

STATE PAROLE AUTHORITY OF NEW SOUTH WALES**RE: RODERICK HOLOHAN****REASONS FOR DETERMINATION**

**The Honourable G J Bellew SC – Chairperson
Ms M Borg – New South Wales Police Representative
Ms M Bostock – Community Corrections Representative
Ms J Boland – Community Member
Mr P Severin – Community Member**

Date of hearing: 31 October 2024

Date of determination: 6 November 2024

Appearances:

Offender: Mr B Agha, Prisoners Legal Service, for the Offender

Commissioner for Corrective Services: Mr G Kassisieh instructed by the Crown Solicitor for NSW

BACKGROUND

1. On 12 December 2010, Roderick Holohan (the offender) appeared before Judge Charteris SC in the District Court of New South Wales and pleaded guilty to the following offences:

- (i) break and enter and commit a serious indictable offence in circumstances of aggravation, namely that he was in company with another person (Count 1);
- (ii) assault with intent to rob (Count 2);
- (iii) armed robbery with wounding (Count 3).

2. As to these offences:

- (i) Count 1 is an offence contrary to s 112(2) of the *Crimes Act 1900* (NSW) (the Act) and carries a maximum penalty of 20 years imprisonment with a standard non-parole period of 5 years imprisonment;

- (ii) Count 2 is an offence is contrary to s 94 of the Act and carries a maximum penalty of 14 years imprisonment;
- (iv) Count 3 is an offence contrary to s 98 of the Act and carries a maximum penalty of 25 years imprisonment with a standard non-parole period of 7 years imprisonment.

3. On 16 December 2010 the offender was sentenced as follows:

- (i) Count 1: a non-parole period of 2 years and 6 months imprisonment with a balance of term of 1 year.
- (ii) Count 2: a non-parole period of 4 years imprisonment with a balance of term of 1 year and 3 months.
- (iii) Count 3: a non-parole period of 11 years and 6 months imprisonment with a balance of term of 5 years and 3 months.

4. The aggregate sentence imposed was one of 21 years imprisonment, with a non-parole period of 15 years and 9 months. No finding of special circumstances was made by the sentencing Judge.

5. On 29 May 2012, the Court of Criminal Appeal upheld an appeal by the offender on the ground that the sentence imposed in respect of Count 2 was manifestly excessive. The offender was resentenced to an aggregate term of 19 years and 6 months imprisonment, with a non-parole period of 14 years and 3 months imprisonment.¹ Pursuant to the sentence imposed by the Court of Criminal Appeal, the offender first became eligible for release on parole on 13 November 2023. His total sentence will expire on 13 February 2029. It should be emphasised that the sentence imposed by the Court was a determinate sentence. In other words, it was a sentence of a definite length. The inevitable result of that, is that the offender *will* be released into the community at some point. He cannot, as a matter of law, be detained in custody for life.

¹ *Holohan v R* [2012] NSWCCA 105

THE FACTS OF THE OFFENDING

6. The following summary is drawn from the judgment of Hoeben JA in the Court of Criminal Appeal².

Count 1

7. Shortly after midnight on 10 May 2009, an alarm was activated in a business known as "Madsens Cameras and Imaging" in Crown Street, Wollongong. On investigation, it was discovered that entry had been gained by forcing open a window to an adjacent building. The offender had then dropped through the roof and forced entry by kicking through a timber and plaster dividing wall which gave access to the rear stairs. Goods and money to the value of approximately \$5,500 were stolen from the premises.

Count 2

8. On the evening of 12 May 2009, Ms Anna Berry was walking north on Forbes Street, Darlinghurst. As she approached the intersection of Forbes Street and Montclair Lane, she noticed the offender walking a short distance behind her. When she had passed Montclair Lane, the offender approached her from behind and placed both his hands over her mouth, grabbing her and preventing her from screaming. She fell to her knees as she pushed away from the offender. She started screaming very loudly, thrashing her body, arms and the two bags she was carrying. The offender ran away.
9. A short time after 11.30pm, the offender spoke to a Ms Walsh and said "*I just tried to rob a girl. I tried to put my hand over her mouth and she fought me off and I ran off*". At this time Ms Walsh noticed that the offender had a rock in his hand. The offender said "*I'm gonna smash someone's jaw in and steal their bag*". He then walked off.

Count 3

10. In the early hours of 13 May 2009 Ms Samantha Barlow, a Sergeant of Police attached to the Kings Cross Police Station, was walking to work. She was dressed in civilian clothes and was carrying two bags, a pink Enviro bag and a multi-coloured shoulder bag.

² Commencing at [6].

11. The offender was in a nearby park at the time. He picked up a rock from a garden bed in the park and approached Ms Barlow, asking her for the time. She stopped, and as she turned, he struck her at least twice to the face with the rock in his right hand. She fell to the ground on her back, still holding the two bags. The offender subsequently said that he struck her at least two more times to the back of the head to make her release the bags.
12. Ms Barlow lay on the ground unconscious. The offender later stated that he dragged her further into the park "*so no-one could see her*". He left Ms Barlow lying in the grass and decamped the scene with the two bags. When he was about 100 metres from the park, the offender searched the bags and retained Ms Barlow's purse and mobile phone, as well as the shoulder bag. As a result of the attack, Ms Barlow suffered significant injuries.

