CITATION:	*Attorney-General (NT) v RJM* [2024] NTSC 85
PARTIES:	ATTORNEY-GENERAL OF THE NORTHERN TERRITORY v RJM
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT exercising Territory jurisdiction
FILE NO:	5 of 2023 (22325981)
DELIVERED:	17 October 2024
HEARING DATES:	29 August 2023, 10 July 2024
JUDGMENT OF:	Brownhill J

CATCHWORDS:

ADMINISTRATIVE LAW – PREVENTATIVE DETENTION LEGISLATION - Application pursuant to the *Serious Sex Offenders Act 2013* (NT) on basis respondent a "serious danger to the community" – onus of satisfying the Court rested upon the applicant – paramount consideration need to protect victims or potential victims, their families and members of the community generally – secondary consideration desirability of providing rehabilitation, care and treatment for the person subject to the order – respondent remained a serious danger to the community – whether the management of the respondent in the community is reasonably practicable – protection of the community could be met by making a supervision order subject to appropriate conditions – supervision order made.

Serious Sex Offenders Act 2013 (NT) ss 3, 4, 6, 7, 9, 14, 19, 22, 23, 25, 31, 32, 79, 63, 82, 88, 89 and 97.

Weapons Control Act 2001 (NT)

Attorney-General (NT) v Harrison [2018] NTSC 33, *Attorney-General (NT) v JD* (2015) 257 A Crim R 156, *Briginshaw v Briginshaw* (1938) 60 CLR 336, *Director of Public Prosecutions (WA) v GTR (2008)* 38 WAR 307, *EE v Attorney-General (NT)* (2017) NTLR 170, *JD v Attorney-General (NT)* (2020) 354 FLR 314, *Nigro v Secretary, Department of Justice* (2013) 234 A Crim R 1 and *Slivak v Lurgi (Australia) Pty Ltd* (2001) 205 CLR 304 *referred to.*

REPRESENTATION:

Counsel:

Applicant:	M Chalmers SC with K Bremner
Respondent:	P Maley

Solicitors:

Applicant:	Solicitor for the Northern Territory
Respondent:	Maleys

Judgment category classification:	B
Judgment ID Number:	Bro2409
Number of pages:	51

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

Attorney-General (NT) v *RJM* [2024] NTSC 85
No. 5 of 2023 (22325981)

BETWEEN:

ATTORNEY-GENERAL OF THE NORTHERN TERRITORY
Applicant

AND:

RJM
Respondent

CORAM: BROWNHILL J

REASONS FOR DECISION

(Delivered 17 October 2024)

[1] The Attorney-General made an application under s 23 of the *Serious Sex Offenders Act 2013* (NT) ('Act') for a final continuing detention order or, in the alternative, a final supervision order in relation to the respondent. The application is made on the basis that the respondent presents a serious danger to the community.

[2] The respondent is now 57 years old. Between January 1985 and January 2020, he was convicted of forty eight offences, primarily involving sexual assault, indecent dealing or indecency, supplying cannabis to a child, deprivation of liberty, assaulting or obstructing Police, common or aggravated assault, stealing or property offences,

motor vehicle offences, firearms offences, failure to comply with reporting conditions offences and breach of conditions offences.

[3] The respondent was first convicted of sexual offending at the age of 19. The circumstances of the offending were as follows. On 2 October 1986, the respondent was on a bus at night time and intoxicated. The victim was a 16 year old girl, who the respondent had met before, but they were not well known to each other. While sitting with the victim at the back of the bus, he put his arm around her and asked her for a kiss. She refused and pushed him away. They got off the bus and he offered to walk her part of the way home as their routes coincided. He asked if there were any Police around and she said there were not. He grabbed her from behind by the throat and dragged her to the ground. She told him to 'cut it out'. He groped her to the crotch and breast areas. When she sat up, he punched her to the face and threatened to kill her. He pushed her onto her back and kneeled over her, while trying to pull down her clothing. He put his fingers down her throat to stop her from screaming. She bit his fingers. He got off her momentarily, giving her the chance to get up and run away, seeking help from members of the public. On 14 May 1987, the respondent was convicted of the offence of assaulting a female with intent to have carnal knowledge of her and was sentenced to 16 months imprisonment, with a non-parole period of 8 months. That offence has now been repealed, but has effectively been replaced by the offence of

attempt to have sexual intercourse without consent contrary to s 192(3) and (5) of the *Criminal Code Act 1983* (NT) ('Criminal Code'). At the time of this offending, the respondent was subject to a good behaviour recognisance for earlier offending. He was granted parole on 27 November 1987, with release on 12 December 1987. He completed that parole on 16 December 1988.

[4] The respondent's second conviction for a sexual offence was recorded on 20 April 1995 for offending which occurred on 23 July 1994. He was then 28 years old. The circumstances of that offending were that the victim was an escort the respondent had hired for an hour. She went to his residence and they had consensual sex. He was drunk and having difficulty ejaculating. At the end of the hour the victim told him his time was up and she was going to leave. He told her she was not leaving until he ejaculated. He continued to have sex with her against her will, despite her struggling and crying out. When she realised he was not wearing a condom, she asked him to put one on, which he did. He continued to have non-consensual sex with her while holding her down. She told him he was raping her and asked him to let her go. He continued. Eventually she stopped physically resisting and lay still. After a considerable time, he ejaculated, got off the victim and she left. The respondent was convicted of sexual intercourse without consent contrary to s 192(2) of the *Criminal Code*. He was sentenced to a total of 4 years and 6 months imprisonment, suspended after 18 months,

with supervision and a good behaviour bond for three years from his release. At the time of this offending, the respondent had just served four months imprisonment for driving offences, had been out of custody for less than four months and was subject to a good behaviour bond. He was released from custody on around 19 April 1996.

[5] The respondent's third, fourth and fifth convictions for sexual offences were recorded on 5 May 2004, for offending which occurred between 1 December 2002 and 3 May 2003. He was then 36 years old. The circumstances of that offending were that the respondent was living with a woman who had a 12 year old daughter, A. Arrangements were made for A's 12 year old friend, C, to have a sleepover. The respondent had consumed alcohol and cannabis. In the early hours of the morning, he began touching C's legs while she slept, waking her up. He moved his hand up her thighs and underneath her boxer shorts until he was touching her bottom. She did not have underwear on under her boxers. She pretended to be asleep and rolled onto her back. The respondent touched her stomach. She got up and walked away. The other victim, A, was having a shower and called out for her mother to bring her a towel. The respondent came into the bathroom with a towel and stood in front of her. He exposed his penis and masturbated for a short time. On another occasion, while the respondent was driving A, and another young girl home, he removed his penis from his pants and showed it to A, who was sitting in the front seat. He held his penis for

the duration of the trip and put it back in his clothes at the end of the trip. He was convicted of one count of indecent dealing with a child under 16 contrary to s 132(2)(a) and two counts of exposing a child under 16 to an indecent act, contrary to s 132(2)(b). The counts were aggravated because the children were in the respondent's care within s 132(4) of the *Criminal Code*. He was sentenced to an aggregate sentence of 26 months imprisonment, with a non-parole period of 19 months. He was released on parole on 4 December 2004. His parole ended on 3 July 2005. During the period of his parole, the respondent attended sex offender treatment counselling and drug and alcohol counselling. He was drug tested on 16 occasions and returned 10 positive results for cannabis, did not attend five times and once produced a dilute sample.

