ROBERT MARC WINDSOR

REASONS FOR DETERMINATION

The Honourable G J Bellew SC – Chair
Ms A Manuell – Community Corrections Representative
Mr H Baqaie – NSW Police Representative
Ms C McComish – Community Representative
Ms J Boland – Community Representative

Dates of hearing: 27 February 2025 : 13 March 2025

Date of determination: 24 March 2025

Appearances:

Mr R Naidoo, Prisoners Legal Service, for the Offender

Ms A Crellin (on 27 February 2025) and Mr C Gardiner (on 13 March 2025) for the State of New South Wales, instructed by the Crown Solicitor for New South Wales

INTRODUCTION

1. At a meeting of 17 January 2025, the State Parole Authority of NSW (the Authority) formed an intention, pursuant to s 144(a) of the *Crimes (Administration of Sentences) Act 1999* (the Act), to grant parole to Robert Marc Windsor (the offender).

2. The matter came before the Authority for a review hearing on 27 February 2025, at the conclusion of which it was adjourned to 13 March 2025. On 13 March, having heard further evidence and submissions, the Authority's decision was reserved.

3. It is noted that in reaching its determination, the Authority has taken into account material in respect of which an order has been made pursuant to s 194 of the Act. The nature and content of that material will not be disclosed.

THE OFFENDING

The charges

4. The offender pleaded guilty to an Indictment containing multiple counts which can be summarised as follows:

    (i) sexual intercourse with a person under the age of 10 years: *Crimes Act 1900*, s 61M.

    (ii) use carriage service to access child pornography: *Crimes Act 1900*, s 91H(2).

    (iii) disseminate/produce/possess child pornography: *Crimes Act 1900*, s 91H(2).

    (iv) sexual intercourse with a person over the age of 10 years and under the age of 14 years: *Crimes Act 1900*, ss 66C(1) and 61M.

    (v) use carriage service to transmit child pornography: *Crimes Act 1900*, s 91H(2).

    (vi) sexual intercourse with a person under 10 years (under authority): *Crimes Act 1900*, s 66A(2) and 61M.

    (vii) aggravated indecent assault: *Crimes Act 1900*, s 61M.

5. In addition, the offender asked the sentencing Judge to take into account a number of additional offences contrary to s 61M of the *Crimes Act 1900.*

The sentence imposed

6. The offender was sentenced by Acting Judge Hosking SC in the District Court of New South Wales to a total term of imprisonment for 17 years, with a non-parole period of 14 years. The non-parole period expires on 23 March 2025 and the sentence expires on 23 December 2028.

The circumstances of the offending

7. The circumstances of the offending were set out by the Sentencing Judge by reference to a Statement of Facts which was before the Court[1] but which is not before the Authority. It is evident that in summarising those facts, the sentencing Judge was, at times, being deliberately circumspect about their content. At one point, his Honour declined to be specific about some aspects of the offending because "*some of the*

[1] Commencing at 1.

descriptions … [were] so disgusting" that he was *"not prepared to state them in a public hearing like this".*[2] With those limitations, the following observations can be made about the offending.

8. First, some of the offending involved acts perpetrated by the offender on his brother, Mitchell Windsor, who is a registered victim and who gave evidence before the Authority on 27 February. Those offences included having sexual intercourse with Mitchell, and possessing a photograph performing fellatio on Mitchell. It is also noted that the additional offences that the offender asked the sentencing Judge to take into account all related to acts perpetrated by the offender on Mitchell. They included rubbing his penis on Mitchell's anus, and touching and licking Mitchell's penis.
9. Secondly, a number of the offences involved another victim, referred to as LF. Those offences included the offender taking photographs and video footage of sexual acts between himself and LF. The acts themselves included the offender having forced anal intercourse with LF, at a time when LF was only 5 years of age. Other offences committed against LF included the offender performing fellatio on him when LF was aged 6, offending which was also recorded. Other footage depicted the offender pushing his penis into LF's mouth and exhorting LF to lick his penis, again at a time when LF was 6 years of age. Some of the offending against LF was aggravated by the fact that the offender was in a relationship with LF's mother and living in their home.

10. Thirdly, police found 388 images of LF and the offender engaged in various poses and sexual acts. There were another 440 images found, 52 of which were of Mitchell and 338 of which were of LF. There were also an additional 9 videos found depicting LF along with 77 images of children aged between 2 and 12 posing erotically or naked.

11. Fourthly, the charges stemming from the use of the internet involved further possession of images and videos on a mobile phone, a USB flash drive and a hard drive. Police estimated that the hard drive contained approximately 40,000 child pornography images and video files. Those charges also included the offender transmitting child pornography.

[2] At 12 – 13.