THE INTENTION TO GRANT PAROLE

13. At a meeting held on 19 September 2024, the State Parole Authority of NSW (the Authority) formed an intention to grant the offender parole. The matter was adjourned for hearing on 31 October 2024. At that hearing, the Authority had the benefit of hearing a statement from Ms Barlow, along with submissions made on behalf of the offender, and on behalf of the Commissioner for Corrective Services (the Commissioner) who opposed the offender's release. The Authority also had the benefit of hearing from an officer from the Long Bay Parole Unit of Community Corrections. The entirety of the evidentiary material is considered in more detail below.

THE RELEVANT STATUTORY PROVISIONS

14. Section 135(1) of the *Crimes (Administration of Sentences) Act 1999* (NSW) (the CAS Act) provides that the Authority must not make a parole order unless it is satisfied that it is in the interests of the safety of the community to do so. Sections 135(2) and (3) of the CAS Act set out a number of factors that the Authority must take into account (to the extent that they are applicable) when determining whether an offender should be

released. It is convenient to note those factors at this point. However, each has been considered in greater detail below, by reference to the evidence which is before the Authority.

The risk of release to the safety of members of the community – s 135(2)(a)

The risk to community safety of release without any, or with a shorter period of, supervised parole – s 135(2)(c)

15. The Authority acknowledges that there is a risk to the safety of members of the community of releasing the offender on parole, and further acknowledges that the offender's risk of re-offending has been assessed as high. That said, no release of any offender is risk free. Moreover, having regard to the evidence before it, and for the reasons discussed below, the Authority is of the view that risk to community safety of releasing the offender at the end of his sentence without a period of supervised parole, or at later date with a shorter period of parole, is likely to be greater than if the offender is released at this point.

The risk of further re-offending – s 135(2)(b)

16. There is a risk of further re-offending. That risk stems from a number of things, including the offender's criminal history. The Authority has taken into account the comprehensive risk mitigation plan which has been formulated and which is analysed in detail below in the context of considering the reports which have been made available by Community Corrections. In the Authority's view, that plan, and other supports which will be put in place, address the risk of further re-offending.

The nature and circumstances of the offending – s 135(3)(a)

17. The nature and circumstances of the offending have been set out. Its seriousness is self-evident and is reflected in the lengthy custodial sentence which was imposed by the Court of Criminal Appeal having regard to all objective and subjective factors. The offending contributes to the risks which have previously been identified.

Relevant comments by the sentencing Court – s 135(3)(b)

18. Hoeben JA observed³ that the objective circumstances of Count 1 were “not insubstantial”, and were reflected in the value of the property taken (which was in excess of \$5,000.00) and the damage caused to the premises. His Honour also expressed the view that the fact that the premises where the offence was committed comprised a business which traded in goods which were clearly in demand, and could be quickly exchanged for cash, was indicative of some planning.

19. As to Count 2, his Honour observed⁴ that:

- (i) there was no weapon used;
- (ii) there was a limited degree of planning;
- (iii) there was limited actual violence; and
- (iv) no amount of money was taken.

20. His Honour concluded (and the other members of the Court agreed) that the sentence imposed by Judge Charteris SC in respect of Count 2 was manifestly excessive.

21. As to Count 3, his Honour observed⁵ (amongst other things) that:

- (i) the offending involved gratuitous violence;
- (ii) the attack was brutal;
- (iii) there was some planning;
- (iv) the offender’s intentions extended beyond satisfying a desire for drugs; and
- (v) despite the offender’s protestations to the contrary, it was clear from his actions that his intention in arming himself with a rock was not just to threaten a potential victim, but to injure the victim by rendering her helpless after a blow to the head.

³ At [52] and following.

⁴ At [58] and following.

⁵ At [66] and following.

The offender's criminal history – s 135(3)(c)

22. Hoeben JA⁶ set out the offender's criminal history in considerable detail. The principal aspects of that history may be summarised as follows:

- (i) the offender first appeared in the Children's Court in June 1982 (aged 12) for an offence of malicious injury;
- (ii) he was found guilty of multiple offences as a young person, resulting in his being committed to an institution on more than one occasion;
- (iii) his offending continued after he turned 18;
- (iv) he served his first term of imprisonment in an adult correctional facility in 1992 and has since served numerous other terms of imprisonment as an adult, to the point where he has spent the greater part of his adult life in custody.

23. The issue of the offender's institutionalisation has been addressed in evidence which is before the Authority, and is discussed further below.

The likely effect of the offender's release on the victim – s 135(2)(d)

24. Ms Barlow made a statement to the Authority.⁷ She recounted the offending and explained that it had caused her to lose her career, and had left her with ongoing sequelae from her injuries, including the inability to smell or taste food. The Authority has available to it other material which is the subject of an order pursuant to s 194 of the CAS Act and will not be disclosed. The Authority has considered all of that material carefully.

25. In the course of her statement, Ms Barlow questioned the offender's right to be released without serving his entire sentence. That question is answered by the fact that the structure of the sentence imposed by the Court of Criminal Appeal⁸ is such that, as a matter of law, the offender became eligible for release on parole on 12 November 2023. That is not an observation which is made, in any sense, pejoratively.

⁶ At [21] and following.

⁷ Transcript 1.13 and following.

⁸ At [5].

Rather, it is made to explain why the Authority is considering the offender's release at this time.

The reports prepared by Community Corrections Officers – s 135(3)(f)

26. The Authority has the benefit of two reports prepared by Community Corrections which unequivocally recommend the offender's release.

