

CITATION: *The Queen v RK & Ors* [2019] NTSC 67

PARTIES: THE QUEEN

v

RK

and

CHIEF EXECUTIVE OFFICER
DEPARTMENT OF HEALTH

and

NORTHERN TERRITORY
COMMISSIONER OF
CORRECTIONAL SERVICES

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory
jurisdiction

FILE NO: 21423593

DELIVERED: 23 August 2019

HEARING DATES: 27 February 2019; 3 April 2019; 6 June
2019 and 15 August 2019

JUDGMENT OF: BLOKLAND J

CATCHWORDS:

CRIMINAL LAW — Mental impairment — Part IIA *Criminal Code Act 1983* (NT) — Periodic review of custodial supervision order under s 43ZH(2) of the *Criminal Code Act 1983* (NT) — Whether to vary custodial supervision order to non-custodial supervision order – Satisfied on the

evidence available that the safety of the supervised person or the public will be seriously at risk if the supervised person is released on a non-custodial supervision order with appropriate conditions — Custodial supervision order confirmed.

Briginshaw v Briginshaw (1938) 60 CLR 336; *The Queen v KMD* [2017] NTSC 18; *The Queen v JW (No 2)* [2017] NTSC, referred to.

Criminal Code Act 1983 (NT) s 43ZG, s 43ZH (2), s 43ZK

REPRESENTATION:

Counsel:

Crown:	M Nathan SC
Defence:	J Murphy and D Thomas
CEO NT Department of Health:	R Brebner
Commissioner of Correctional Services:	S Monck

Solicitors:

Crown:	Director of Public Prosecutions
Defence:	North Australian Aboriginal Justice Agency
CEO NT Department of Health:	Solicitor for the Northern Territory
Commissioner of Correctional Services:	Solicitor for the Northern Territory

Judgment category classification:	C
Judgment ID Number:	BLO1906
Number of pages:	21

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

The Queen v RK & Ors [2019] NTSC 67
No.21423593

BETWEEN:

THE QUEEN
Appellant

AND:

RK
Respondent

AND:

**CHIEF EXECUTIVE OFFICER
DEPARTMENT OF HEALTH**

AND:

**NORTHERN TERRITORY
COMMISSIONER OF
CORRECTIONAL SERVICES**

CORAM: BLOKLAND J

REASONS FOR JUDGMENT

(Delivered 23 August 2019)

Ruling on periodic review of the custodial supervision order

- [1] The Court has conducted a periodic review under s 43ZH of the *Criminal Code Act 1983* (NT) (*'Criminal Code'*) of a Custodial Supervision Order

(‘CSO’) with respect to RK (‘the supervised person’). The purpose of the review is to determine whether the supervised person the subject of the s 43ZK report may be released from the supervision order, or may be subject to a varied order once the details under s 43ZK are provided.

- [2] On completion of the review s 43ZH(2) provides the Court ‘must’ vary the CSO to a Non-Custodial Supervision Order (‘NCSO’) unless satisfied on the evidence available that the safety of the supervised person or the public will be seriously at risk if the person is released on an NCSO. If the Court is so satisfied of the serious risk the Court may either confirm the order or vary the conditions of the order, including the place of custody where the supervised person is detained.
- [3] Counsel for the supervised person argues the Court should not confirm the CSO, but rather order an NCSO. While I understand the objections to the CSO continuing, given at previous times the somewhat chaotic history of the provision of services to the supervised person and the length of time the supervised person has been subject to the CSO, I am nevertheless satisfied that at this time, based on the material before the Court, he presents a serious risk to the safety of himself or the public. It is the case that many of the previous behaviours of concern have not been present in the last four months, however, the supervised person’s complex conditions and needs, together with previous unsuccessful attempts to have him transition into the community and the current risk assessments lead to the conclusion that

further stages of the transition programme should be completed before the CSO should be varied.