[6] The respondent's sixth and seventh convictions for sexual offences were recorded on 27 November 2009, for offending which occurred on 5 January 2008 and 2 May 2008. He was then 41 years old. The circumstances of the January offending were that the respondent drove his car past two young women, aged 24 and 17. One of them asked him to buy them alcohol. He agreed and they got into his car. He bought alcohol and he and the victims drank it together at various locations. He then drove them to his workplace. One of the victims had vomited and she wanted to wash her shirt. The women went into a bathroom. The respondent followed them in and blocked the exit. He armed

himself with a small knife and told the 17 year old to undress, saying he wanted to have sex with her. She did as she was told, but was very upset. He touched her breast with his hand. The other victim remonstrated with him, he desisted and left the bathroom, dropping them back in Darwin. He was convicted of two counts of deprivation of liberty and one count of performing an act of gross indecency without consent, contrary to ss 196(1) and 192(4) of the *Criminal Code*. The circumstances of the May offending were that the respondent was in a car with another male. That male got a call from a 13 year old girl asking for a lift. They drove to collect the girl and her 10 year old sister. The respondent drove them to his workplace and supplied them alcohol and cannabis. He told the 13 year old to lie down. He removed her underwear, exposing her genitalia. He touched her on the outside of her vagina, causing her to cry. He then desisted and drove them home. He was convicted of one count of committing an act of gross indecency without consent, contrary to s 192(4) of the *Criminal Code*. He was sentenced to a total of six years and six months imprisonment with a non-parole period of four years and six months. He was released on parole on 9 February 2015. His parole was revoked on 8 April 2015 for breaching the condition that he not have contact with female children under 16 years and removing his electronic monitoring device.

[7] The respondent's eighth to twelfth convictions for sexual offences were recorded on 10 January 2020, for offending which occurred in 2015

and 2018. He was then 49-52 years old. The circumstances of the offending were that the two victims were aged 10 years and 8 years. The respondent was a long-term family friend of the extended family of the victims and all of the offending occurred at their grandmother's house. On the first count, he sat behind the 10 year old who was sitting at a table with other children. He put his hand on her side and felt for her bra. She was not wearing one. He put his hand through the loose arm hole of the singlet she was wearing, put it on top of her breast, and fondled her breast and nipple for two to three minutes. He stopped when the victim stood up. He said sorry. She sat back down and he put his hand on her waist and kept it there. She felt uncomfortable, stood up and ran to another sibling. On the second count, the 10 year old was lying on a bed in the living room. He greeted her, stood near the bed and rubbed his groin and chest with his hands, while glancing at her. He did this for about 10 minutes and stopped when the grandmother came in. On the third count, the eight year old was playing in the lounge room. The respondent approached her and tried to kiss her. She said 'no' and ran away. On the fourth count, later that day, the eight year old was in the dining room. The respondent grabbed her, sat her on his lap and again tried to kiss her cheek and lips. She told him 'no' and demanded to be put down. He told her to be quiet. On the fifth count, he then put his hand up her skirt and touched her vagina on the outside of her underpants, again attempting to kiss her on the lips. She

protested and ran away outside. The respondent was convicted of five counts of indecent dealing with a child under 16, contrary to s 132(2)(a) or (b) of the *Criminal Code*. He was also convicted of five counts of breaching a condition of his reporting obligations. He was sentenced to a total of four years and six months, commencing on 9 May 2019, with a non-parole period of three years and two months. He was not granted parole. His sentence expired on 8 November 2023.

History of the proceedings

[8] This application was filed on 14 August 2023. A preliminary hearing was conducted on 29 August 2023, following which I determined that the matters alleged, if proved, would satisfy the Court that the respondent is a serious danger to the community. Pursuant to s 25(2)(b) of the Act, I made a medical assessment order within s 79 of the Act, which authorised two psychiatrists to examine the respondent and prepare reports about him.

[9] On 17 October 2023, the applicant's application for an interim continuing detention order was heard. The respondent sought an interim continuing supervision order. The respondent relied on a Risk Summary Report by Senior Clinician/Psychologist, Rosemary O'Reilly-Martinez, dated 7 September 2022. Ms O'Reilly-Martinez had 10 individual sessions of psychological treatment with the respondent from 31 August 2020. Ms O'Reilly-Martinez also undertook various

risk assessments of the respondent. Ultimately, Ms O'Reilly-Martinez concluded that:

> [The respondent] is assessed to fall within the well above average risk category in regard to actuarial factors. He has exhibited relevant risk factors in all five of the domains of the RSVP dynamic risk assessment tool and in three of the five less structured examination of known risk factors. This indicates that with regard to dynamic risk factors he is likely to fall within the high range when compared to other male sexual offenders.
>
> [The respondent's] ongoing risk of sexual offending can be significantly decreased by enforcing stringent conditions on his movement and monitoring him in an ongoing fashion.

[10] The respondent proposed an interim supervision order with very stringent conditions effectively equivalent to a home detention order. The respondent argued that being released on the interim supervision order prior to the hearing listed for December 2023 would provide the respondent with the opportunity to demonstrate his willingness and capacity to comply with a final supervision order.

[11] On 17 October 2023, I made an interim supervision order in the terms proposed by the respondent which was to have effect from the respondent's release from custody on 8 November 2023 until the hearing listed for 21 December 2023.

[12] The interim supervision order included conditions that the respondent must not commit an offence of a sexual nature, must report to a probation and parole officer ('PPO') as directed, must not leave the Northern Territory without the permission of a PPO, must comply with

directions of a PPO, must reside and remain at the location specified by a PPO and must not leave that location without prior permission from a PPO, must not purchase, possess or consume alcohol or drugs and must submit to testing, must wear an electronic monitoring device if directed by a PPO, must comply with directions of a PPO as to rehabilitation, care, treatment or structured day activities, must not possess a firearm or other weapon, must disclose to a PPO details of any person with whom he enters into a relationship, must not have contact with children 17 years or younger except in the presence of an adult approved by a PPO, must not possess, purchase, obtain, use or acquire any device with internet capabilities without written approval of a PPO, must not enter any private premises other than his own residence without prior approval of a PPO, must be subject to a curfew as directed by a PPO, and must remain on the Banned Drinkers Register.

[13] On 19 December 2023, the final hearing was vacated due to the unavailability of the two psychiatrists ordered to prepare reports about the respondent. The interim supervision order was continued. The matter was listed for mention on 21 February 2024. On that date, the final hearing of the application was listed for 10 July 2024 and the interim supervision order was continued until that date.

[14] On 10 July 2024, after the hearing, I reserved my decision and the interim supervision order was continued for a period of three months

from that date. On 7 October 2024, the interim supervision order was continued for a further period of one month from 10 October 2024.

Respondent's release and breaches of the interim supervision order

[15] On 8 November 2023, the respondent completed his sentence for the offending referred to in paragraph [7] above and was released from custody. Both prior to, and upon his release, the respondent was clearly instructed to have no contact with the victims or their family.