27. In the first report of 15 August 2024, it was observed that one form of practical support which would be available to the offender on release would come from a case worker from the William Wilberforce Foundation, an organisation which supports the care of marginalised and disadvantaged persons, including offenders released on parole. It was explained that a Mentor from the Foundation would assist the offender to find more permanent accommodation (the present proposal being to release him to temporary accommodation) and to obtain employment on release.

28. In the course of the hearing, an issue was raised by Counsel for the Commissioner about the offender's engagement with that Foundation. Counsel submitted that on a proper evaluation of the evidence, concerns arose from what appeared to be the offender's failure to engage with that support.⁹ The Community Corrections representative present at the hearing explained¹⁰ that Community Corrections were in receipt of conflicting information as to the offender's engagement. Mr Agha, who appeared for the offender, confirmed his instructions¹¹ that the offender had engaged, and would engage, with the Foundation. The evidence of the Community Corrections Representative at the hearing¹² was that she understood that in that event, the Foundation would support the offender, such level of support being determined by the nature and extent of his needs.

29. It was further explained in the report that Community Corrections have continued to work with the Aboriginal Community Engagement and Cultural Officer with a view to

⁹ Transcript 2.26–2.33.

¹⁰ Transcript n11.5–11.11.

¹¹ Transcript 11.20–11.22

¹² Transcript 11.27–11.42.

linking the offender with culturally appropriate services, interventions and programs upon release. She also reported that during her engagement with the offender, he had consistently accepted responsibility for his offending, and has expressed his remorse. As to the offender's institutionalisation, it was observed:

His continued time in custody has resulted in him having a limited work history, limited prior access to accommodation or support services, and no pro-social connections besides his children.

30. The report noted that there had been an improvement in the offender's behaviour since March of this year, and that he is considered to be both hard-working and proficient in the employment he has undertaken in custody.

31. The risk mitigation plan which has been formulated in the event of the offender's release includes (but is not limited to):

- (i) immediate referral to the South Coast Aboriginal Medical Service for access to a General Practitioner, a Psychologist, mentoring and related support, including support in respect of addictions to alcohol and other drugs;
- (ii) immediate referral to the Opioid Treatment Unit for the continuation of pharmacotherapy;
- (iii) being subject to random drug and alcohol testing to monitor abstinence;
- (iv) referral, in the event that it is considered necessary, to [a named AOD Service] to prevent relapse;
- (v) participation in the EQUIPS Aggression Program to address violence issues;
- (vi) continuing engagement with the VOTP Maintenance Program for ongoing management, as well as to monitor any escalation of risk of violence;
- (vii) participation in behavioural modules focussing upon managing anger and engaging in a pro-social lifestyle;
- (viii) close monitoring of his reintegration by support networks, and by his daughter;

(ix) monitoring and verifying his engagement with all recommended services.

32. The proposal for release involves the offender being released to temporary accommodation. However, it was confirmed at the hearing¹³ that the offender would have access to support through the Initial Transitional Service (ITS) and that the period of temporary accommodation was capable of being extended. It was also explained that the offender would have the benefit of support from an indigenous organisation which provides mentoring and support, and that as part of the offender's supervision, Community Corrections would "absolutely" monitor where he was living.¹⁴

33. The report of Community corrections also noted that the offender had completed the Violent Offenders Treatment Program (VOTP) and had been attending maintenance sessions since May 2021. His psychologist has confirmed that he has consistently presented as eager to engage, and has participated in those sessions in an open and meaningful manner. His eligibility to continue to participate in those sessions will continue until the end of his parole order.

34. The ultimate opinion of Community Corrections was expressed in the following terms:

*Mr Holohan is an Indigenous man who has been assessed as a high risk of reoffending. While it is a concern that he has incurred further institutional misconducts, it is noted that his behaviour has significantly improved since his last parole consideration. In addition, he has had positive feedback in case notes and from his employment in custody. Given Mr Holohan's long period of incarceration and subsequent institutionalisation, the benefits that may be offered by pre-release leave have been acknowledged and considered. It is important to note that while Mr Holohan may progress to a classification making him eligible for pre-release leave prior to the expiry of his sentence, he has no social or familial support to sponsor him in the program. **Should he not be released at this juncture, there is a possibility that he will be unable to participate. Such occurrence could further institutionalise Mr Holohan and could attribute to a further distrust in authority.** In any case, a suitable post release plan has been formulated to include various support services and interventions, which will provide a step-down pathway in lieu of pre-release leave, as well as further case management. Despite Mr Holohan having a longer period of parole, Community Corrections has identified that this supervision is essential in continuing to address his risks. **A longer period of parole would provide Community Corrections to closely monitor and support his transition back to community life. This is paramount, as Mr Holohan has spent a significant period in custody for his index offences, as well as most of his adult life** (emphasis added).*

¹³ Transcript 4.20–4.26; 9.18–9.22.

¹⁴ Transcript 9.30–9.33.

35. That view was supported at the hearing, the Community Corrections representative stating that the offender had completed his custodial program pathway, and a robust supervision plan had been formulated, from all of which the offender would benefit to assist with his reintegration needs.

36. In a supplementary report of 11 October 2024, Community Corrections confirmed that temporary accommodation had been secured for the offender, and that contact had been made with relevant services to assist in finding permanent accommodation and transitional support. Ultimately, it was stated:

Mr Holohan has continued to maintain positive behaviour in custody, with encouraging reports from his employment. He has confirmed post-release accommodation and adequate support services in place to assist with his reintegration needs. In addition, Mr Holohan has a robust supervision plan to ensure that his criminogenic and responsivity needs are addressed. Community Corrections opines that his release to parole is appropriate at this juncture.