Observations of the Sentencing Judge

12. Acting Judge Hosking SC found that:

(i) the offender had acted entirely selfishly towards his victims, caring nothing for the psychological damage inflicted on them, as a consequence of which he deserved severe punishment;[3]

(ii) the offending occurred over a long period of time, the victims were young, and the offender had filmed some of his acts *"undoubtedly so he could revisit the incidents in his mind later",* a fact which demonstrated a degree of planning;[4]

(iii) the offences surrounding the possession of child pornography and abuse were less serious, but were nonetheless significant[5] because accessing such material degrades the children involved;[6]

(iv) general deterrence was an important consideration on sentence;[7]

(v) specific deterrence was also important, there being a need to dissuade the offender from sexually molesting boys and accessing child pornography;[8]

(vi) there was no basis for a finding of special circumstances;[9] and

(vii) there was some evidence of remorse.[10]

The evidence of Mitchell Windsor before the Authority

13. Mitchell Windsor, the offender's brother, is a registered victim. At the hearing on 27 February 2025, he made a statement to the Authority. That statement was extremely detailed. In it, Mr Windsor recounted the offending, and the psychological sequelae from which he continues to suffer as a consequence. It is to Mr Windsor's great credit that despite what has occurred, he now finds himself on the cusp of obtaining a tertiary qualification in the area of medicine. However, the enduring adverse emotional and psychological effects of the offending on Mr Windsor were both clear and unequivocal.

[3] At 14.
[4] At 19.
[5] At 14.
[6] At 14–15.
[7] At 15.
[8] At 15.
[9] At 19.
[10] At 19.

14. Mr Windsor demonstrated considerable courage in providing his statement to the Authority, in open Court. The Authority thanks him for his contribution to the process. The Authority is required by law to take into account Mr Windsor's statement in making its decision, and it has done so.

15. It is of paramount importance that registered victims of offending who take the invariably emotional and upsetting decision to personally participate in hearings before the Authority are fully and accurately informed about the elements of the process that the Authority must follow in determining whether parole should be granted to an offender. It is evident that Mr Windsor had either not been informed of some of those elements at all, or had been provided with information which was incorrect. In making that observation, it must be stressed that the fault for that does ***not*** lie at the feet of Mr Windsor. However, it is necessary to correct some matters to which he referred, not only for Mr Windsor's benefit and assistance, but for the benefit and assistance of the broader community. It is only when that step is taken that victims, and the Community as a whole, can have a proper appreciation of the process, and the determination which the Authority is required to make.

16. In this regard, particular reference must be made to four matters.

17. First, Mr Windsor urged the Authority to reject the offender's *"application for parole"*.[11] Inherent in that urging was what appeared to be a tacit criticism of the Authority for considering such "*application*" at all. However, the fact is that in New South Wales offenders do not apply for release on parole. Under the Act, the offender has an entitlement to consideration, by the Authority, for his release at this time.

18. Secondly, Mr Windsor suggested that the fact that an intention to grant parole had been formed was reflective of the Authority giving priority to the offender's freedom, at the expense of the safety and well-being of his victims.[12] Two observations should be made about that. The first, is that the mere fact that the Authority forms an intention

[11] Transcript 3.9.
[12] Transcript 9.24 – 9.35.

to grant parole in any case does not lead to the conclusion that such an intention will, as a matter of course, be carried into effect and the offender released. The second, is that the views of a victim in the position of Mr Windsor are matters that the Authority must, under the Act, take into account. The process of an open hearing of the kind which has taken place in the present case enables the Authority to hear, first hand, the submissions of a victim in Mr Windsor's position, and take them into account, along with the other factors which the Act mandates be considered. No one factor is determinative of the outcome.

19. Thirdly, some matters to which Mr Windsor referred appeared to reflect his view that if the Authority implemented the intention that it had formed and released the offender, it would be granting the offender some form of *"early release"*.[13] It is appropriate, given those references, to reiterate what the Authority said in its determination in *Roderick Holohan* in relation to this issue.[14] Put simply, if a decision were made to release the offender on parole at this point it would not, in any sense, constitute a form of "*early release*". Aside from the provisions of s 160 of the 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. In the present case, the sentencing Judge determined that the offender would be eligible for release on 23 March 2025. Bearing in mind the earlier observations about the Authority's obligation to consider release on parole, any determination by the Authority at this point to release the offender at the expiration of his non-parole period would, if made, be entirely in accordance with terms in which the sentencing Judge structured the offender's sentence, and the orders which he made. It would most certainly not amount to releasing the offender at a time earlier than that which the sentencing Judge determined was appropriate.

20. Finally, should also be noted that in the course of his statement Mr Windsor alluded to the suggestion that there were other criminal acts in which the offender engaged which were not the subject of the charges which were brought against him. It should be emphasised that, as might be expected, the Authority makes its decision on the

[13] See for example at Transcript 10.12.
[14] 6 November 2024 at [76] and [77].

basis of the offences for which the offender was sentenced, and not upon allegations which are not substantiated.

