

SUPREME COURT OF QUEENSLAND

CITATION: *Tiers v Attorney-General for the State of Queensland* [2026] QCA 191

PARTIES: **ALGANA TIERS**
(appellant)
v
ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND
(respondent)

FILE NO/S: Appeal No 3325 of 2026
SC No 7580 of 2010

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal

ORIGINATING COURT: Supreme Court at Brisbane – [2026] QSC 164 (Kelly J)

DELIVERED ON: 29 September 2026

DELIVERED AT: Brisbane

HEARING DATE: 9 September 2026

JUDGES: Mullins P, Boddice JA, Davis J

ORDERS: **1. The appeal be allowed.**
2. The orders below be set aside.
3. The application for a further supervision order be dismissed.

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the respondent made an application for the appellant to be subject to a further supervision order pursuant to Division 4A of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) – where the primary judge made an interim supervision order until the final determination of that application – where the appellant appeals those orders – where the appellant contends that there were no reasonable grounds to believe that the appellant was a serious danger to the community in the absence of a supervision order as either that finding was not reasonably open on the evidence or that finding was incorrect – where the appellant further contends that the primary judge erred in finding that the appellant was suffering from substance abuse disorders because the evidence did not support such a finding – where

a psychiatrist's report opined that the appellant had previously met those diagnoses – where that report recorded the appellant's low risk of reoffending was not affected by the imposition of a supervision order – where the report further recorded that given the period of time since the index offending, the error for the measurement of risk is greater than usual – where the primary judge found the psychiatrist's evidence was significantly qualified by that remark – whether there was a basis to be satisfied on reasonable grounds that the appellant would be a serious danger to the community in the absence of a supervision order

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 8, s 13, s 19B, s 19D, s 23, s 24

Attorney-General for the State of Queensland v Ruhland (2020) 3 QR 449; [2020] QSC 33, applied
House v The King (1936) 55 CLR 499; [1936] HCA 40, applied

COUNSEL: C J Tessmann for the appellant
 J M Horton KC, with J B Rolls, for the respondent

SOLICITORS: Legal Aid Queensland for the appellant
 C E Christensen, Crown Solicitor for the respondent

- [1] **MULLINS P:** I agree with Boddice JA.
- [2] **BODDICE JA:** On 26 June 2026, the primary judge ordered that the respondent's application, for the appellant to be subject to a further supervision order pursuant to Division 4A of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) (**the Act**), be listed for hearing.
- [3] As part of those orders, the primary judge, pursuant to s 19D(2) of the Act, made an interim supervision order. It required that the appellant be subject to the requirements of a supervision order made on 25 May 2020, as amended on 21 May 2021 and as further amended on 9 April 2026, until the final determination of the application.
- [4] The appellant appeals the primary judge's orders on three grounds.
- [5] First, that the primary judge's satisfaction that there were reasonable grounds for believing the appellant is a serious danger to the community, in the absence of a further supervision order, was not reasonably open.
- [6] Second, that on the evidence, the primary judge's satisfaction that there existed reasonable grounds for believing the appellant is a serious danger to the community in the absence of a further supervision order, was incorrect.
- [7] Third, that the primary judge erred in finding that the appellant will suffer from alcohol and cannabis abuse disorders if released to the community without supervision because those findings were not reasonably open on the evidence.

Background

- [8] The appellant is a 40 year old Indigenous man.