37. That recommendation was again supported by the Community Corrections representative at the hearing, who noted that the offender's behaviour in custody since the submission of the earlier report "continues to be satisfactory",

38. Finally, in answer to a question from Mr Agha regarding the programs and support services which would be available to the offender upon release, and the circumstances in which they would be delivered, the Community Corrections representative said:¹⁵

I think, obviously, it is important to Mr Holohan, but I think what we need to consider is that these programs will be taking place on his country, whereas if he were to remain in custody, it's obviously of less significance to him because it's not on his country where he hasn't been in a long time. Mr Holohan has already been linked with, I believe, the Aboriginal Cultural Engagement Officer in the Nowra area. So they work with Community Corrections, but they will obviously have the specifics of what programs are available to him and, yeah, definitely in the supervision plan, they have already outlined for us what is available in the area for him.

¹⁵ Transcript 12.33 – 12.41.

The report of the Serious Offenders Review Council – s 135(3)(g)

39. The Serious Offenders Review Council (the Council) provided the Authority with a comprehensive report dated 3 September 2024 supporting the offender's release. Having reviewed all of the available material, and having noted:

- (i) the offender's recent "*positive custodial behaviour*";
- (ii) the need for a lengthy period of supervision because of his institutionalisation;
- (iii) the absence of the social and family support necessary for implementation of leave;
- (iv) the offender's development of a connection with his family which would assist with his re-integration;
- (v) his regular custodial employment which had attracted positive reports; and
- (vi) the recommendation for release by Community Corrections,

The Council expressed its opinion in the following terms:

*His entrenched anti-social and maladaptive personality traits (Dr. Elliott) are unlikely to change in custody, and **only a lengthy period of close supervision on parole is likely to ameliorate those issues, particularly that he has now has a more positive mindset. While we have concerns, we see that a lengthy period of supervision on parole is the only reasonable pathway for his re-integration and the protection of the public. We advise that his release to parole is appropriate** (emphasis added).*

Other relevant factors – s 135(4)(j)

The report of Dr Gordon Elliott

40. Dr Elliott furnished a report on 20 December 2021 in which he identified the offender as having an antisocial and maladaptive personality. At that time, his prognosis for the offender was guarded. No recent report has been provided.

The Program Pathway Advice

41. A program pathway advice of 26 September 2024 expressed the view (amongst other things) that the offender's continued detention may be detrimental to his successful reintegration.

Submissions of the Commissioner for Corrective Services

42. In opposing the offender's release, the fundamental position taken by the Commissioner¹⁶ was that a "*more incremental progression towards release*" was more appropriate, with such progression involving a consideration of:

- (i) transitioning the offender to a minimum security classification on account of his improved behaviour, which would create eligibility for pre-release leave; and
- (ii) a more suitable post-release housing plan that provided the offender with longer term accommodation stability.

43. In support of that position, it was submitted that:

- (i) despite what were acknowledged as "*commendable improvements*" in his behaviour, the offender remained a high risk to the safety of members of the community,¹⁷ such risk being reflected in his criminal history, his personality traits, his limited community networks and support, and his history of substance abuse;¹⁸
- (ii) although there was "*merit in the view that a longer period of period of supervision would provide [the offender] support for his reintegration into community life*", the offender would remain a high risk¹⁹ which would not be addressed if released,²⁰ and would be best addressed by the offender remaining in custody;²¹
- (iii) the offender had limited supports in the community;²²

¹⁶ Written submissions at [11] and [12].

¹⁷ Written submissions at [92].

¹⁸ Written submissions at [99].

¹⁹ Written submissions at [93].

²⁰ Written submissions at [100].

²¹ Written submissions at [105].

²² Written submissions at [96].

- (iv) although some support networks would be put in place in the event of release, there was an issue as to whether the offender would engage with them;²³
- (v) the seriousness of the offending, and the remarks of the Court of Criminal Appeal, were self-evident;²⁴ and
- (vi) the offender’s criminal history reinforced the risk to the safety of the community.²⁵

44. At the same time, it should be noted Counsel for the Commissioner expressly accepted that:

- (i) a well-structured and supervised period of parole is capable of reducing the risk of re-offending “*for the right candidate at the right time*”;²⁶ and
- (ii) generally speaking, there is benefit to community safety from an offender being released to parole with the longest available period of parole supervision.²⁷

45. In advancing these submissions, Counsel for the Commissioner also acknowledged the opinions of Community Corrections and the Council supporting the offender’s release.²⁸

46. It became apparent during the course of the hearing that one of the fundamental bases of the Commissioner’s opposition to the offender’s release stemmed from a proposal that the offender be reclassified, so as to be eligible for pre-release leave. That submission had been advanced for the first time in written submissions dated 28 October 2024.²⁹ That was some two and a half months after the first report of Community Corrections in which it was observed that even if a reclassification

²³ Written submissions at [105].

²⁴ Written submissions at [116]–[117].

²⁵ Written submissions at [121].

²⁶ Written submissions at [100].

²⁷ Written submissions at [108].

²⁸ Written submissions at [124]–[128].

²⁹ At [12](a).

progressed to the point of approval and the offender became eligible for pre-release leave, he had no person available to act as a sponsor so as to avail himself of it.

47. During the course of the hearing, Counsel for the Commissioner was asked by the Community Corrections Representative of the Authority, Ms Bostock, why it was that the issue of reclassification had not been considered earlier. That led to the following exchange:³⁰

MR KASSISIEH: Thank you, your Honour. Then in respect of that information, the information that I have is that that is being considered imminently in terms of reclassification, and the pre-release report indicated that the next period that it was to be reviewed was actually November 2024.