- [4] It is accepted here, as submitted on the supervised person's behalf, that a major aim of Part IIA of the *Criminal Code* '[Is] to assist the supervised person to successfully integrate into the community [without serious risk]'.¹ Further, as an overarching principle when making a decision under Part IIA, the Court 'must apply the principle that restrictions on a supervised person's freedom and personal autonomy are to be kept to the minimum that is consistent with maintaining and protecting the safety of the community'.²
- [5] It is also accepted that given the serious intrusions into the liberty of the supervised person and the serious consequences of a CSO, the principle articulated in *Briginshaw v Briginshaw*³ applies. That principle provides that the requisite degree of proof is enhanced so that matters to be proven should be firmly established, not reliant on inexact proofs or evidence. The standard is still the balance of probabilities, albeit significantly enhanced as described in *Briginshaw*. The Chief Executive of the Department of Health bears the onus to demonstrate the serious risk. In this instance, Senior Counsel for the Director of Public Prosecutions and counsel for the Commissioner of Corrections also support the current position of the Chief Executive of the Department of Health.

¹ *The Queen v KMD* [2017] NTSC 18 at [33].

² *Criminal Code Act 1983* (NT) s 43ZM.

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

[6] Counsel for the supervised person submitted the Court should vary the CSO to a NCSO, with a direction the supervised person be directed or ordered to live at the Cottages, a facility on the grounds of the Darwin Correctional Precinct staffed by disability support workers and administered under the *Disability Services Act 1993* (NT). The material before the Court clearly shows that until there is further progress towards transitioning to life in the Cottages, there would be an unacceptably serious risk to the public. It is accepted that much of the material put before the Court relies on the history of problematic aggressive behaviours on the part of the supervised person. It is also accepted that the supervised person is not likely to randomly attack members of the public. It is not that type of situation. The evidence clearly shows that without being stepped through a proper process of transition, treatment and support, he is at risk of his behaviours escalating or breaching the terms of the existing order. Persons such as police or other first responders would then be at serious risk. The Cottages are not a secure premises, however they are appropriate for the provision of certain services such as those required by the supervised person. The supervised person at this time in my view needs to complete a greater proportion of the transition plan in order that the serious risks are appropriately reduced.

[7] It is appreciated that to continue the CSO the risk must be ‘serious’. There will always be some element of risk present. It is not sufficient to simply find some risk. Further, the decision must not be based on what is in the

‘best interest’ of the supervised person. The inquiry is focussed on whether there is an actual serious risk.⁴

- [8] It is also appreciated that a CSO is an extraordinary order. A person subject to a CSO has not been found guilty of an offence. As is the case here, the supervised person suffers profound cognitive and other conditions. There are also significant cultural issues at play given the supervised person has only previously lived on the Tiwi Islands, his family reside there and want him to return. The ultimate plan is that he be returned to Wurramyanga, but the risk he presents in a non-custodial setting, without further progression of the transition is serious. At times the support offered to the supervised person has not been appropriate and more training was required to be provided to both correctional staff and the Office of Disability (‘OOD’) support workers to understand the supervised person’s complex needs including overcoming basic communication difficulties. It is accepted here that the supports through the recent transition process appear to have greatly improved.

History

- [9] In coming to a final decision, I have reviewed the material before the Court. It is now voluminous and only parts will be summarised.
- [10] Following the provision of medical reports, on 10 March 2015, the supervised person was found unfit to be tried. Following a special hearing conducted on 26 and 27 March 2015 a jury found he had committed two

⁴ *The Queen v JW (No 2)* [2017] NTSC at [54].

offences. First, one offence of aggravated assault, the circumstances of aggravation being that he was armed with an offensive weapon and he caused harm, to the victim and second, assault a police officer with a circumstance of aggravation, namely, causing harm.

[11] The finding that a person who is unfit to be tried has committed the offences does not constitute a finding of guilt, but rather makes a person liable to supervision in the terms of Part IIA of the *Criminal Code*.

[12] The events comprising count 1 took place in the context of a card game at Wurramiyanga. The supervised person thought he was the \$3-winner of the card game, but he was not. He started to get angry. He went back into the house and grabbed some scissors. The victim, Mr Babui, tried to stop him, and the supervised person stabbed Mr Babui in the back.

[13] The supervised person did not have the scissors when they were playing cards. Mr Babui thought the supervised person did not have a 'good brain' that day and that he wanted cigarettes and ganja.

[14] Mr Babui told police in a statement that the supervised person had yelled, 'what the fuck are you doing, I kill you right now'.

[15] Police officers were alerted to the incident and attended. They showed considerable restraint in the circumstances.

[16] The supervised person initially complied with police directions. He went to the police van and then broke away. Police pursued him to arrest him. The

pursuit included following the supervised person into a house and using pepper spray to subdue him. During the subsequent apprehension the supervised person stabbed Officer Jason Conroy, causing harm. That offending comprised count 2.