- [9] In 2002, when aged 15, the appellant committed the offences of entering a dwelling and committing an indictable offence, rape and grievous bodily harm. The victim was a four year old female. The offences occurred after the appellant made sexual advances to another female, which were rejected. The appellant then entered a house where the victim was sleeping. He assaulted and violently raped her, causing her serious injuries. At the time of the commission of the offences, the appellant had heavily abused alcohol and marijuana.
- [10] In April 2003, the appellant was sentenced to an effective term of 8 years and 6 months' imprisonment for those offences. Prior to the appellant's release from custody, the respondent successfully brought proceedings under Division 3 of the Act. An order was made that the appellant be released from custody, subject to a supervision order, for a period of five years.
- [11] During the period of that supervision order, the appellant was found to have contravened the supervision order on six separate occasions. On each of those occasions, the appellant was released, subject to an amended supervision order. The contravention proceedings included breaches of conditions as to curfews, abstinence from the use of alcohol, prohibition in respect of visiting licensed premises without permission and the ingestion of illicit substances.
- [12] The appellant returned to custody pending determination of the various contravention hearings, and as a consequence,¹ the supervision order was still in operation in April 2016 when the appellant was the subject of a further contravention proceeding. The appellant was found to have breached conditions as to curfew, accommodation and complying with the reasonable directions of a Corrective Services officer. It was ordered that the supervision order be rescinded and the appellant be detained in custody indefinitely.
- [13] In June 2017, the continuing detention order was ordered to be rescinded. It was further ordered that the appellant be released, subject to a supervision order, for five years. Within months of his release, the appellant was arrested following allegations that he had contravened the supervision order by consuming alcohol and breaching other conditions.
- [14] In October 2018, the contravention of conditions in respect of alcohol was found proven. It was ordered that the supervision order be rescinded and that the appellant be detained in custody indefinitely.
- [15] In May 2020, the continuing detention order was rescinded. It was ordered that the appellant be released, subject to a supervision order for five years (**the relevant supervision order**).
- [16] During the operation of the relevant supervision order, the appellant was the subject of three separate contravention proceedings. In the first contravention proceeding, the appellant was found to have contravened by consuming alcohol. In the second, he was found to have contravened by consuming cannabis and using social media to have contact with a female who had children. In the third, he was found to have contravened by consuming amphetamines/methylamphetamine. On each occasion, the appellant was ordered to be released, subject to the existing supervision order.

¹ Sections 23 and 24 of the Act; *Attorney-General for the State of Queensland v Ruhland* [2020] QSC 33 at [19].

- [17] Due to periods of incarceration consequent on those contravention proceedings, the supervision order did not expire until 27 June 2026. In April 2026, the appellant was found to have further contravened the relevant supervision order by consuming amphetamines and/or methylamphetamine. The appellant was ordered to be released subject to the relevant supervision order, which was amended to permit the appellant to consume alcohol up to a blood alcohol concentration of 0.05.

Proceeding below

- [18] Prior to expiry of the relevant supervision order, the respondent applied for a further supervision order. It was at the preliminary hearing of that application that the orders, the subject of this appeal, were made by the primary judge.
- [19] The preliminary hearing was held pursuant to Division 4A of the Act. Relevantly, it provides that for the purposes of an application for a further supervision order, the provisions of Division 3 of the Act apply with the modifications set out in s 19D. As a consequence, whether an interim supervision order pending determination of the final hearing of the application is made depended on satisfaction of the test set out in s 8(1) of the Act. It provides:

“8 Preliminary hearing

- (1) If the court is satisfied there are reasonable grounds for believing the prisoner is a serious danger to the community in the absence of a division 3 order, the court must set a date for the hearing of the application for a division 3 order.”
- [20] At the preliminary hearing, evidence was given by a psychiatrist, Dr Harden, and a psychologist, Dr Madsen, by way of written reports dated 17 March 2026 and 11 February 2026 respectively. Neither were cross-examined on those reports. The primary judge also had evidence as to the appellant’s criminal history, previous psychiatric and psychological assessments and the appellant’s performance in Corrective Services facilities and under past court orders.
- [21] Dr Harden, who had examined the appellant on seven occasions between 2009 and 2025, observed that the appellant’s only past history of sexual offending was the sexual offence committed in 2002. In his opinion, that offending most likely occurred as a result of a combination of factors, including a sense of sexual entitlement, drug and alcohol intoxication and abuse, anti-social attitudes and an opportunistic exploitation of the availability of a victim. Dr Harden opined that there was no information to suggest a paraphilic component. Further, whilst the appellant still met the criteria for anti-social personality disorder, he had likely declined to the milder end of the spectrum. Dr Harden noted that the appellant previously had met criteria for alcohol abuse, marijuana abuse, inhalant abuse and opiate abuse.
- [22] As to the risk of future sexual offending, Dr Harden noted that as the appellant had only one catastrophic sexual offence, committed a long time ago, the error for measurement of risk must be greater than usual. Notwithstanding that caveat, Dr Harden opined that on all of the available information, the appellant’s current risk of sexual re-offending “is now low”.
- [23] After recording that there had been a significant decline in the appellant’s risk of sexual offending in the 24 years that had elapsed since the commission of that one sexual offence, Dr Harden further opined that the risk of sexual re-offending was no

longer further reduced by the imposition of a supervision order. The risk of sexual re-offending with or without a supervision order was in the low range.

