¹⁸⁸

[234] Under the NCSO, Ms Guy is not tasked with 'policing' KMD's compliance with the conditions of the NCSO. The members of the

183 Ex SO84, [78(a)], [86], [87(a)].

184 Ex SO81.A, [1.1].

185 Ex SO81.A, [1.2], [1.4].

186 Ex SO81.A, [1.4], [1.7].

187 Ex SO81.A, [1.7].

188 Ex SO81.A, [1.7].

Support Team are to provide care and support to KMD (condition 4(a)), Ms Guy is to provide weekly to fortnightly counselling sessions to KMD (condition 4(f)), Support Team meetings are to discuss KMD's mental state and progress in the community (condition 4(h)(i)), Support Team members may raise concerns they have about KMD's mental state with the Case Manager (condition 4(h)(ii)), and members of the Support Team are able to share information with each other about KMD and her mental state (condition 5). It is the role of the Case Manager to report concerns that KMD has breached or is about to breach the NCSO to the Director of Public Prosecutions for consideration of the making of an urgent application to the Court under s 43ZE or the CEO Health (condition 4(h)(v)).

[235] In circumstances where Ms Guy did not have any concerns about KMD's mental state arising from her contacts with R and M, there was no requirement on her to 'report' these contacts to the Case Manager or the Support Team. Mr Chick's criticisms of Ms Guy in this regard are therefore unwarranted.

NCSO breach by entering exclusion zone on 3 June 2025

[236] In Ex SO81.A, Mr Chick wrote that, on 3 June 2025, he was informed by Community Corrections that electronic monitoring data showed that KMD had entered the 5km exclusion zone around the residences of RL

and Mrs L at 12.19pm and remained there until 12.39pm.¹⁸⁹ Data showed that she was at an address adjacent to the Stuart Highway. Community Corrections had called KMD twice, with the calls going to her message bank.¹⁹⁰ Mr Chick asked Community Corrections to notify Police.¹⁹¹ Community Corrections did not notify Police as they took the view that notification was to be made by Mr Chick. At 12.58pm, Mr Chick was informed that KMD was no longer in the exclusion zone.¹⁹² He decided to contact KMD's employer to ask KMD to contact Community Corrections. He said his call was answered by KMD who hung up after he identified himself. Mr Chick informed Community Corrections about that call.¹⁹³ He was told Community Corrections called the employer and the person who answered told them they did not have a KMD there. KMD did not respond to the messages left on her phone by Community Corrections.¹⁹⁴

[237] Mr Chick wrote that KMD had later informed Community Corrections that she had gone to the location for work purposes, she ultimately accepted that she had entered the exclusion zone, she was aware Mr Chick had called her at work, she usually has her phone on her and has good mobile coverage, and she described how to have a call put

189 Ex SO81.A, [2.1].

190 Ex SO81.A, [2.3].

191 Ex SO81.A, [2.4]-[2.5].

192 Ex SO81.A, [2.6].

193 Ex SO81.A, [2.7].

194 Ex SO81.A, [2.8].

through to her at work.¹⁹⁵ Community Corrections said KMD was understanding that they were having trouble reaching her.

[238] Mr Chick wrote that the specifics of KMD's exclusion zone locations had been thoroughly discussed with KMD on numerous occasions, including after she entered the exclusion zone on 11 April 2025.¹⁹⁶

[239] KMD did enter the exclusion zone, travelling just inside its outer boundary. On the basis that the location of the exclusion zone had been discussed with her on numerous occasions, and her agreement with Community Corrections that she had entered, I find that KMD was aware that she entered the exclusion zone, making this an intentional breach. She did so, remaining there for 20 minutes, for purposes relating to her employment, and was subject to continual monitoring whilst there.

Whether KMD is likely to endanger herself or another person because of her mental condition – s 43ZN(1)(a)

KMD is not likely to endanger herself

[240] As already mentioned, in *KMD (No 6)*, I concluded that there was no risk that, if KMD were released, she would endanger herself because of

195 Ex SO81.A, [2.9]-[2.10].

196 Ex SO81.A, [2.11].

her mental condition.¹⁹⁷ There is no evidence received in this periodic review to alter that conclusion.

[241] The relevant issue is whether KMD is likely to endanger another person because of her mental condition.

Meaning of 'likely to endanger'

[242] This matter is concerned with the *likelihood* that KMD would engage in acts of violence which would expose other persons to danger.¹⁹⁸

[243] The word 'likely' can, depending upon its context, have a range of meanings including 'probable' (as in, more likely than not) or a chance that is more than merely possible.