[17] Ultimately, the Court was required to fix the appropriate sentence, however this does not have a direct bearing on the length of the supervision order, or whether a CSO or a NCSO is appropriate. In this case, once his subjective features, including the supervised person's cognitive deficits, were considered, an indicative sentence of 8 months was fixed with respect to count 1 and 12 months on count 2, a total of 20 months imprisonment commencing on 17 May 2014. It was on 18 May 2014 that the supervised person was flown to Darwin on a Care Flight and remanded in custody at Darwin Correctional Centre.

[18] While the indicative sentence does not bear in a direct way on the length of time a person is ultimately required to be on a supervision order, it is a factor, as well as the surrounding facts and circumstances of the offences committed, that may inform questions of whether the risk posed by the supervised person is serious or otherwise. It is accepted the offences themselves are largely history but still retain some relevance, albeit by way of background to this review.

[19] After receiving relevant reports, a CSO was made on 12 May 2015. The supervised person was ordered to be held and treated at the Darwin

Correctional Centre and the order included a provision to enable him to transition to the Cottages on the recommendation of the report of David Besanko, OOD, filed 8 May 2015. A s 43ZA certificate was filed confirming the necessary services for the transition plan were available.

[20] The supervised person has a difficult personal medical history. It cannot be reproduced or summarised in full here, however I have reviewed various of the reports filed in court.⁵ He suffered seizures from the age of three months and suffered various head injuries as a young child growing up in the Tiwi Islands. Later in life he suffered a grand mal seizure. Significant behavioural problems were observed between 2008 and 2013. He had previously been referred for psychiatric attention and intervention. He also has a history of physical and psychological dependence on cannabis. More recently, the Comprehensive Client Assessment summarised his conditions as cognitive disability, epilepsy and complex communication disorder. He has limited adaptive behaviour and requires ongoing supervision and support to manage his daily living. He has mild to moderate hearing loss, chronic kidney disease, extremely poor language development and diminished adaptive behaviour skills.⁶ It is also well acknowledged and accepted the supervised person was exposed to traumatic events as a child.

5 For example, Report prepared by Dr Ranjit Kini, 27 February 2015; Psychology Report of James M Huntley, 23 March 2018; Occupational Therapy Report of Saji Sebastian, 18 December 2018; Speech Pathology Assessment Report, 22 January 2019; Department of Health Major Review Report, Saji Sebastian, 15 September 2015; Department of Health s 43ZG Report, Saji Sebastian, 20 November 2015; Department of Health s 43ZK Report, Alana Michell, 23 November 2018.

6 Report of Rachelle Browne, 22 January 2019.

- [21] Although he had on three occasions been charged with offences as a younger person, two of those offences were unrelated to violence and all were withdrawn. He had not been convicted of any offence at the time of the offences for which became liable to supervision.
- [22] Dr Kini reported in detail to the Court the supervised person's significant cognitive defects and intellectual disability. His cognitive functioning is unlikely to improve and given the nature of his disabilities, it was recommended his treatment and care would be transferred to the OOD. Dr Kini found and has consistently found that, he does not have a mental illness.
- [23] The major review, which was initially to be heard on 13 October 2015, was adjourned to 30 November 2015. The CSO was varied to facilitate the implementation of the transaction plan which specifically permitted the Manager of the Darwin Correctional Centre to release him into the care of the Chief Executive of Health for the purpose of implementing the treatment plan. While being treated he could be regarded as being held in custody, yet be in the Cottages.
- [24] The major review report filed on 23 September 2015 by the Department of Health was reasonably positive, noting the supervised person had not engaged in any acts of aggression towards OOD staff or other persons during 20 transition sessions to the Cottages. He had been reasonably compliant with instructions, showing motivation to participate in activities

and showing a willingness to try out new activities. He maintained friendly body language towards others at the Cottages. The difficult behaviours were noted as limited social interactions and a tendency to maintain distance from others in social settings. He had a tendency to clear his throat and spit. Throughout the period that he has been subject to supervision orders, specific swallowing difficulties have been noted and have required further investigation, particularly in relation to communication and non-engagement issues.