CHAIRPERSON: What does imminently mean?

MR KASSISIEH: To put it colloquially, it's indicated in my inbox that it's being considered now. There are obviously steps towards that, it's not a guarantee, but it is being taken with urgency.

CHAIRPERSON: Are you able to be any more definitive about that?

MR KASSISIEH: I can indicate that the email has escalated. What is currently being considered is approval for escorted leave and a plan that may include attendance at Nunyara. One of the things that are being considered is progression to C2. As I say, it is not certain, not guaranteed, but it's being considered.

CHAIRPERSON: Leave escorted by whom?

MR KASSISIEH: I don't think we have quite that level of detail except that it is being progressed with a view to developing an external leave plan. The very long chain that I have, is looking at on and off complex escorted day leave. That is, unfortunately, the closest I can provide the details at this stage.

48. Bearing in mind that the proposal for the offender's classification was not raised by the Commissioner, at least in any substantive way, until the hearing, the Community Corrections representative at the hearing was asked for her views in relation to it. Those views were expressed in the following exchange:³¹

CHAIRPERSON: The second matter I wanted to raise stems from the references to the possibility of a revised classification. You've heard what's been said in relation to that. Just as an open-ended question, are you able to provide any further information in relation to that general issue?

REPRESENTATIVE: Yes. So of course, we're always going to be supportive of our release plan in terms of the pre-release leave. However, at the stage of our report, there wasn't the option for Mr Holohan to engage in that. So in lieu of that, we had the revised supervision plan in

³⁰ Transcript 4.44 - 5.20.

³¹ Transcript 9.35 - 10.41.

place to assist with his reintegration. In terms of when or if the C2 classification comes through, there are still hurdles to jump. So, just because he gets the classification doesn't necessarily mean he's going to be able to obtain the leave. So, firstly, with the chaplain, whilst it is an option, there's often waiting lists, there's other inmates who have had classifications done before Mr Holohan who are waiting for the chaplain to facilitate their day leave. In terms of the suggestion of the Nunyara COSP as the day leave option, we would also need to look at the suitability of a residence at the COSP, whether the COSP can facilitate if there's non-association that exists. So it's not necessarily something that can be ticked and, yes, he'll be straight out next week on a pre-release day leave escorted situation. We also don't escort. So, Community Corrections wouldn't be escorting, so I'm not sure who facilitates that either.

CHAIRPERSON: Just assume for the purposes of my question that I'm going to ask you in a moment that the reclassification occurred and assume, further, despite the matters that you've raised that some form of day leave could be put in place supervised by the chaplain, at what frequency would you expect that day leave to occur?

REPRESENTATIVE: I'm not entirely sure. I've seen instances where it's once..(not transcribable)..So I wouldn't be able to comment on the frequency of what we would expect. In terms of his reintegration, if that's what you're asking, what we would want to see, again, I think it depends what he's doing on the day leave. I know that Mr Holohan had some concerns around remaining in Sydney, he really would like to go back to country in Nowra. So, obviously, that can't be facilitated on day leave either. I think that at the end of the day regardless of the reclassification if it was to have occurred, we probably still wouldn't be changing our recommendation. I stand strong that we are recommending release with the supervision plan that we have in place.

CHAIRPERSON: Does that mean that even if, in your view, just so that I can understand what you're saying, in your view, even if the reclassification and the supervised day leave were to come to fruition, your view is that the interests of both the offender and the community are best served if he's supervised under the plan that you've devised?

REPRESENTATIVE: I'm under the belief that if Mr Holohan remains in custody for another anniversary period, he has acknowledged his institutionalisation and he is aware of it, he has insight into it, and I just think that if he stays in for another year, he's completed his program pathway in custody, if he's released he'll have access to offence-related programs that he can do, so it is in his best interest to get out with a longer period of supervision and be able to, yeah, engage in things that are going to help his offence-related criminogenic factors other than remain in custody where he only has access to his VOTP Maintenance sessions.

49. Counsel for the Commissioner did not challenge any of these views when given the opportunity to do so,³² but submitted that there was “active consideration regarding classification [which was] being undertaken in an expeditious way”.³³ Ultimately Counsel submitted that:

³² Transcript 12.47.

³³ Transcript 14.20 –14.22.

- (i) in circumstances where more than 4 years remains on the offender’s sentence, there was “*no question that there is an opportunity to come back for a longer period of supervision, perhaps in 12 months*”;³⁴
- (ii) it was open to defer a decision and reconsider the matter once there was “*more clarity around an exploration of reclassification*”;³⁵
- (iii) a cautious approach was warranted at this time, such that even if the offender was detained for a further 12 months there would be benefit to the community by virtue of the fact of that additional incarceration.³⁶

50. Counsel further submitted that the difficulties arising from the temporary nature of the offender’s accommodation, his criminal history, the nature of the offending, and the uncertainty surrounding his engagement with support services should lead to the conclusion that the Authority could not be satisfied that the offender’s release was in the interests of the safety of the community. It was submitted that the statutory considerations under s 135(2) and (3) of the CAS Act weighed against the offender’s release,³⁷ although Counsel expressly acknowledged that:

- (i) the proposed supervision plan was “*well considered and put together*”;³⁸
- (ii) that there had been improvement in the offender’s behaviour which, although recent, was “*commendable*”.³⁹

Submissions of the Offender

51. In written submissions dated 30 October 2024, Mr Agha submitted that:

- (i) the offender’s release was supported by both the Council and by Community Corrections;⁴⁰

³⁴ Transcript 13.12 – 13.14.