- [24] Subsequent to the delivery of his report, Dr Harden clarified what he meant by “low”. Dr Harden said the average risk of a person convicted of a hands-on sexual offence committing another sexual offence was about 15 to 17 per cent after a period of five years and that a low risk was below that risk level.
- [25] Dr Madsen, who was the appellant’s most recent treating psychologist, recorded that he had completed eight sessions with the appellant from August 2025 to February 2026 and had, between 2019 and 2020, completed a further seven sessions. In his opinion, the appellant was a general anti-social offender, rather than a specialist sexual offender. After noting that the anti-social traits had mellowed and that there was no evidence of paraphilic interest, sexual deviance or subsequent sexual offences despite having been in the community since 2010, Dr Madsen opined that the appellant’s conduct was not indicative of sexual risk escalation.

Primary decision

- [26] The primary judge found satisfaction that there were reasonable grounds for believing that the appellant is a serious danger to the community, in the absence of a Division 4A order. The primary judge gave the following reasons:

“First, it is noteworthy that the respondent’s submission was to the effect that the matter of ‘greatest weight’ was Dr Harden’s opinion. I have read Dr Harden’s opinion with some care, and it is an opinion which, in my consideration, is significantly qualified. The qualification, which I have already set out, is to the effect that because Dr Harden was dealing with only one catastrophic sexual offence committed a long time ago, ‘the error of measurement in any comments on risk must of course be greater than usual (that is there is a greater than usual chance that the likelihood of reoffending could be either greater or less than that stated in my opinion).’ I read that qualification as meaning that in Dr Harden’s view there is a greater than usual chance that the likelihood of reoffending could, relevantly, be greater than that stated in his opinion.

I have also had regard to the offending itself, which I have already described. It was extremely serious sexual offending which occurred in opportunistic circumstances whilst [the appellant] was intoxicated. I note the historical nature of that offending, but the circumstances in which it occurred, whilst [the appellant] was intoxicated and its opportunistic nature, are matters which are noteworthy. Whilst it may be said that there has been no further sexual offending committed by [the appellant], that result falls to be considered in a context where [the appellant] has for a very significant period of time been either in incarceration or on supervision. By reason of those features, [the appellant] has had a very significantly reduced opportunity to engage in sexual offending.

I have had careful regard to [the appellant’s] history on the various orders. It is a history which, adopting the characterisation of the Attorney-General’s counsel, reflects chaotic episodes and regular non-

compliance, including regular disregard of requirements in relation to alcohol and illicit drugs. I am also conscious that, according to Dr Harden, it is uncontroversial that [the appellant] meets diagnostic criteria for antisocial personality disorder, alcohol abuse disorder, marijuana abuse disorder, inhalant abuse disorder and opiate abuse disorder. Acknowledging that views might differ as to the satisfaction of the existence of reasonable grounds, I am satisfied that there are reasonable grounds for the belief required by s 8(1) of the Act. As matters presently stand, without an order, [the appellant] is to go out into the community with identified diagnoses of, inter alia, alcohol abuse, marijuana abuse, inhalant abuse, and opiate abuse disorders in circumstances where his most recent episode of consumption of an illicit drug or substance in disregard of a requirement of his order involved amphetamines. He would go into the community with no supervision, where that recent use of amphetamines was apparently caused by anxiety he was experiencing as a result of the prospect of his release into the community. The existence of alcohol and cannabis abuse disorders, in my consideration, are relevant to the assessment or consideration of reasonable grounds. In the community without supervision, suffering from those disorders, [the appellant] would have increased opportunities to be exposed to cannabis and alcohol, and increased opportunities to offend. The catastrophic sexual offence, albeit historical, was offending which was opportunistic and which occurred whilst he was intoxicated. Viewing all of these matters cumulatively and noting what I regard to be a significant qualification contained in Dr Harden's opinion, I have reached the level of satisfaction I have earlier outlined in relation to the requirements of s 8(1) of the Act.