[25] At the time of the first major review the overall goals and plans developed in consultation with his adult guardians included a plan for him to be able to return to Bathurst Island by the end of 2015 to live with supports from extended family once suitability and effectiveness of the family member's skills and resources in supporting him could be assessed. Further, it was intended to develop support strategies for behaviour management and to provide education to the family in terms of supporting him. Arrangements were to be made for referrals to a speech pathologist, occupational therapist and psychologist. Although at that time the aim was that the supervised person return to Bathurst Island, given the need to assess his readiness and the suitability of family and community support, it was recommended the CSO remain in place but that implementation continue to be progressed.

[26] As at 16 November 2015, the supervised person had commenced residing at the Cottages in a full-time capacity. It was noted his behaviour was stable, however, it has been pointed out this was in a controlled environment devoid

of external stimuli and triggers, including drugs and alcohol. A recommendation was made for a NCSO. It was proposed he would continue to reside at the Cottages until an appropriate location in Bathurst Island could be identified.⁷ On 30 November 2015 the CSO was varied to a NCSO reflecting those recommendations. A number of orders in terms of behaviour and requirements on the part of the supervised person also formed part of the NCSO.

[27] On 20 April 2016, application was made by the Chief Executive of the Department of Health to vary the NCSO to a CSO and to commit the supervised person to Darwin Correctional Centre. The reason for the application was that on 9 April 2016, the supervised person was attending a barbeque with his carers and demonstrated escalating levels of physical and verbal aggression towards them. He hit one of them on the head and police were contacted. An ambulance was called as the supervised person was displaying symptoms of a seizure. Given his aggressive behaviour at hospital he was physically restrained and sedated. He was returned to the Cottages, however it was unclear as to whether he had experienced a seizure. It had been noted that prior to him becoming aggressive on that day that he became upset and angry when a staff member took away a cigarette he had fashioned from a butt with extra paper and left beside a hot plate to be lit.

⁷ Progress Report of Saji Sebastian pursuant to s 43ZG of the *Criminal Code*, 20 November 2015, filed 25 November 2015.

[28] A further incident took place on 14 April 2016 when, without approval and contrary to the NCSO, the supervised person left the Cottages and would not respond to requests to return. He had not displayed verbal or physical aggression, however was seen picking up rocks and a glass bottle from the side of the road. He was arrested by police. He was charged with assaulting a police officer during the course of that interaction. In the Court of Summary Jurisdiction on 15 April 2016 the supervised person faced three criminal charges including the charge of assault a police officer. There was no application for bail and he was remanded in custody. As a result of those incidents he was held in Sector 5 of the Darwin Correctional Centre.

[29] It was assessed that it was no longer suitable to house the supervised person at the Cottages, given the lack of powers and restraint. At that time it was thought the OOD could continue supporting the supervised person, but it would need to be in a more secure environment. On 26 April 2016 the Court varied the NCSO to an interim CSO. From that time the supervised person was held in the complex behaviour unit (CBU) at the Darwin Correctional Centre. At that time, given the incidents of aggression and absconding and other lesser examples of escalation of non-compliant behaviour, it was recommended on 20 July 2016 that the supervised person continue on a CSO under Correctional Services and that he be transitioned to the Cottages in accordance with a plan of 15 July 2016. The OOD continued to provide

therapeutic and other supports to him. It was indicated that an application would be made to vary to a NCSO when the OOD was competent to do so.⁸

[30] A similar recommendation was made in a progress report of 8 December 2016 when the NCSO of 30 November 2015 was formally varied to a CSO with the supervised person committed to the custody of Darwin Correctional Centre, but to receive treatment from the OOD and other Department of Health staff where appropriate. The order permitted periods of release on certain conditions to the Cottages. A six-week transition program was completed in March 2017 to permit the supervised person to be accommodated at the Cottages full time, however on 20 April 2017, the supervised person was returned to the Darwin Correctional Centre, Sector 5, following an assault of a staff member. The assault involved the supervised person throwing a cup of boiling water at the face of a support worker. His behaviour was described as disruptive, referring to impulse control issues and difficult conduct patterns. It was recommended that he remain on a CSO, but that he be transitioned out of Sector 5 into the CBU when operations allowed. A report filed on the 19 July 2017, prepared by the then Commissioner of Correctional Services acknowledged that Sector 5C, a high security wing, was not the most appropriate environment for a supervised person with a cognitive impairment, however, it was recommended as the most appropriate location as it provided greater consistency of staff who were said to be able to offer higher levels of assistance and support. It was

⁸ Report prepared by Saji Sebastian, s 43ZK *Criminal Code*, filed 3 November 2016.

noted the supervised person had participated in the Elders Visiting Program and socialised with offenders from his block. At that time he was on a waitlist for the CBU as it was reported to be at full capacity. It was acknowledged by Correctional Services that he should be given priority in the CBU.