[16] On 10 November 2023, the respondent sent a direct message saying 'Howdy call me' via Instagram to a victim of his previous offending, who was then aged 18 years. The victim and her family reported the contact to Police. This was brought to the attention of the respondent's PPO. When the contact was discussed with the respondent, he told his PPO he wanted to apologise to the victim and the family for his offending behaviour. He was told that was not appropriate. As a consequence of this contact, between 10 and 13 November 2023, the respondent was directed by his PPO to remove all social media from his devices, not to have any contact, directly or indirectly, with any of his victims or their family members, to only have one identified and approved phone, and not to produce, possess or view pornography. The respondent signed each of these written directions to indicate his agreement to abide by them and his understanding that he may be in breach of his interim supervision order if he failed to abide by them.

[17] On 27 December 2023, the respondent was arrested and charged with four Counts of breaching the interim supervision order, contrary to s 46(1) of the Act, and remanded in custody by the Local Court. The conduct the subject of the charges was:

(a) On 28 November 2023, the respondent sent a direct message via Facebook Messenger to a victim of his prior offending which said 'Happy late birthday' (Count 1).

(b) On 4 December 2023, the respondent sent a direct message via Facebook Messenger to a victim of his prior offending which said 'Happy Birthday I hope you have a wonderful year ahead' (Count 2).

(c) On 15 December 2023, the respondent sent a direct message via Facebook Messenger to a victim of his prior offending which said 'Hello [smiley face emoji]' (Count 3).

(d) On 18 December 2023, the respondent sent a direct message via Facebook Messenger to a victim of his prior offending which said 'let's talk' (Count 4).

[18] It also appeared from an examination of his phone that the respondent had viewed pornography, but it was not clear when it had been accessed. The respondent also admitted to accessing Facebook every three or four days.

[19] On 15 March 2024, the respondent pleaded guilty to the four charges and was sentenced to five months' imprisonment, backdated to 27 December 2023. The respondent was released from custody on 26 May 2024 and was again subject to the interim supervision order. Further written directions were made by the respondent's PPO prohibiting him from using social media or dating websites, from contacting directly or indirectly any victims of his offending or their families, and from producing, possessing or viewing pornography.

Evidence received on the final hearing

[20] At the hearing on 10 July 2024, the Court received into evidence the following:

(a) pursuant to s 82 of the Act, reports:

(i) dated 20 November 2023 and 17 April 2024 from Dr Rajan Darjee, a Consultant Forensic Psychiatrist (Exhibits AG-1 and AG-2); and

(ii) dated 26 November and 18 December 2023 from Professor Danny Sullivan, a Consultant Forensic Psychiatrist (Exhibits AG-3 and AG-4); and

(b) pursuant to s 89 of the Act, supervision reports prepared pursuant to s 88 of the Act dated 11 December 2023 and 26 June 2024 from

the Commissioner for Correctional Services (Exhibits AG-5 and AG-6); and

(c) pursuant to s 97 of the Act, an individual treatment summary report dated 9 July 2024 from Alana Wood, a Senior Psychologist employed by Northern Territory Correctional Services who had been treating the respondent since October 2023 (Exhibit AG-7).

[21] Some authors of those reports also gave oral evidence, which is referred to below.

[22] The Coordinator of the Northern Territory Victims Register informed that there were no victims registered against the respondent. Consequently, no victim submissions about the respondent were received pursuant to ss 83-85 of the Act.

The scheme of the legislation

[23] It has been observed[1] that the Act seeks to remedy a concern that there is an unacceptable risk that prisoners who have committed very serious sexual offences will commit another serious sex offence when they return to the community upon their release, and that the Act represents an important shift in the administration of justice because it impacts the fundamental principle that a person's liberty is not to be affected except upon proof of a criminal offence, and then only for so long as

1 *Attorney-General (NT) v JD* (2015) 257 A Crim R 156 at [3] per Mildren AJ, cited in *Attorney-General (NT) v Harrison* [2018] NTSC 33 at [7] per Grant CJ.

the sentence of the Court in respect of that offence allows, and no longer. The scheme of the Act permits this Court, in the exercise of its civil jurisdiction, to make an order for continued detention or supervision beyond expiration of the sentence imposed in relation to a criminal offence, even though no further offence has been committed, albeit in very limited circumstances.[2]

[24] The primary object of the Act is to enhance the protection and safety of victims of serious sex offences and the community generally by allowing for the control, through continued detention or supervised release, of offenders who have committed serious sex offences and pose a serious danger to the community (s 3(1)). The secondary object of the Act is to provide for the continuing rehabilitation, care and treatment of those offenders (s 3(2)).

[25] The term 'serious sex offence' is defined to mean any of the offences listed in Schedule 1 of the Act, an offence which substantially corresponds to such an offence, or an attempt, conspiracy or incitement to commit such an offence (s 4). The offences listed in Schedule 1 include sexual intercourse without consent, aggravated indecent assault, sexual offences against children under the age of 16 years, and a range of less common offences with a sexual element.

---

2 Ibid.

[26] The Act provides that a person is a 'serious danger to the community' if there is an unacceptable risk that a person will commit a serious sex offence unless they are in custody or subject to a supervision order (s 6(1)).

[27] The Act provides that a Court must not decide that a person is a serious danger to the community unless it is satisfied, to a high degree of probability, that there is acceptable and cogent evidence of sufficient weight to justify the decision (s 7(1)), with the onus on the applicant (s 7(2)). This standard of proof required is not the ordinary civil standard; rather, the Court must be satisfied to a high degree of probability, approaching, but less than, proof beyond reasonable doubt, that the person is a serious danger to the community, with the evidence to reflect the *Briginshaw*[3] principle.[4] Further, the applicant has the onus of satisfying the Court that it is appropriate to make the final continuing detention order or final supervision order (s 32).

[28] The essential operation of the Act has been described elsewhere,[5] and need not be repeated here.

---

3 *Briginshaw v Briginshaw* (1938) 60 CLR 336.

4 See *JD v Attorney-General (NT)* (2020) 354 FLR 314 at [41], [57]-[58] per Blokland J, Hiley J and Mildren AJ.

5 See *EE v Attorney-General (NT)* (2017) NTLR 170 at [7]-[13] per Grant CJ, Southwood and Riley JJ, which description was summarised in *Attorney-General (NT) v Harrison* [2018] NTSC 33 at [8]-[14] per Grant CJ.

Qualifying offender

[29] On 17 October 2023, when the interim supervision order was made, the respondent was a qualifying offender, by reason of the following.

[30] As set out in paragraph [7] above, the respondent had most recently been convicted of, and sentenced for, 10 offences, five of which were indecent dealing with a child under 16 years, which comprises a 'serious sex offence' (s 4, Sch 1). The first limb of s 22(1) was therefore satisfied.

[31] The total term of imprisonment was four years and six months. The total sentence period ended on 8 November 2023. For the counts of indecent dealing, the sentences ended on 8 November 2022.

[32] The respondent had therefore served his sentence for the serious sex offences and was under a sentence of imprisonment for another offence (the five other offences), and had not at any time since commencing to serve that sentence ceased to be under a sentence of imprisonment for an offence, or in custody for any other reason. Consequently, the respondent fell within s 22(4), and is considered a 'qualifying offender' within s 22(1), pursuant to the second limb of that section (namely, s 22(1)(b)(ii)).