[244] In a similar context to the present, the Victorian Court of Appeal held in *NOM v Director of Public Prosecutions*, that the focus of a similarly worded provision is upon the extent of the chance, risk or peril of some harm materialising.¹⁹⁹ It requires an assessment of the likelihood of the risk materialising and whether or not that risk is *more than merely possible* is the critical consideration, not the gravity of the harm that may eventuate.

197 *KMD (No 6)* at [147].

198 *KMD (No 6)* at [150].

199 *NOM v Director of Public Prosecutions* (2012) 38 VR 618 at [58]-[59] per the Court.

Is KMD likely to endanger another person?

[245] In *KMD (No 5)*, I concluded that the likelihood that KMD would act on her delusional beliefs and endanger members of the public is low, but real rather than fanciful.²⁰⁰ In *KMD (No 6)*, on the basis of the evidence then before me, I confirmed that conclusion.²⁰¹

[246] Since that time, KMD has been in the community under an NCSO for over 15 months (up to the date of the hearing in the second tranche of this periodic review). She has not engaged in any act of violence against any person, nor has she threatened any person with violence.

[247] The CEO Health argued that the period of time during which KMD has been in the community thus far is insufficient to ‘substantiate a reduction to her level of risk’. This submission was founded upon the psychiatric evidence to the effect that KMD’s delusions developed over several years before she engaged in the acts of violence the subject of the index offending in 2013.

[248] This submission cannot be accepted. It has now been over 12 years since KMD has engaged in any act of violence. The CEO Health’s approach effectively disregards the lengthy period of time in which KMD was in custody before being released. That period commenced at the time when KMD’s delusions were florid but there were no further

200 *KMD (No 5)* at [140], [144].

201 *KMD (No 6)* at [151]-[153].

acts of violence whilst in custody. Further, there is no basis upon which to infer that any new delusions would only commence after KMD was released into the community such that the likelihood of harm to members of the community may be expected to arise some years thereafter.

[249] The 15 months that KMD has spent in the community to date, without committing or threatening any act of violence, without demonstrating any evidence of delusional or incongruent thinking, with only two minor breaches of the conditions of the NCSO, and with all of the protective factors (employment, stable accommodation, family support and cultural connections) leads me to the conclusion that the chance or risk that KMD would harm another person because of her mental condition is no more than merely possible.

[250] I have addressed above the matters relied upon by Mr Chick in reaching his conclusions about risk. None of them add anything to the psychiatric evidence taken into account in *KMD (No 6)* and, given his conclusions, they are of little assistance in this periodic review.

[251] On the basis of all of the evidence before me, including that which relates to the period since 12 July 2023, I find that the chance or risk that KMD would harm another person is no more than merely possible. Consequently, I find that KMD is not likely to endanger herself or another person because of her mental condition.

The need to protect people from danger – s 43ZN(1)(b)

[252] As I observed in *KMD (No 6)* (at [154]-[155]), this matter brings into consideration both the likelihood of endangering people and the magnitude of the risk of harm to people which, on the basis that past behaviour is a reasonable predictor of at least the capacity for future behaviour, KMD's index offending makes the magnitude of the risk of harm to others high.

[253] Where a risk of a high magnitude is no more than merely possible, there remains some need to protect people from danger, just as there will always remain some risk as a consequence of KMD's index offending.

The nature of the mental condition – s 43ZN(1)(c)

[254] Nothing received on this periodic review causes me to revise the findings I made in *KMD (No 5)* and maintained in *KMD (No 6)* (at [157]-[158]) that KMD has a mental condition, namely a delusional disorder, whereby she holds a system of delusional beliefs on which she has acted and may act.

Relationship between the mental condition and the offending conduct – s 43ZN(1)(d)

[255] Again, nothing received on this periodic review causes me to revise the findings I made in *KMD (No 5)* and *KMD (No 6)* (at [159]) that on 7 May 2013, KMD acted on her delusional belief system, with serious

aggression and violence towards three other people, firing six shots from a gun at or towards those people, causing two of them physical harm.

Whether there are adequate resources available for KMD's treatment and support in the community – s 43ZN(1)(e)

[256] It is irrefutable that there is treatment and support available to KMD in the community. No party submitted to the contrary.