[31] On 2 August 2017 he was transferred back to the CBU and between August and November 2017 displayed no significant behaviours of concern and was described as compliant and cooperative. Day visits to the OOD Cottages were recommended under the supervision of Department of Health staff.

[32] On 31 October 2017 it was reported he threatened to assault a support worker, stated he was unwell and requested to be returned to the CBU. Transitional plans and activities to the Cottages were suspended due to funding issues as reported by the former Commissioner for Correctional Services. On 25 November 2017, the supervised person was said to be the perpetrator of a significant behavioural incident in the CBU in which he displayed threatening behaviour towards officers and was moved back to Sector 5C. On 4 December 2017 he was transferred back to the CBU. On 13 December 2017 he was reportedly involved in another significant incident in the CBU, said to be damaging property and threatening officers with broken items and was transferred back to Sector 5C as a management mechanism.

- [33] In his report of 4 January 2018, the former Commissioner for Correctional Services, expressed the view that there needed to be more clarity around the issues and opinions concerning the supervised person. It was recommended, among other things, that a communication strategy be developed to communicate further transition plans and that officers interacting with the supervised person receive specialised training.
- [34] The report filed on 5 January 2018⁹ by the Department of Health recommended that the supervised person continue on the CSO and be accommodated in the CBU and that the OOD continue to attempt to organise appropriate psychological treatment. The opinion at that time was that if another transition plan were to commence, the likelihood of success was not high. On 12 January 2018 the Court ordered that the CSO continue for 12 months but the matter was listed for periodic review on 12 June 2018.
- [35] By the time of the review of 30 November 2018, it was reported to the Court that the supervised person was re-accommodated in Sector 5 of the Correctional Centre due to the escalation of his behaviours of concern and the level of risk he posed to staff. Some behaviours of concern from earlier in 2018 were noted in the report from correctional services and it was clear correctional services required further support from the OOD. A behavioural support clinician met with the supervised person on 8 November 2018 to work on a plan. It was noted that the escalation of the supervised person's

⁹ Section 43ZK report of Saji Sebastian, 5 January 2018.

behaviours had occurred after the cessation of that session. The OOD recommended the CSO continue for a further 12 months. This was to allow for complete and comprehensive disability, allied health and forensic risk assessments, accompanied by associated transition plans and behavioural support plans. It may be noticed there was significant delay in implementing further assessments and transition plans from June 2018 to November 2018. After hearing submissions on the apparent difficulties, the CSO was varied to the extent that the supervised person be held in the CBU until the next periodic review.

[36] A detailed affidavit filed on 15 February 2019, affirmed by Samantha Livesley of the Department of Health, sets out a review of the history of the OOD interactions with the supervised person. This also included a report of 23 November 2018 completed by Alana Michell. Ms Michell is a senior clinician who oversees the work of the OOD. On 27 February 2019 she gave evidence of the history of the interactions between the OOD and the supervised person. In terms of the transition plan her overall opinion was it needed to be slow and graduated as the best option. Over the years she said when things are moving too fast, mistakes happen. She also told the Court of the need for the supervised person to be tested in different environments that are less restrictive in nature than what he has been used to before a full transition will take place. She did not support release on a NCSO, on the basis of the assessments she had made. Her view was that when behavioural

incidents and behaviours of concern did occur, they were of very high severity and could cause harm to others.

[37] The transition to Bathurst Island in 2015 did not take place, on Ms Michell's evidence, because of delays with accommodation and subsequent incidents of behaviours of concern in 2016. As to whether behaviours of concern should result in suspension of the transition plan, Ms Michell thought it would depend on the level of the incident or whether a full assessment is required. Ms Michell agreed that for a period of around six months, the supervised person was not receiving face-to-face support but the supports were around trying to develop and complete further assessments, but he did not have direct access to disability support workers at that time. Ms Michell also agreed staff dealing with the supervised person need specific training as to his needs and individual support plans. Ms Michell favoured a staggered approach in order to make the transition successful.