[33] It follows that the respondent was a qualifying offender within s 22 of the Act.

Serious danger to the community

[34] The first question for determination is whether the respondent presents a 'serious danger to the community' within the meaning of the Act. A qualifying person presents such a danger if there is an unacceptable risk that he or she will commit a 'serious sex offence' unless he or she is in custody or subject to a supervision order.

[35] In deciding whether the respondent is a serious danger to the community, the Court must have regard to the likelihood that he will commit another serious sex offence; the impact of the serious sex offences committed, or likely to be committed by the respondent on the victims and the community; and the need to protect people from those impacts (s 6(2)).

[36] To assess whether there is an 'unacceptable risk', the Court must undertake a balancing exercise, requiring the Court to have regard, amongst other things, to the nature of the risk (commission of a serious sex offence, with serious consequences for the victim) and the likelihood of the risk coming to fruition, on the one hand, and the serious consequences for the offender on the other, if an order is made.[6] The 'risk' referred to in that balancing exercise is not *any risk* that the respondent may commit a further serious sex offence, as it is

6 *JD v Attorney-General (NT)* (2020) 354 FLR 314 at [60]-[61] per Blokland, Hiley JJ and Mildren AJ, citing *Director of Public Prosecutions (WA) v GTR* (2008) 38 WAR 307 at [27], *Nigro v Secretary, Department of Justice* (2013) 234 A Crim R 1 at [110] per Redlich, Osborn and Priest JJA, and *Queensland v DBJ* [2017] QSC 302 at [12]-[13] per Bowskill J.

clear that some risks can be acceptable consistently with the adequate protection of the community.[7]

Evidence of Dr Sullivan

[37] Dr Sullivan's first report set out the respondent's description of his personal history, medical history, psychiatric history, substance abuse history, and psychosexual and offending history, along with the respondent's plans for returning to the community and information from other sources, including the respondent's forensic history.

[38] Dr Sullivan's first report made the following observations or opinions. The respondent meets diagnoses of severe substance use disorder (for stimulants, alcohol and cannabis, currently in a controlled environment), antisocial personality disorder, and paedophilic disorder (based on his recurrent sexual attraction to children who are prepubescent, pubescent or conspicuously not exhibiting mature secondary sexual characteristics). The respondent's victims' ages are consistent with a paedophilic disorder, not hebephilia (which is a sexual attraction to sexually mature underage young people). The respondent's scores on a psychopathy assessment tool were below the cut-off and he did not meet the diagnostic criteria for this personality style, which is strongly associated with reoffending and a relatively limited response to therapeutic interventions. The respondent's

7 Ibid at [61].

offending is strongly associated with intoxication (from alcohol, cannabis and methamphetamine) having the effect of disinhibiting him, impairing his judgement, and likely increasing his level of sexual arousal.

[39] Dr Sullivan's first report opined that the respondent:

(a) scored in the high risk category of reoffending risk assessed on the STATIC-99 instrument; and

(b) had a significant range of past risk factors in three of the domains, and a moderate number of risk factors in one other domain under the Risk for Sexual Violence Protocol ('RSVP') model of assessment.

[40] Dr Sullivan's first report ultimately opined that the respondent would be at a high risk of committing another serious sex offence if not detained in custody or subject to a supervision order. Dr Sullivan opined that the respondent would require extensive support in order to safely return to the community, with appropriate accommodation, opportunities for employment, support to prevent drug and alcohol use and to detect his use of those substances, and support to anticipate and avoid situations of elevated risk, namely contact with children. Dr Sullivan's first report opined that the risk of committing a further sexual offence could be managed adequately on a supervision order rather than a continuing detention order.

[41] Dr Sullivan's second report referred to case notes by the respondent's PPO describing the respondent's preoccupation about contacting the victim and her family to apologise for what he had done, and the respondent's breach of the directions made by the PPO. Dr Sullivan's second report opined that the respondent demonstrated a pattern of knowing breaches of conditions of the interim supervision order, leading to marginally increased risk as assessed on the RSVP assessment tool. The respondent's behaviour suggested ambivalence about compliance with an order, that he prioritises his own wishes and desires over the conditions, and that he may struggle to comply with a supervision order. Dr Sullivan said he had real and ongoing concerns about the respondent's capacity and inclination to comply with a supervision order. Dr Sullivan opined that continued breaches would render a supervision order impracticable. Dr Sullivan did not consider that other directions or conditions would materially change the respondent's risk.

[42] Dr Sullivan was not called to give oral evidence at the hearing.

Evidence of Dr Darjee

[43] Dr Darjee's first report set out the respondent's family and personal history, sexual and relationship history, medical and psychiatric history, substance use history, and forensic history. It also reported

what was discussed with the respondent in the two hour video conference.

[44] Dr Darjee's first report made the following observations or opinions. The respondent meets the criteria for a moderate to severe personality disorder. The personality disorder was severe in the past, but more recently is of moderate severity. The respondent also meets the criteria for diagnoses of antisocial and narcissistic personality disorders, with traits of prominent dissociality and disinhibition. The respondent scored 27 out of 40 on a psychopathy assessment tool based primarily on his personality functioning and behaviour before 2020, which is a relatively high score for an Australian male offender. The respondent's recent functioning and presentation appears more agreeable, harmonious and stable than previously, and his behaviour in custody appears to have been much better than in previous sentence periods. The respondent disclosed a sexual preference for peri-pubertal girls over a period of about 20 years. He does not have an exclusive sexual interest in children and he is not sexually attracted to very young pre-pubertal children. An assessment tool for paedophilic interests indicated the respondent is unlikely to have a strong preferential or exclusive sexual interest in children. The respondent appears to have a hebephilic sexual attraction, which is a sexual interest in children who have started to go through the physical changes of puberty but do not have adult-like physical secondary sexual characteristics. The

respondent has had serious problems with alcohol and drugs in the past, but stopped drinking in 2008 and has not used drugs since 2019.

[45] Dr Darjee's first report opined that the respondent:

(a) scored in the high risk category of reoffending risk as assessed on the STATIC-99 instrument;

(b) placed in the well above average category of reoffending risk assessed on the STATIC-99R instrument, indicating he falls within a group of men with a much higher long-term likelihood of committing a further sexual offence than the average man who has committed a sexual offence, noting that this rating says nothing about the nature, imminence or severity of potential future sexual offending and does not take into account future management;

(c) has relevant risk factors across all domains under the RSVP-V2 model of assessment and, overall, the number of risk factors, especially in the past, is more than one would expect in the average individual convicted of sexual offences; and

(d) on the basis of the RSVP-V2 assessment tool, there is a high likelihood of further sexual offending if he was unmanaged in the community, he poses a moderately imminent risk of sexual offending if he was unsupervised and unsupported in the

community, and he poses a moderate risk of serious harm through sexual violence if he were to reoffend.