³⁵ Transcript 13.14 – 13.16.

³⁶ Transcript 13.26; 14.1 – 14.32; 15.16 – 15.24.

³⁷ Transcript 14.35 – 14.40; 15.4 – 15.24.

³⁸ Transcript 14.34 – 14.35.

³⁹ Transcript 15.18 – 15.20.

⁴⁰ Written submissions at [6] and [7]; [12] – [13].

- (ii) it was essential, from the point of view of community safety, that the offender be released at this juncture, with a long period of meaningful parole supervision, and that the Authority could be satisfied that it was in the interests of the safety of the community to do so;⁴¹
- (iii) there had been an improvement in the offender's behaviour since March of this year;⁴²
- (iv) approved short term accommodation had been secured;⁴³
- (v) a robust supervision plan had been put in place with access to numerous support services;⁴⁴
- (vi) detaining the offender in custody posed a risk of further institutionalisation;⁴⁵ and
- (vii) the evidence supported the conclusion that the only viable pathway was release on supervised parole.⁴⁶

52.Mr Agha developed these submissions further at the hearing.⁴⁷

CONSIDERATION

53.It is important to emphasise at the outset that whilst the Authority must have regard to the mandatory considerations in the CAS Act, no single factor determines the decision that the Authority must make. Different factors may pull in different directions. As Counsel for the Commissioner candidly accepted, the factors that the Authority must consider raise issues about which minds may differ, and it is ultimately up to the Authority to ascribe such weight to each factor as it considers appropriate, so as to reach a conclusion.⁴⁸

⁴¹ Written submissions at [9] – [11].

⁴² Written submissions at [24] – [28].

⁴³ Written submissions at [32] – [34].

⁴⁴ Written submissions at [35] – [42]; [49] – [51].

⁴⁵ Written submissions at [59] – [63].

⁴⁶ Written submissions at [69] – [73].

⁴⁷ Transcript 6.17 – 9.6

⁴⁸ Transcript 15.4 – 15.6.

54. The Authority accepts that there is a risk to the safety of the members of the community of the offender's release on parole⁴⁹, and that the offender's risk of re-offending has been assessed as high. Those risks, which are not insignificant, stem from a combination of matters including the circumstances of the offending which led to the present sentence,⁵⁰ the observations about that offending which were made by the Court of Criminal Appeal,⁵¹ and the offender's criminal history which has been summarised above.⁵² All of those matters are deserving of, and have been given, weight by the Authority in the balancing exercise that it must undertake. Taken by themselves, they may support a conclusion that the offender should not be released.

55. However, for the reasons that follow, the Authority has come to the view that those matters are outweighed by other factors and that on the evidence which is available:

- (i) the identified risks may be rendered even greater if the offender is kept in custody;
- (ii) the release of the offender at this point will address the risk of re-offending;⁵³
- (iii) the risk to community safety is likely to be greater if the offender is released at the end of his sentence without a period of supervised parole, or at a later date with a shorter period of supervised parole,⁵⁴ and
- (iv) it is in the interests of the safety of the community to make a parole order releasing the offender.⁵⁵

56. The reasons for those conclusions are as follows:

57. To begin with, it has been observed by Community Corrections in its first report that as a result of the offender's period in custody, he is limited in (amongst other things) his access to support services and pro-social associations. It is evident from the report

⁴⁹ Section 135(2)(a).

⁵⁰ Section 135(3)(a).

⁵¹ Section 135(3)(b).

⁵² Section 135(3)(c).

⁵³ Section 135(2)(b).

⁵⁴ Section 135(2)(c).

⁵⁵ Section 135(1).

that Community Corrections saw those circumstances as being generally counter-productive to the offender's effective rehabilitation, and his positive re-integration back into the community. There is no evidence to suggest that if the offender remains in custody, any of those factors are likely to undergo any positive change. On the contrary, the evidence supports a conclusion that there is at least the possibility that they may become even more entrenched. Each of those potential outcomes can be usefully contrasted with the fact that, if released, the offender will have access to a plethora of support services, including:

- (i) a General Practitioner;
- (ii) a Psychologist;
- (iii) Community Corrections; and
- (iv) an Indigenous Community Engagement and Cultural Officer.

58. In the Authority's view, the immediate, and apparently unrestricted, availability of that support is conducive to the mitigation of the risks which have been identified, and thus to the offender's successful reintegration.

59. The identified risks, including that of re-offending, are further comprehensively addressed by the mitigation plan which has been formulated. As has been noted, Counsel for the Commissioner described that plan as "*well considered and put together*". He also conceded that a well-structured and supervised period of parole is capable of reducing the risk of re-offending. Whilst Counsel qualified that latter concession by making it clear that it assumed engagement of "*the right candidate at the right time*", the reports of Community Corrections and the Council, both of which have been considered in detail above, unequivocally support the conclusion that now is the right time, and that the offender is the right candidate. In light of the risk mitigation plan, as well as the other supports which will be put in place, the Authority is unable to accept the submission advanced on behalf of the Commissioner that the identified risks would not be addressed in the event of the offender's release. The mitigation plan is fundamentally at odds with that submission.