[38] Ms Michell agreed that it was unlikely that the OOD had a lot to do with the supervised person during the 18 months when he was on remand and in Sector 5 in the years 2014 and 2015. There was a further period in 2018 already mentioned when he had little in the way of supports. These periods were in my view problematic and the supervised person appeared to have fallen through the cracks of the organisations required to support him. I am however satisfied there has been substantial attention and support offered to him throughout this year.

[39] The many reports that have been filed on behalf of the OOD under the hand of Mr Saji Sebastian and his evidence have been both constructive and instructive. As to the previous transition plans, Mr Sebastian thought the previous transition plans did not include a comprehensive client assessment that could inform the direct service staff. He also thought there was an element of lack of skills within the service staff to understand the supervised person, respond to his needs and potentially anticipate behaviours that could happen and avoid them. He considered there were some deficiencies in training. He also thought it was important that staff received training on different strategies which could be used to communicate with the supervised person. Mr Sebastian also understood that the initial plan was that the supervised person be returned to the Tiwi Islands very quickly. He had been in the process of investigating risk mitigation strategies if the supervised person had returned to the Tiwi Islands in 2016, however, the potential residence was unfurnished and needed repairs and he understood the process would not be very quick. The training of staff has been a consistent issue in this review and it is accepted that this is being taken seriously by the parties. The particular communication needs and difficulties of the supervised person must be conveyed to all persons who are interacting with him.

[40] A risk assessment report prepared by Catherine Leigh-Smith and dated 11 April 2019 concluded that if the supervised person was placed on a NCSO at that time the only practicable alternative would be to reside in the

Cottages. It was her opinion that the Cottages do not have the structures, processes and programs in place to effectively manage risk and the risk of violence towards OOD staff and first responders would remain high. She acknowledges that under the model currently being proposed there is capacity to move from a CSO to a NCSO supported by evidence of the effective management of risk. She also acknowledges that if an incident occurred while the supervised person was on an NCSO the Department of Health would assume full responsibility for him and police would be first responders. She considered this problematic as she anticipates that these circumstances could result in significant negative legal outcomes for the supervised person and a greater level of disruption to the therapeutic process. She concludes that the supervised person's needs would be more appropriately met by him remaining on the CSO for the time being as he works through the proposed transition plan. She believes the appropriate time for consideration of him being placed on an NCSO would be at stage 6 of the plan, however a further assessment could be made at that time.

[41] The most recent s 43ZK Progress Report addressing the implementation of the transition plan, authored by Ms Michell, provides the following summary and recommendations:

'RK is currently being accommodated in the CBU of [Darwin Correctional Centre], whilst he undertakes a transition to the cottages. To date the transition has progressed in line with the estimated timeframes within the transition plan document, and it is expected that RK will progress to Stage 2e, which are three hour visits at the Cottage in mid-August 2019. It is anticipated that RK will be able to progress to Stage 2f in line with the timeframes

outlined in his transition plan, which is estimated to be September 2019. It is recommended that the CSO continue for a duration of 12 months. Within this time it will enable the continuation of the transition of RK to the Cottages and the implementation of the recommendations made within the disability, allied health and forensic assessments completed to date. This continuation of the CSO for a period of 12 months will further allow for [the Forensic Disability Unit], together with the [Office of Public Guardian], to engage with both the [National Disability Insurance Agency] and RK family to consider longer term options for RK to be supported in a non-custodial setting on the Tiwi Islands’.

Conclusions

- [42] Although at previous times attempted progression through the transition plan has been less than ideal, there have been significant improvements with the support services made available to the supervised person. The overall expert opinion is that if the transition stages are too short, it will not succeed. Although the previous incidents of concern were 2015, 2016 and 2017, and are somewhat historical, there is a pattern of behaviour that escalates when there is rapid change.
- [43] In such circumstances the supervised person continues to be a serious risk to the public. I do however acknowledge that between April of this year to date the supervised person’s behaviour has been exemplary, save for one incident which should not in my view detract from that assessment. He has been receiving visits from family, attending social functions and visiting the Cottages with escorts. All of this is positive, however it has only taken place over a four-month period. In my opinion the supervised person still presents a serious risk if he does not engage further in the transition process.

[44] I will not order the CSO be varied to a NCSO at this time. Given the history of this matter, further progress reports will be required at reasonably frequent intervals.