[46] Ultimately, Dr Darjee's first report opined there would be a high likelihood of the respondent committing a further serious sex offence if not detained or subject to a supervision order, but the risk does not necessitate a detention order. The respondent requires a high level of case prioritisation and supervision to prevent further sexual violence, but it should be feasible to implement a risk management plan in the community to mitigate the risk of further sexual offending, so the respondent does not require further detention. The most important aspects of risk management are ensuring abstinence from alcohol and drugs, and preventing unsupervised contact with under-aged girls. Conditions prohibiting alcohol and drug use, testing, access to alcohol and drug services and ongoing individual psychological intervention with an appropriately experienced therapist were recommended.

[47] Dr Darjee's second report noted the respondent's breaches of the conditions of his supervision order and said that the respondent's response to the period of supervision in the community seems to indicate that he continues to have psychopathic traits of grandiosity, manipulativeness and lack of empathy, continues to do what he wants with little regard for others or the consequences, and clearly struggles to stop himself from doing what he wants to do, even when he has clearly been told that he should not do something. This second report

opined that his behaviour in the community confirmed his ongoing high level of risk and suggested that in order to prevent him reoffending, he would require a much greater degree of monitoring, supervision and restrictions than upon his initial release.

[48] In evidence-in-chief, Dr Darjee said that the cut-off for psychopathy is 30 out of 40, and he scored the respondent 27 out of 40. He said there is a standard error of three points, and a score over 25 is a high level of psychopathy. Psychopathy is a matter of degree, rather than an 'all or nothing thing', and the respondent scored highly in all four facets of psychopathy. Consequently, whether he meets the threshold of 30 and has a categorical diagnosis or not, he has a high level of psychopathic traits. The traits of being impulsive, irresponsible and anti-social can change as a person gets older, but the traits of being grandiose and manipulative, and of being callous and lacking empathy, do not change across a person's life. A person with those traits needs to be motivated by their own self-interest to comply with conditions, and the likelihood is that the respondent will need to be on supervision indefinitely.

[49] In evidence-in-chief, Dr Darjee said that, since writing his second report, he had read the supervision case notes made by the respondent's PPO and Ms Wood's treatment report about the respondent since he had been released from custody in May 2024. Dr Darjee said that, since that release as compared with the initial release, the respondent appeared to have been under strict and intensive monitoring with more

strict attention being given to his conditions. Dr Darjee said that, given the Northern Territory does not have a semi-secure accommodation facility for serious sex offenders, if he is in the community, the respondent requires monitoring at a level where he is not permitted to be unescorted, and this would be necessary 'for a while' until he could be trusted to manage himself in the community without someone 'keeping an eye on him'. The period within which this is required is most likely months rather than weeks and could well be up to a year. Before any easing of the strict conditions for his management, there would need to be a thorough review of his behaviour, with a series of gradual periods of relaxation of conditions and 'testing out'.

[50] In cross-examination, Dr Darjee agreed that the monitoring, supervision and restrictions the respondent had been subject to since his release from custody in May 2024 included not having a phone with internet access, being on electronic monitoring, only leaving his residence in the presence of a PPO, seeing his psychologist and his PPO weekly, and that this was the level of intensive monitoring, supervision and restrictions Dr Darjee was referring to in his second report. Dr Darjee confirmed that the respondent appeared to now be abiding by the conditions of the interim supervision order. Dr Darjee agreed that, from what he had read, it appeared that, since his release in May 2024, there was a good intensive plan in place that is able to protect the community from the respondent reoffending, and said he

was satisfied with the implementation of the respondent's supervision since May 2024.

Serious danger to the community

[51] Having regard to the opinions of Dr Sullivan and Dr Darjee, and taking into account the considerable adverse impact of the serious sex offences committed, and likely to be committed, by the respondent on the victims and the community, and the need to protect people from those impacts, I find that the respondent presents a serious danger to the community. This is on the basis that there is an unacceptable risk that he will commit a serious sex offence unless he is in custody or subject to a supervision order. Counsel for the respondent did not contend otherwise.

Continuing detention order or supervision order

[52] On the hearing of an application, the Court may make a final continuing detention order or final supervision order if satisfied that the qualifying offender is a serious danger to the community (s 31). The applicant has the onus of satisfying the Court that it is appropriate to make a final continuing detention order or final supervision order.

[53] In deciding whether to make a continuing detention order, the Court must have regard to the paramount consideration (i.e. the need to protect victims and members of the community), and to the secondary

consideration (i.e. rehabilitation, care and treatment for the respondent) (s 9). In the consideration of those matters, the Court must have regard to the likelihood that the respondent will commit another serious sex offence and whether adequate protection could reasonably be provided by making a supervision order in relation to the person (s 9).

[54] It necessarily follows that a continuing detention order should not be made if adequate protection could be afforded to victims and the community by making a supervision order.[8] In deciding whether to make a supervision order, the Court must have regard to the same paramount and secondary considerations (s 14). In doing so, the Court must have regard to the likelihood of the respondent committing another serious sex offence, whether it will be reasonably practicable for the Commissioner of Correctional Services to ensure that the respondent is appropriately managed and supervised in the community, and whether adequate protection could only reasonably be provided by making a continuing detention order (s 14(3)(c)).

[55] Section 18 sets out a list of compulsory requirements which the Court must include in any supervision order, but the Court is expressly empowered to include any other requirements the Court considers appropriate, which are described as 'optional requirements' (s 19).

---

8 *Attorney-General (NT) v Harrison* [2018] NTSC 33 at [49] per Grant CJ.

Evidence of Ms Wood

[56] Ms Wood's report outlined her provision to the respondent of ongoing offence-specific individual treatment to address his criminogenic needs associated with his risk of sexual reoffending. At the time of her report, the respondent had attended a total of 23 appointments, all of which (bar two) were in person and of about an hour's duration. The focus of the treatment was risk-management planning, development of coping strategies, and exploring the internal factors contributing to the respondent's non-compliance with the conditions of the supervision order, and management of those factors in the future.

[57] Ms Wood's report stated that the respondent appeared to have consistently engaged well in treatment sessions, presenting as compliant, cooperative, enthusiastic and attentive, with an apparently positive attitude towards treatment, an expressed desire to desist from further sexual offending by being forthcoming around risks and collaboratively establishing strategies to manage them, and a reasonable degree of insight into them. Her report opined that the respondent's apparent motivation to engage is likely somewhat superficial, given his antisocial personality traits. Ms Wood opined that the respondent requires ongoing treatment, but did not identify any additional conditions, restrictions or monitoring strategies which could be imposed on the respondent to ensure he is managed and supervised as appropriate to his risk.

[58] Ms Wood gave oral evidence at the hearing. In cross-examination, she said that she works with sexual offenders with a range of personal supports available to them, from none to a thorough pro-social network that can help mitigate risk. She did not consider that increasing the frequency of psychological treatment sessions with the respondent would decrease his risk, which is driven by long term factors and personality factors. Ms Wood was aware that the respondent was directed, after his release in May 2024, not to have an internet capable device, and that he now has a phone that only permits calls and texts to Northern Territory Correctional Services ('NTCS'). Ms Wood said there was no information to suggest that the respondent had breached or been non-compliant with the supervision, monitoring and restrictions regime since his release in May 2024. She said it is important that the regime had only been in place for a short period of time, which was not a sufficient period to make predictions about his future compliance. Ms Wood said it was not possible to say how long this intensive regime would need to remain in place because it depends on too many factors. Ms Wood was due to take extended leave in August 2024, and her treatment of the respondent would be taken over by another senior psychologist within NTCS.