I have decided to exercise my discretion to make an order in terms of the draft provided by the Attorney-General's counsel. In terms of the interim order, I consider that such an order, amongst other things, provides an ongoing framework through which [the appellant] can receive assistance to remain abstinent from alcohol and drugs with a view to his reintegration into the community. I accept the Attorney-General's counsel's submission that in those respects this type of order reflects the proper exercise of my discretion in the circumstances of the case. I will make an order as per the draft order provided by the Attorney-General's counsel."

Consideration

- [27] Grounds 1 and 2 essentially concern the same issue, with the determination of either being dependent upon whether it necessary to establish discretionary error, in accordance with *House v The King* error,² or error on the correctness standard in an appeal against a finding of satisfaction that there are reasonable grounds for believing a person is a serious danger to the community in the absence of a further supervision order.
- [28] In the present case, it is unnecessary to determine whether the applicable standard for the determination of the necessary satisfaction is the correctness test, or a *House v The King* error. The appellant has established error, on either basis.

² (1936) 55 CLR 499.

- [29] First, the relevant satisfaction is premised on reasonable grounds for believing the appellant represented an unacceptable risk of committing serious sexual offences in the absence of a further supervision order. The Court could only reach that satisfaction if there was a proper basis not to accept Dr Harden's evidence as to a supervision order having no effect on the appellant's risk of committing a serious sexual offence in the future. There was no such basis.
- [30] The expert psychiatric evidence was that the appellant was a "low" risk of committing a serious sexual offence in the future, with or without a supervision order. Although Dr Harden qualified his opinion, noting the fact that the appellant had only one previous sexual offending and that there was significant scope for error in the assessment of risk, that qualification did not permit the rejection of his clear evidence that the appellant's "low" risk of committing a serious sexual offence in the future was not affected by the imposition of a supervision order. The only evidence was that the presence of an order made no difference.
- [31] The erroneous rejection of Dr Harden's evidence was central to the primary judge's conclusion that there was the requisite satisfaction. Reliance upon it rendered that conclusion incorrect. It also meant the exercise of any discretion miscarried, thereby establishing a *House v The King* error.
- [32] Second, a finding that the appellant "is to go out into the community with identified diagnoses of, inter alia, alcohol abuse, marijuana abuse, inhalant abuse and opiate abuse disorders" was not consistent with Dr Harden's opinion. While the executive summary of his report referred to diagnoses of "Antisocial Personality Disorder and Alcohol Abuse, Marijuana Abuse, Inhalant Abuse and Opiate abuse", the body of the report drew a distinction on Dr Harden's report that the appellant "still meets diagnostic criteria for Antisocial Personality Disorder", and had *previously* met criteria for those other diagnoses. Dr Harden did not opine that the appellant *currently* met the diagnostic criteria for any of those substance abuse disorders. It was therefore not correct to characterise the appellant as going into the community currently having those diagnoses.
- [33] That distinction was important. The appellant had committed only one sexual offence, despite having been in the community, albeit subject to a supervision order, for over 15 years. Whilst the index sexual offending was opportunistic, extremely serious and occurred in the context of intoxication and the appellant had regularly not complied with supervision order conditions in relation to the abstinence in respect of alcohol and illicit drugs, that non-compliance had not resulted in any contravention of a sexual nature.

Orders

- [34] I would order:
1. The appeal be allowed.
 2. The orders below be set aside.
 3. The application for a further supervision order be dismissed.
- [35] **DAVIS J:** I agree with the orders proposed by Boddice JA and the reasons which his Honour gives for the making of those orders. I add the following remarks.