60. It is also important to bear in mind that if the offender were not released until the end of his sentence, there would be no risk mitigation plan in place at all, because the offender would not be under any supervision. He would, in that event, be left entirely to his own devices to manage his reintegration into the community, without any level of support whatsoever, after being incarcerated for almost 20 years. Any comment about the obvious, and in the Authority's view, substantially greater, risk which would be posed to the safety of the community in those circumstances, would be superfluous.

61. The fact that the identified risks will be addressed by the offender's release at this point finds specific support in the report of the Council, whose, unequivocal view is that a lengthy period of supervision on parole is "*the only reasonable pathway for [his] reintegration and the protection of the public*". In other words, the Council's view is that the safety of the community (or as the Council put it, the protection of the public) is best achieved by the offender's release now, rather than at some unidentified time in the future. That position was also supported by the Community Corrections representative at the hearing.

62. It was submitted on behalf of the Commissioner⁵⁶ that there was still a significant period remaining on the offender's sentence, and that delaying release at this time "*would not significantly shorten the period of supervision which could become available in even 12 months' time...*". Two observations should be made in relation to that submission.

63. The first, is that the 12 month period suggested by the Commissioner represents approximately 25% of the remaining sentence. Contrary to the submission advanced by the Commissioner that, in the Authority's view, is a significant period.

64. The second, is that the submission is fundamentally at odds with the opinion of the Council that a lengthy period of supervision on parole is the only reasonable pathway

⁵⁶ Written submissions at [113].

for the offender, not only in terms of his re-integration, but also from the perspective of the safety of the community. On a fair reading of the entirety of the Council's report, it can be reasonably inferred that it determined that the lengthy period of supervision on parole to which it referred, and which it obviously considered to be an essential component in the protection of the community, should commence now, and not at some later time. Shortening the period of supervised parole by keeping the offender in custody would run completely contrary to the Council's opinion. That opinion, which the Authority accepts, supports the conclusion that, far from being in the interests of the safety of the community, the offender's continued detention is likely to be counter-productive, not only to the offender, but to the community as a whole. In circumstances where the opinions of those within Community Corrections were to precisely the same effect, the Authority is unable to accept that there is anything to be gained by detaining the offender in custody as Counsel for the Commissioner submitted. Whilst there may, as was submitted on the Commissioner's behalf, be an "opportunity" to revisit the matter in 12 months, the weight of the evidence before the Authority weighs heavily in favour of the conclusion that taking that course would be counter-productive, not only to the offender specifically, but to the safety of the community generally.

65. Moreover, it is evident that the Council was fortified by the evidence before it that the offender's identified anti-social and maladaptive traits were unlikely to change in custody, and that only circumstance which was likely to address and ameliorate those issues was the lengthy period of supervised parole which it had identified as being necessary. That provides further support for the proposition that it is in the interests of the safety of the community to release the offender at this point. It can be readily inferred that if the Council took the view that detaining the offender in custody for some further period would assist in some positive way in terms of the resolution of those identified psychological issues, it would have said so.

66. The proposal that the offender be detained in custody for the purpose of facilitating a re-classification, which (it was said) would render him eligible to participate in escorted leave formed the first of two fundamental components of the "more

incremental progression towards release” urged on behalf of the Commissioner. It is necessary to make a number of observations about that position, and the submissions advanced in support of it.

67. It would be something of an understatement to say that as things presently stand, considerable doubt surrounds whether any favourable reclassification is likely to be approved, be it in the short term or at all. The proposal for the offender’s reclassification was variously described⁵⁷ as being “*considered*”, “*considered imminently*”, “*considered now*”, the subject of “*obvious steps*”, “*taken with urgency*”, “*progressed with a view to developing an external leave plan*” and having “*hurdles to cross*”. The terms used to describe the position that the matter has reached pose more questions than they answer. The reality, as Counsel for the Commissioner ultimately accepted, is that reclassification is “*not certain [and] not guaranteed*”.⁵⁸ That presents something of an obstacle which must be overcome before any proposal for supervised leave could even be considered.

68. The difficulties with the Commissioner’s position on this issue do not end there. In its first report of 15 August 2024, Community Corrections observed that although the offender would benefit from pre-release leave, he may not have the ability to obtain a sponsor in order to participate in the program (if indeed he was found to be eligible through reclassification). It was further observed that in all likelihood, the offender would be reliant upon a prison chaplain to facilitate such leave. Apparently accepting that the availability of a chaplain to perform that role would be unlikely, the view was expressed that the risk mitigation plan would provide a “*step-down pathway*”, or in other words, a suitable alternative to pre-release leave.

69. The first substantive suggestion of steps being taken towards reclassification were raised at the hearing which was more than two months after Community Corrections’ first report. The misgivings expressed by the author of that report about the offender ever being able to participate in any leave were prescient in light of the information

⁵⁷ Transcript 4.44 – 5.11; 14.21.

⁵⁸ Transcript 5.12.

provided by the Community Corrections representative at the hearing in the passages previously set out, namely that:

- (i) attaining a reclassification does not mean that the offender will be able to participate in leave, and there remained “*hurdles to jump*”;
- (ii) whilst escorted leave by a Chaplain was an option, there were often long waiting lists, such that inmates whose classifications had been approved prior to the offender would be given priority;
- (iii) there were issues as to whether the Nunyara COSP was a suitable facility for that purpose;
- (iv) Community Corrections had no responsibility for providing escorts;
- (v) the frequency of the leave could not be determined;
- (vi) irrespective of any proposed reclassification, the recommendation of Community Corrections would not change, to the point where Community Corrections “*stood strong*” in recommending release with the existing supervision plan which can be put in place.