Commissioner's opinion as to whether appropriate management and supervision is reasonably practicable

[59] The Act provides that the Commissioner of Correctional Services must ensure that a supervisee is managed and supervised by PPOs in a way

that is appropriate (s 63(1)), having regard to the paramount consideration and the secondary consideration (s 63(2)), and the Commissioner must have regard to the need to ensure that the supervisee's compliance with his supervision order is monitored and enforced.

[60] Section 88(3) of the Act requires the supervision report to include the Commissioner's opinion as to whether, if a supervision order is made or the person's supervision order is continued in force, it would be reasonably practicable for the Commissioner to ensure that the person is appropriately managed and supervised as required under s 63.

[61] The first supervision report described the way the respondent was managed by NTCS on the interim supervision order following his initial release from custody, which included the respondent living with his mother in a private residence owned by her, electronic monitoring, leaving the residence only in the company of NTCS staff, weekly supervision with his PPO and additional supervision sessions as the respondent required, supervised outings with NTCS compliance officers three times per week for reintegration activities (accessing services and appointments, including fortnightly drug and alcohol counselling sessions and weekly offence specific psychological treatment with Ms Wood, developing pro-social activities and hobbies and exploring employment options) and drug and alcohol testing.

[62] The first supervision report noted concerns with the respondent residing at his mother's home, as he committed a serious sex offence there in 1994. On one occasion, he removed his electronic monitoring device, left it at the residence whilst he went to consume alcohol, and his mother had disposed of it. Further, the residence is proximate to potential victims, with young children living opposite. There is a concern that the respondent's mother may not notify NTCS if the respondent displays escalating or arising risky behaviours. The respondent's mother had been reluctant to discuss the respondent's offending with NTCS staff, and had minimised his offending when she had discussed it. Ms O'Reilly-Martinez opined that the respondent's mother is not part of the respondent's support and awareness group as she would not communicate concerns about the respondent's behaviour to NTCS or the Police or otherwise mitigate the respondent's dynamic risk factors. The position of NTCS was that the respondent's mother would not be approved to supervise contact between the respondent and any child. Alternative accommodation options for the respondent have been explored, but found to be unsuitable for him.

[63] The respondent had been electronically monitored, had remained at his residence unless escorted by NTCS staff, and the respondent had complied with the rules for electronic monitoring. The intention was to continue with electronic monitoring until it was considered safe for

him to move independently in the community. The respondent is subject to lifetime reporting to the National Child Offender System.

[64] The first supervision report concluded that, despite the support and supervision provided to the respondent in the community, NTCS 'is unable to guarantee one of the main risk mitigation strategies identified by [Dr Darjee and Dr Sullivan] – namely that he is not having unsupervised contact with under-aged girls'. Further, if the respondent is subject to a final supervision order, the conditions in the interim supervision order are necessary to appropriately manage and supervise the respondent as required by s 63 of the Act.

[65] The second supervision report described the way the respondent was managed by NTCS on the interim supervision order following his release from custody in May 2024. Essentially, his management was much the same as it had previously been under the interim supervision order. There were written directions prohibiting him contacting the victims and their families, accessing, using or possessing an internet capable device, accessing social media, and engaging with pornography or escorts, and supervision support was focussed on addressing the difficulties the respondent previously faced with supervision in the community.

[66] The second supervision report stated that an integral aspect of monitoring the respondent within the community is reliance on the

respondent's support network (his mother, friends or acquaintances) being aware of his offending risks and ensuring that he does not have contact with children. The respondent's social support and awareness group consists only of his mother. Despite further discussions with the respondent's mother, concerns remain regarding her ability to support the respondent's adherence to the conditions of a supervision order. While the respondent's mother is not considered to be a protective person for the purpose of ensuring adherence to the conditions of a supervision order, it is acknowledged that she provides significant support to the respondent. The respondent's step-sister was identified as a strong support person for him, but she resides interstate and the respondent recently withdrew his consent for NTCS to remain in contact with her about his progress under the supervision order.

[67] The second supervision report concluded that NTCS remains concerned that the significant monitoring and supervision to which the respondent has been subject will not be sufficient in mitigating the risk posed by the respondent. Reference was made to Dr Darjee's second report stating the respondent should be subject to 'a higher degree of monitoring and supervision' than he was when initially released from custody. The second supervision report stated that NTCS are 'not confident in how to achieve' that, other than by way of a continuing detention order. The second supervision report concluded that the respondent is 'too great a risk to the community' and 'cannot be safely

supervised within the community', so the victims, their families and the greater community 'would benefit from [the respondent] being subject to a continuing detention order'.

[68] The author of the two supervision reports, Tracy Luke (Assistant Commissioner NTCS) gave oral evidence at the hearing. In examination-in-chief, she said that, given the concerns about his mother, the respondent does not have anyone in his support and awareness group that could be utilised by NTCS to report behaviours of concern, supervise or report any contact he might have with children, or accompany him when leaving his residence.

[69] Ms Luke gave evidence that NTCS has 186 full time equivalent compliance officers or PPOs to service 1300 people being supervised across the Northern Territory. She said that two compliance officers had been taking the respondent for outings three times a week, with two outings of five hours duration and one outing of three hours duration. She referred to three occasions on which the respondent sought to leave his residence (to take his mother to the hospital, to go to the chemist, and to go shopping) and he was permitted to do so on two occasions without any escort by NTCS staff, and once he was escorted by two PPOs, because NTCS did not have sufficient compliance officers to escort him. She described the respondent's supervision as an 'incredibly resource-intensive regime' and said that every hour spent with the respondent meant less time to be working

with other offenders. In response to a question referring to Dr Darjee's evidence that the respondent may need to have this level of supervision for up to a year, she said the regime is not sustainable for 'a long period of time'. As a matter of work health and safety policy, there are always two officers for all escorts regardless of the particular offender.

[70] In cross-examination, Ms Luke agreed that it was open to NTCS to reduce the number of outings for the respondent each week, and to refuse him permission to leave his residence if there was not staff available to escort him. She agreed that, if the respondent left the inclusion zone around his residence without that permission, it would be detected by his electronic monitoring device. Ms Luke was not able to say for what period of time NTCS would have the resources available to supervise and monitor the respondent in the way presently undertaken, including the three escorted outings per week.

[71] In cross-examination, Ms Luke said that she did not understand Dr Darjee's position that there was greater supervision being provided to the respondent after May 2024 than there was upon his initial release. Ms Luke said that Dr Darjee's oral evidence that the level of supervision, monitoring and restrictions was adequate did not change the opinion she expressed in the second supervision report to the effect that the respondent could not be appropriately managed and supervised in the community.

The expert psychiatric opinion evidence

[72] There appeared to be no dispute that, based on the psychiatric expert opinion evidence of both Dr Darjee and Dr Sullivan, the likelihood of the respondent committing another serious sex offence is high.

[73] The applicant submitted that the psychiatric expert opinion evidence of Dr Darjee and Dr Sullivan is 'ambivalent' about the adequacy of protection under the conditions of the interim supervision order.