Whether KMD is complying or likely to comply with the conditions of the NCSO – s 43ZN(1)(f)

[257] Aside from the two intentional breaches of the NCSO found above, KMD has complied with the conditions of the NCSO since 12 July 2023. Up to the date of the hearing, that was a period of over one year and 11 months.

[258] The two breaches were of a minor nature and did not give rise to any additional risk of harm to any person.

[259] I reject the submission of the CEO Health that these two breaches are demonstrative of an attitude of non-compliance on the part of KMD. There is no suggestion of any pattern of non-compliance from which such an attitude could be inferred.

The CEO Health's primary position: Revoke the NCSO and place KMD on a CSO

[260] The primary position of the CEO Health was that there is no practicable alternative consistent with maintaining and protecting the safety of the community other than to commit KMD to custody on a CSO. This position was founded upon the evidence relied upon by the CEO Health in the previous periodic review.

[261] The submission is somewhat surprising given my decision in *KMD (No 6)* and the CEO Health's abandonment of its appeal against that decision, and where the only new evidence relied on by the CEO Health in this periodic review is the evidence of Mr Chick, whose recommendations were not for KMD to be returned to a CSO, but for KMD to remain on a NCSO, albeit varied in certain ways.

[262] Seemingly in response to the recommendations of Mr Chick (their own witness), the CEO Health argued that a condition that KMD engage in psychiatric treatment is a condition no more than the minimum necessary to protect the safety of the public, KMD will not comply with such a condition and, consequently, she should be placed on a CSO and returned to custody.

[263] As the CEO Health acknowledged, in *KMD (No 6)*, I rejected that submission and determined that the evidence now relied on in this periodic review did not lead me to that conclusion.

[264] None of the evidence received on this periodic review has caused me to reach the conclusion that a CSO is the only way to maintain and protect the safety of the community.

Outcome: Vary the conditions of the NCSO

[265] On the basis of the conclusions set out above, particularly that the risk or chance that KMD would endanger another person because of her mental condition is no more than merely possible, I consider that it is appropriate on this periodic review for KMD to continue to be subject to the NCSO, but to vary its terms considerably.

[266] I do not consider it appropriate at this time to release KMD unconditionally, noting: (a) the ongoing fears and concerns of the victims for their safety; (b) the period of one year and three months that KMD has been in the community under the NCSO; and (c) that the nominal period for the major review does not expire until 7 May 2029. I consider that a further period in the community subject to conditions protective of the victims' safety, but without oversight of a care and support team, strictures of monitoring and movement limitations is appropriate. Applying the principle that restrictions on KMD's freedom and personal autonomy are to be kept to the minimum that is consistent with maintaining and protecting the safety of the community, I consider this to be a necessary step along the way to demonstration that a NCSO

is unnecessary to protect the victims and members of the community from danger of harm.

[267] I intend to effectively remove the supervision and monitoring of KMD's movements, to reduce the exclusion zone around the residence of the victims (the breadth of which was a consequence of the requirements of electronic monitoring), and to remove the limitations upon KMD's freedom of movement. KMD will be prohibited from entering within 500 metres of the victims' residences and from contacting them or entering or remaining where they are working or visiting, save in limited circumstances. The intention is that, if KMD is in a public place (such as a shopping centre) and becomes aware of the presence of one of the victims, she must depart from that place to ensure that she does not have any contact with them. The limited exceptions are hospitals or dentists for emergency medical or dental treatment and airports, bus stations or other transport hubs. The intention is that, in such circumstances, KMD will be required to conduct herself in a way that ensures that she has no contact or interaction with the victims.

[268] I intend to vary the condition as to KMD's residence so that she is simply required to reside in the Northern Territory, thereby ensuring she continues to be under the jurisdiction of this Court.

[269] I intend to remove the restriction on contact with R, because he is an adult and capable of deciding for himself whether or not to engage with KMD. If he does not wish to do so, like any parent of an adult under the general law, KMD will be required to comply with his wishes and not stalk, harass or otherwise unduly persist with unwelcome contact.

[270] I intend to retain but vary the restriction on contact with M, which is to operate whilst he is a child, such that KMD may only have contact with M if he and his father, JC, consent or in accordance with a parenting plan or order under the *Family Law Act*. This is to acknowledge that M is of an age where he is capable of expressing his wishes regarding contact with KMD and he is in the care of his father. Their wishes about contact with KMD are to be respected, but the condition acknowledges the rights of any parent of a child to pursue their legal entitlements under the family law.