- [36] The orders the subject of appeal are as described in the reasons of Boddice JA, but in addition there was an order that the appellant undergo examination by two psychiatrists, Dr Elizabeth McVie and Dr Anna Lenardon.
- [37] The pivotal provision of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) is s 13. It is that section which authorises the making of continuing detention orders and supervision orders against prisoners who have served their full sentence of imprisonment.
- [38] Central to s 13, and indeed many other provisions of the Act, is the assessment of risk of the respondent committing a serious sexual offence.³ The Act contemplates that the assessment of risk will largely be conducted upon an assessment of expert psychiatric evidence.⁴
- [39] No citizen is obliged, absent statutory provision or court order, to consent to psychiatric assessment at the behest of the executive. That issue is overcome by s 8 of the Act which provides for a preliminary hearing. The Court must be satisfied “there are reasonable grounds for believing the prisoner is a serious danger to the community in the absence of a [s 13] order”. Only if that test is satisfied does the authority exist in the Court to order a respondent to submit to psychiatric examination.
- [40] If the Attorney-General is successful in the preliminary application, a respondent will usually be ordered to submit to examination. Those examinations will be conducted and the Attorney-General would by that process obtain evidence to then seek orders under s 13.
- [41] Section 19B of the Act provides that where a supervision order has been made and that order is expiring, the Attorney-General may apply for a further supervision order. That is the application which was made here.
- [42] By s 19D, s 8 and other provisions relevant to an application under s 13 are applied to any application brought for a further supervision order. The effect is that an application for a further supervision order, like an application made for orders under s 13, is determined on an assessment of risk of the commission of a serious sexual offence. That application is contemplated to be supported by expert psychiatric evidence. There is a preliminary hearing where a respondent may be ordered to submit to psychiatric examination.
- [43] The test which is applied at the preliminary hearing for a further supervision order is the same as the test applied under s 8. As explained by Boddice JA, the question for the primary judge was whether he was satisfied that “there are reasonable grounds for believing the [appellant] is a serious danger to the community in the absence of [a further supervision order]”.
- [44] The only psychiatric evidence relied upon to allegedly support the Attorney-General’s application was the evidence of Dr Harden. That evidence, as explained by Boddice JA, does not support the application. To the contrary, Dr Harden was of the view that the appellant’s risk of committing a serious sexual offence was low, and that a further supervision order would have no effect upon the risk.

³ Sections 5, 8, 11, 19D.

⁴ Sections 8, 11, 12, 13(4)(a), 19D(1)(f).

- [45] Dr Harden is a recognised expert in this area. He is often called to give evidence on behalf of the Attorney-General in cases brought under the Act. The Attorney-General routinely urges the Court to accept Dr Harden's evidence in such cases.
- [46] The Attorney-General could never be successful in obtaining a further supervision order if Dr Harden's evidence was accepted. Presumably then, the hope was that the doctors who, pursuant to order, would examine the appellant, may, contrary to Dr Harden's opinion, identify risk justifying the making of a further supervision order. That is not the statutory scheme. The Attorney-General must satisfy the reasonable grounds test before a respondent may be ordered to undergo further examination.
- [47] The apparent inconvenience of Dr Harden's evidence was sought to be overcome by a submission that Dr Harden qualified his opinion by observing that the only sexual offence committed by the appellant was one offence committed 24 years ago and that fact makes assessment of risk more difficult. As already observed, the only expert psychiatrist opinion relied upon was that of Dr Harden. A psychologist, Dr Madsen, provided a report, but as observed by Boddice JA, Dr Madsen's opinions also did not assist the Attorney-General; quite the contrary. If that qualification to Dr Harden's opinion does cast real doubt upon his evidence, then the Attorney-General is left with no reliable psychiatric evidence relevant to the application.
- [48] The primary judge was urged, in the absence of supporting psychiatric evidence, and in the face of contrary psychiatric and psychological evidence, to draw the necessary conclusion as to risk based on alleged recent alcohol abuse by the appellant, and the fact that 24 years ago the only sexual offence that has ever been committed by the appellant, was committed whilst he was under the influence of alcohol.
- [49] I agree with Boddice JA that there was no proper basis for the satisfaction that there were reasonable grounds for believing the appellant is a serious danger to the community in the absence of a further supervision order.
- [50] The Act bestows powers upon the Attorney-General to seek orders which severely curtail the basic civil rights of a respondent. There are significant restrictions upon movement and freedom by the imposition of a supervision order. The making of a supervision order can lead to incarceration upon breach.⁵
- [51] In my view, there was no evidence justifying the bringing of the application for a further supervision order.

⁵ Sections 20, 21, 22, 43AA.