[74] I disagree. As set out in paragraph [40] above, Dr Sullivan's initial opinion was that the risk of the respondent committing a further sexual offence could be managed adequately on a supervision order rather than a continuing detention order. As set out in paragraph [41] above, Dr Sullivan said he had real and ongoing concerns about the respondent's capacity and inclination to comply with a supervision order, and continued breaches would render a supervision order impracticable. Dr Sullivan was not called to give oral evidence.

[75] As I understand Dr Sullivan's evidence, he was of the opinion that the respondent's breaches of the conditions of the interim supervision order raised concerns about his future compliance with a supervision order, and *if* the respondent were to breach the conditions of a supervision order again, that would make clear that a supervision order was not appropriate to manage the respondent's risk. He did not say that the need to protect victims, likely victims, their families and

members of the community generally warrants a continuing detention order or that adequate protection could not reasonably be provided by a supervision order.

[76] As set out in paragraph [46] above, Dr Darjee's initial opinion was that the risk of the respondent committing a further sexual offence does not require a continuing detention order and it should be feasible to implement a risk management plan in the community to mitigate the risk. As set out in paragraph [47] above, Dr Darjee's opinion as set out in his second report was that, to prevent the respondent reoffending, he would require a much greater degree of monitoring, supervision and restrictions than upon his initial release. In his oral evidence, Dr Darjee opined that the respondent appeared to have been under strict and intensive monitoring with more strict attention being given to his conditions since his release in May 2024, the respondent requires monitoring at a level where he is not permitted to be unescorted, a restriction which would be necessary for months rather than weeks and could well be necessary for up to a year. As set out in paragraphs [48]-[50] above, Dr Darjee was of the opinion that the monitoring, supervision and restrictions the respondent had been subject to since his release from custody in May 2024 was the level of intensive monitoring, supervision and restrictions he was referring to in his second report, that the respondent appeared to now be abiding by the conditions of the interim supervision order, and since his release in

May 2024, the supervision, monitoring and restrictions upon the respondent were able to protect the community from him reoffending.

[77] As I understand Dr Darjee's evidence, he was of the opinion that adequate protection of victims, likely victims, their families and members of the community generally could reasonably be provided by a supervision order with conditions and management consistent with the interim supervision order and the way it was being implemented, and the need for protection did not warrant a continuing detention order.

[78] Consequently, the psychiatric opinion evidence from both experts was essentially that adequate protection of victims, likely victims, their families and members of the community generally could reasonably be provided by making a supervision order in the same terms as the interim supervision order, to be implemented by NTCS in the same way as has been done since May 2024, and it is not the case that the need for protection could only reasonably be provided by making a continuing detention order.

Reasonably practicable for Commissioner to ensure respondent is appropriately managed and supervised

[79] When a court is deciding whether to make, amend or revoke a supervision order (a final or an interim supervision order) in relation to a person, in considering the need for protection referred to in s 14(2)(a), the Court must have regard to whether it will be reasonably

practicable for the Commissioner of Correctional Services to ensure that the person is appropriately managed and supervised as mentioned in s 63 (s 14(3)(b)).

[80] There do not appear to be any authorities which have considered the meaning of the term 'reasonably practicable' in the context of the Act or its equivalents in other jurisdictions.

[81] In *Slivak v Lurgi (Australia) Pty Ltd*,[9] Gaudron J made some observations about the words 'reasonably practicable' (albeit in a very different context from the present). Her Honour was in the minority in the result, but these observations have been followed numerous times.[10] Her Honour said (at [53]):

> The words 'reasonably practicable' have, somewhat surprisingly, been the subject of much judicial consideration. It is surprising because the words 'reasonably practicable' are ordinary words bearing their ordinary meaning. And the question whether a measure is or is not reasonably practicable is one which requires no more than the making of a value judgment in the light of all the facts. Nevertheless, three general propositions are to be discerned from the decided cases:
>
> - the phrase 'reasonably practicable' means something narrower than 'physically possible' or 'feasible';
>
> - what is 'reasonably practicable' is to be judged on the basis of what was known at the relevant time;

---

9 *Slivak v Lurgi (Australia) Pty Ltd* (2001) 205 CLR 304 at [53] per Gaudron J.

10 See, for example, *Saunders Civilbuild Pty Ltd v SafeWork New South Wales* [2023] NSWCCA 261 at [186] per Walton J; *Director of Public Prosecutions (Vic) v Vibro-Pile (Aust) Pty Ltd* (2016) 49 VR 676 at [54] per Maxwell P, Redlich and Whelan JJA; *Powercoal Pty Ltd v Industrial Relations Commission of New South Wales* (2005) 156 A Crim R 269 at [84] per Spigelman CJ; *McDonald v Girkaid Pty Ltd* (2004) Aust Torts Reports 81-768 at [195] per McColl JA.

- to determine what is ‘reasonably practicable’ it is necessary to balance the likelihood of the risk occurring against the cost, time and trouble necessary to avert that risk. [*citations omitted*]

[82] These observations about the term ‘reasonably practicable’ are of some assistance in the present context, but it must be borne in mind that the consequence of a finding that the person’s appropriate management and supervision is beyond the limit of what is ‘reasonably practicable’ may be the continuing detention of a person beyond the term for which they were sentenced for the offending.

[83] As set out in paragraphs [67] and [71] above, Ms Luke’s opinion was essentially that adequate protection could only reasonably be provided by making a continuing detention order, and that it was not reasonably practicable to ensure that the respondent is appropriately managed and supervised as required by s 63 of the Act. This opinion was based, in part, upon Dr Darjee’s opinion that a higher degree of supervision, monitoring and restrictions was required than the respondent had been under when first released, and her understanding that the respondent was effectively under the same regime when he was released in May 2024, leading her to disregard Dr Darjee’s opinion that the present regime under the interim supervision order was adequate.

[84] While almost all of the respondent’s supervision, monitoring and restrictions regime was the same between the two periods, it is apparent that, upon his initial release, he had an internet capable phone

and access to social media, which he was not permitted to have after his release in May 2024. That is a higher restriction than he was previously subject to. That internet capable phone was also the means by which the respondent committed the breaches of the interim supervision order. Its absence is a significant difference between the two regimes, and explains Dr Darjee's opinion that the regime following the respondent's release in May 2024 was adequate. In any event, even if Dr Darjee erroneously understood that the supervision regime after May 2024 was at a higher level than it had previously been, that does not diminish the force of his opinion, aware of the scope, operation and effect of the regime after May 2024, that it was adequate to address the respondent's risk. Consequently, this basis for Ms Luke's opinion was largely unfounded.

[85] The other basis for Ms Luke's opinion was essentially that the regime of supervision, management and restrictions under the interim supervision order is staff resource-intensive to a degree which is not sustainable or justifiable in the long-term (i.e. for the duration of up to a year) when there are other offenders in respect of whom the staff resources could be utilised.

[86] The question for the Court is whether the resource-intensive nature of the regime over a period of up to a year means it will not be reasonably practicable to ensure the respondent is adequately managed and supervised on a supervision order.

[87] Relevant to that question is the fact that the regime has been in place now for a period of around five months since the respondent's release in May 2024. It has been feasible to supervise and manage the respondent under the regime for that period, which is a significant portion of the period suggested by Dr Darjee as the potential outer limit of the duration of the intensive regime he considered to be appropriate.