[271] I will retain the condition that KMD not have access to firearms.

[272] I will remove condition 5, as it is no longer necessary. I will remove condition 6 given the conclusions below that the CEO Health is no longer the 'appropriate person'. I will retain condition 7 authorising the Northern Territory Police to apprehend KMD if she breaches any condition of the NCSO, thereby ensuring that its conditions are practically and immediately enforceable.

Complaints that the NCSO is not working

[273] My conclusions above make it unnecessary to consider the CEO

Health's alternative submission that the Support Team under the NCSO is no longer functional.

The appropriate person

[274] The CEO Health submitted that, given the terms of the current NCSO, the CEO Health is not the 'appropriate person' within the meaning of Part IIA of the *Criminal Code*. This submission was made in relation to the current terms of the NCSO, particularly those relating to the Support Team, and the role of the Case Manager. Nevertheless, the submission has a broader application.

[275] Division 5 of Part IIA of the *Criminal Code* deals with supervision orders. The provisions of Division 5 confer certain functions on 'the appropriate person'. Relevantly, s 43ZK(1) provides that, if the Court makes a supervision order, the appropriate person must, at intervals of not more than 12 months, until the supervision order is revoked, prepare and submit a report to the Court on the treatment and management of the supervised person's mental impairment, condition or disability. That report is to contain details of the treatment, therapy or counselling that the supervised person has received, and the services that have been provided to them, since the last report and details of any

changes to the prognosis of the supervised person's mental impairment, condition or disability and to the plan for managing it (s 43ZK(2)).

[276] The term 'appropriate person' is defined in s 43A.

[277] Paragraph (a) of the definition refers (relevantly) to a supervised person who is detained or in custody in, or receives treatment, services or assistance in, at or from, an approved treatment facility or an approved temporary treatment facility within the meaning of the *Mental Health and Related Services Act 1998* (NT). Under the current NCSO, and the varied NCSO, KMD does not fall within that paragraph.

[278] Paragraph (b) of the definition refers (relevantly) to a supervised person who is detained or in custody in, or receives treatment, services or assistance in, at or from, a prescribed person, organisation or facility or a person, organisation or facility who or which is a member of a class of prescribed persons, organisations or facilities. There does not appear to be any person, organisation or facility or class of persons, organisations or facilities prescribed within this provision.

[279] Paragraph (c) of the definition refers to a person who is a represented adult as defined in s 3 of the *Guardianship of Adults Act 2016* (NT). KMD does not fall within that paragraph.

[280] Paragraph (d) of the definition refers to a person who is held in custody in a custodial correctional facility or is under the supervision of a

probation and parole officer under the *Parole Act 1971* (NT). Under the current NCSO, and the varied NCSO, KMD does not fall within that paragraph.

[281] It follows that there is no ‘appropriate person’ in relation to KMD, under the current NCSO or the varied NCSO. The consequence of that is that there is no authority with a statutory obligation to prepare a report under s 43ZK for the next periodic review. Given that the CEO Health will not be providing any treatment, therapy, counselling or services to KMD under the terms of the varied NCSO, there is no significant difficulty with that.

[282] The CEO Health did not seek to be removed as a party from these proceedings, so it will, on the next periodic review, have the same rights as any of the other parties to tender evidence and make submissions about what the disposition should be at that time.

Next periodic review

[283] The next periodic review will be within 12 months from the date of delivery of this decision.

Disposition

[284] I make the following orders:

- (1) The non-custodial supervision order made on 5 July 2023 remains in effect with the conditions varied as follows:

- (a) Conditions 4(a) to 4(x), 5 and 6 are deleted and replaced with the following:

4(a) KMD will reside in the Northern Territory.

4(b) KMD must not:

(a) have contact, directly or indirectly, with RL, Mrs L or Mr I ('the victims');

(b) enter or remain at any place where the victims are living, including within 500 metres of their residences;

(c) enter or remain at any place where the victims are working or visiting, except in the case of:

(i) a medical or dental emergency for KMD or a member of her family; or

(ii) an airport, bus station, or other transport hub for the purposes of KMD's travel.

4(c) Until M turns 18 years old, KMD is only permitted to have contact, whether directly or indirectly, with M:

(a) with his consent and the consent of his father, JC; or

(b) in accordance with any parenting plan or order made pursuant to the *Family Law Act 1975* (Cth).

4(d) KMD must not own, possess, use or have access to any firearm.

(b) Condition 7 is renumbered as condition 5.