70. As previously noted, none of these propositions were challenged by Counsel for the Commissioner.

71. Put simply, on the evidence before the Authority:

- (i) the present state of any proposal for reclassification is largely, if not entirely, nebulous, and at best aspirational;
- (ii) even if it were implemented, and the offender was eligible for supervised day release, there are a number of obstacles which stand in the way of his being able to avail himself of it in the immediate future.

72. It follows that one of the two fundamental components of the Commissioner’s principal position in opposition to release, namely incremental progression incorporating reclassification so as to create eligibility for pre-release leave, completely falls away. Moreover, there is no evidence to suggest that the second

component of that position, namely the availability of more suitable post-release housing, is likely to be enhanced by detaining the offender in custody. The first report of Community Corrections specifically alluded to the fact that the offender's lengthy incarceration has left him in a position where he has limited access to accommodation. Nothing in that report supports a conclusion that this is likely to change if he remains in custody. If that is accepted to be the case, then the second component of the Commissioner's suggested incremental progression also falls away.

73. The alternative proposition put on behalf of the Commissioner was that even if it was accepted that pre-release leave could not be implemented, there remained a "protective" benefit in detaining the offender in custody. The Authority is unable to accept that proposition. It flies in the face of the opinions of Community Corrections, the Council, and the author of the Program Pathway Advice.

74. It is clear from the statement made by Ms Barlow that the offender's release will affect her⁵⁹. The Authority has engaged in a consideration of that issue by reference to what Ms Barlow said to the Authority in person, and the material in its possession which is the subject of an order pursuant to s 194 of the CAS Act. The contents of that material cannot be disclosed. What can be said is that having taken it into account, the Authority is satisfied that the effect, on Ms Barlow, of the offender's release can be mitigated to some degree. That should not be construed as expressing a view that such effect is not significant. However, in all of the circumstances, it is not a factor which, either alone or in combination with other factors, supports a conclusion that the offender should not be released.

75. Two observations remain to be made.

76. The first, is that the decision to release the offender on parole at this point is not, in any sense, a form of "early release". Aside from the provisions of s 160 of the CAS Act (which have no application in this case), the notion of "early release" of an offender is not known to the law in New South Wales. The Court of Criminal Appeal determined

⁵⁹ Section 135(3)(d).

that the offender would be eligible for release on parole on and from 13 November 2023. It follows that a determination by the Authority to release the offender at this point is (as one might expect) entirely in accordance with the Court's orders. It is most certainly not tantamount to releasing the offender at a time earlier than that which the Court determined was appropriate.

77.The second, is that the offender's release will be subject to a number of stringent conditions. Those conditions are annexed to these reasons. Their imposition will further address the risks which have been identified.

ORDERS

78.For the reasons expressed, and taking into account all relevant factors, the Authority is satisfied that it is in the interests of the safety of the Community to release the offender.

79.It is ordered that the offender be released to parole not earlier than 20 November 2024 and not later than 27 November 2024.

80.The offender's release will be subject to the conditions set out in the document attached and marked "A".

ANNEXURE A
CONDITIONS OF PAROLE – RODERICK HOLOHAN

While you are on parole:

1. You must be of good behaviour.
2. You must not commit any offences.
3. You must adapt to normal lawful community life.

When you are first released on parole:

4. You must report:
 - a) to a community corrections officer at a time and place directed, or
 - b) if you have not been given a direction, to a Community Corrections office within 7 days of your release.

While your parole is supervised:

5. You must report to a community corrections officer at the times and places directed by the officer*.
6. You must comply with all reasonable directions from a community corrections officer about:
 - a) the place where you will live
 - b) participating in programs, treatment, interventions or other related activities
 - c) participating in employment, education, training or other related activities
 - d) not undertaking specified employment, education, training, volunteer, leisure or other activities
 - e) not associating with specified people
 - f) not visiting or frequenting specified places or areas
 - g) ceasing drug use
 - h) ceasing or reducing alcohol use
 - i) drug and alcohol testing
 - j) monitoring your compliance with the parole order
 - k) giving consent to third parties to provide information to the officer that is relevant to your compliance with the parole order.
7. You must comply with any other reasonable directions from a community corrections officer.
8. You must permit a community corrections officer to visit you at the place where you live at any time, and permit the officer to enter the premises when they visit you.

9. You must notify a community corrections officer if you change your address, contact details or employment. You must do this before the change occurs if practicable, or within 7 days of the change occurring.
10. You must not leave New South Wales without permission from a community corrections manager.
11. You must not leave Australia without permission from the State Parole Authority.

ADDITIONAL CONDITIONS IMPOSED BY THE STATE PAROLE AUTHORITY

- 16(b). You must not use a prohibited drug or substance, except those that have been prescribed by a medical practitioner.
19. You must, if so directed by your officer, participate in the following intervention: Violent Offenders Therapeutic Program (VOTP) Maintenance.
24. You must not contact, communicate with, watch, stalk harass or intimidate the victims and their families.
30. You must not frequent or visit the Local Government Areas of City of Canada Bay, City of Coffs Harbour, City of Ryde, City of Shellharbour, City of Willoughby, City of Wollongong, Inner West Council, Hornsby Shire, Kempsey Shire, Ku-ring-gai Council, Lane Cove Council, Midcoast Council, Municipality of Burwood, Municipality of Hunters Hill, Municipality of Kiama, Municipality of Strathfield, Port Macquarie-Hastings Council and Northern Beaches Council.