[88] Also relevant to that question is the availability of NTCS staff resources to implement the regime for the necessary period of time. There was no evidence to the effect that, generally speaking, those resources are unavailable or will cease to be available at some point in the future. Rather, Ms Luke's evidence was to the effect that, if the respondent was not subject to the supervision order, the resources utilised to supervise and manage him could be utilised for other offenders.

[89] It is an inherent aspect of the public provision of services through human resources that providing those services to one recipient thereby denies the provision of those services to other recipients. It is necessarily incumbent on those who administer the services to allocate them to the demands for them as best they can.

[90] Ms Luke gave two instances of when the respondent was permitted to leave his residence unescorted due to an unavailability of staff to

escort him. As the respondent's counsel pointed out, the terms of the interim supervision order are such that permission to leave the residence is at the discretion of the respondent's PPO and can be refused if that is considered necessary. The respondent's counsel also pointed out that, if it were necessary, the number or duration of weekly outings for which the respondent is escorted could be reduced.

[91] The applicant submitted that there is an absence of evidence that the respondent is willing and able to comply with the conditions of a supervision order because he had only been subject to it, and complying with its terms, for 75 days between his release in May 2024 and the date of the hearing. That submission is not particularly persuasive when it is commonly the situation for most (perhaps almost all) serious sex offenders who have been in custody and are being considered for a supervision order that there is no or little evidence about their capacity to comply with the terms of a supervision order upon their release from custody.

[92] The applicant also submitted that the fact that Ms Wood, the psychologist who had been treating the respondent for a considerable period of time, would be taking extended leave added a layer of uncertainty and unpredictability to the respondent's future compliance with the terms of the supervision order. Whilst it may be accepted that continuity of treating professionals is preferable for stability in an offender's management, there was no suggestion that the respondent

would be without treatment following Ms Wood's departure. Her evidence was that there are other senior psychologist's within NTCS who could take over the respondent's treatment in her absence.

[93] It is also relevant to consider that, if the respondent is not subject to a supervision order, he must be subject to a continuing detention order, but there is no evidence to suggest that a further period in detention would have any impact upon his future capacity or willingness to comply with the conditions of a future supervision order or the nature and scope of such conditions or the way the respondent might be supervised and managed under them. Nor is there any evidence to suggest that, at some future point in time, there would be more staff resources available to NTCS than there are now.

[94] The applicant sought to equate the respondent's situation with a serious sex offender for whom the appropriate risk management regime is placement in a 'step-down' secure residential facility. The applicant indicated that given there is no such facility in the Northern Territory, it is not reasonably practicable for the Commissioner to ensure that the person is appropriately managed and supervised, with the consequence that adequate protection could only reasonably be provided by making a continuing detention order. I do not accept that. The expert psychiatric evidence does not characterise the respondent as requiring such a residential placement; it accepts that the respondent's risk can be appropriately managed under a supervision order. Further, it is not

the case that the necessary regime is not available in the Northern Territory. On the contrary, the necessary regime has been and is being undertaken.

[95] For the reasons set out above, I am not satisfied that it will not be reasonably practicable for the Commissioner to ensure that the respondent is appropriately managed and supervised.

Conclusions

[96] Having regard to the body of evidence, and for the reasons set out above, taking into account the paramount consideration of the need for protection as well as the secondary consideration regarding rehabilitation, I find that it would be appropriate to make a final supervision order in relation to the respondent, with conditions for supervision and management consistent with those in the interim supervision order, given my satisfaction that he is a serious danger to the community in the relevant sense.

[97] Having regard to the risk of reoffending which the respondent presents, and the conclusions I have drawn above, I find that it will be reasonably practicable for the Commissioner of Correctional Services to ensure that the respondent is properly managed and supervised under a final supervision order in those terms.

[98] Further, I am not satisfied that adequate protection could only reasonably be provided by making a continuing detention order at this point.

Disposition

[99] I make the following orders.

1. Pursuant to s 31 of the *Serious Sex Offenders Act 2013* (NT) ('the Act'), the respondent is subject to a final supervision order for a period of five years, which order is subject to the following requirements.

2. Pursuant to s 18 (compulsory requirements) of the Act:

   (a) the respondent must not commit:

      (i) a serious sex offence; or

      (ii) an offence of a sexual nature;

   (b) the respondent must report to a probation and parole officer as directed by a probation and parole officer;

   (c) the respondent must receive visits and accept communications from a probation and parole officer as directed by a probation and parole officer;

   (d) the respondent must give to a probation and parole officer information about his place of residence and place of employment or education as directed by a probation and parole officer;

(e) the respondent must not leave, or stay out of, the Northern Territory without the permission of a probation and parole officer; and

(f) the respondent must comply with any directions that a probation and parole officer gives to him pursuant to s 20 of the Act, as part of this supervision order.

3. Pursuant to s 18(2) of the Act, there are no matters about which a probation and parole officer cannot give directions to the respondent pursuant to s 20 of the Act.

4. Pursuant to s 19 (optional requirements) of the Act:

(a) the respondent must take any medication prescribed for him by a medical practitioner for as long as recommended by a medical practitioner;

(b) the respondent must reside and remain at a location specified by a probation and parole officer and until otherwise determined must not leave the premises at any time of the day or night without first obtaining permission from a probation and parole officer, except in the case of a personal medical emergency;

(c) the respondent must not purchase, possess or consume alcohol or remain in the presence of any person consuming alcohol and must

submit to testing as directed by a probation and parole officer for the purpose of detecting the presence of alcohol;

(d) the respondent must not purchase, possess or consume any dangerous drug or remain in the presence of any person consuming a dangerous drug and must submit to testing as directed by a probation and parole officer for the purpose of detecting the presence of any dangerous drug;

(e) the respondent must have attached and wear any monitoring device if directed to do so by a probation and parole officer;

(f) the respondent must allow the placing and installation of anything necessary for the effective operation of any monitoring device he is required to wear;

(g) the respondent must comply with the Rules for Electronic Monitoring;

(h) the respondent must comply with any direction given by a probation and parole officer to participate in any specified rehabilitation, care or treatment and structured day activities provided by his probation and parole officer;

(i) the respondent must permit a probation and parole officer to access his place of residence at all times for the purposes of

ensuring compliance with the terms of this supervision order and to search for and seize any thing he is not permitted to possess;

(j) the respondent must not have possession or control of a firearm or a prohibited weapon, a controlled weapon or an offensive weapon within the meaning of the *Weapons Control Act 2001* (NT);

(k) the respondent must disclose to a probation and parole officer the details of any person who he enters into a relationship with, including the full name of the person;

(l) the respondent must have no contact with children under the age of 18 years except in the presence of an adult who has been approved for the purposes of this order by a probation and parole officer;

(m) the respondent must not possess, purchase, obtain, use or acquire by any means any device with Internet capabilities, other than with the written approval and subject to the conditions imposed in such approval by a probation and parole officer;

(n) the respondent must disclose his offending history to any prospective partner or employer;

(o) the respondent must not, without lawful reason and approval of a probation and parole officer, enter any private premises other than his own residence;

(p) the respondent will be subject to a curfew as directed by a probation and parole officer; and

(q) the respondent must remain on the Banned Drinkers Register.