THE PROCEEDINGS BEFORE THE AUTHORITY ON 27 FEBRUARY 2025

21. At the hearing of 27 February 2025, the Authority was informed by a representative of Community Corrections who attended to give evidence that the offender's release was supported.[15]

22. In submissions which had been provided to the Authority in advance of the hearing, the State advanced two primary submissions in opposition to the offender's release.

23. The first, was that the offender had not engaged in any pre-release leave.[16] In this regard, the Authority was informed at the hearing that the offender had been approved on 12 June 2024 to undertake day leave[17] but that such approval was withdrawn on 14 November 2024. That withdrawal of approval was, it seems, based upon geographical issues arising from those areas the offender wished to visit when taking such leave.[18] There was no suggestion in the evidence provided to the Authority that approval for the offender's leave was withdrawn because a view was taken that day leave would be of no benefit to him. In circumstances where the view remains that the offender would benefit from day leave, no steps have been taken since November 2024 to implement it.

24. Ms Crellin, who appeared for the State at the hearing on 27 February, sought instructions in relation to this issue. Having done so, she indicated that she had been informed that *"if information was sought by the Authority, Corrective Services would work towards this action as a priority"*.[19] That position frankly poses more questions than it answers, the primary question being why it is that this issue has apparently not been considered as a priority until now, in circumstances where the impending expiration of

[15] Transcript 10.46.
[16] Submissions of 24 February 2025 at [24].
[17] Transcript 11.43.
[18] Transcript 13.23.
[19] Transcript 17.46 – 18.7.

the offender's non-parole period, and thus his eligibility for parole, must have been evident for some time. None of this is the fault, much less a criticism, of Ms Crellin, who did her best to assist the Authority, however, it is a somewhat unsatisfactory position where the State advances, as a reason for refusing the release an offender on parole, the necessity for that offender to undertake day leave, in circumstances where, on the evidence, leave has been approved but nothing has been done for 4 months to put the necessary arrangements into effect to allow it to be undertaken. In advancing its position in relation to this issue, the State submitted that the offender had *"sufficient time remaining … to engage in pre-release leave".*[20] At the risk of stating the obvious, having sufficient time in which to participate in such leave is, to say the least, somewhat futile if nothing is done to facilitate it.

25. The second primary submission advanced by the State in opposing the offender's release was that there was a need for the offender to undertake treatment, in the form of a custody-based sex offender program.[21] In this regard, the Authority was informed by the Community Corrections representative who attended to give evidence at the hearing on 27 February that an assessment undertaken by a Departmental (Corrective Services NSW) Psychologist in 2019 had found that the offender was ineligible for any such program on the basis of his risk rating[22] and that in any event, no program was available at the Correctional Centre at which he is being held.[23] The Authority was informed that the offender had expressed a willingness to undertake a program.[24]

26. Mr Crellin indicated that she had received information (seemingly the night before the hearing on 27 February) about the possible availability of individual risk management interventions to address the offender's sexual preoccupation.[25] Why that information was provided at the eleventh hour, in circumstances where the Authority had formed an intention to grant parole more than a month earlier, was not made clear.

[20] Submissions at [26].
[21] Submissions at [24]; [26].
[22] Transcript 13.35.
[23] Transcript 13.43.
[24] Transcript 13.42.
[25] Transcript 14.39 – 14.43.

27. The Community Corrections representative indicated she had no information at all about such availability.[26] When asked by Mr Naidoo, who appeared for the offender, whether there were programs available in the community to address the offender's sexual preoccupation, the Community Corrections representative explained that if released, the offender would be referred to a Departmental Psychologist who would *"provide further assessments and provide case management advice"* and that the offender *"could also be referred to a private psychologist to work on his offending"*.[27] The precise nature of any *"case management advice"* which might be forthcoming in that event was not explained, nor was what constituted "*working*" on the offending. The Community Corrections Officer confirmed that there was no structed sex offender program available to be undertaken by the offender in the community, based on the risk mitigation plan which had been formulated.[28]

28. At the conclusion of this evidence, the State's position remained that there was a necessity for the offender to undergo a custody-based sex offender program. That position was taken in circumstances where (leaving aside questions of eligibility) the State, through Corrective Services NSW, had not made such a program available. Such circumstances, to say the least, gave rise to something of a tension. In all of these circumstances, the Authority was left in a position where it had no alternative but to adjourn the hearing until 13 March. In doing so, it requested a report addressing:
    (i) the eligibility of the offender to undertake sex offender programs in custody;
    (ii) the availability of those programs; and
    (iii) an indication of the time frame in which those programs could be made available, noting the offender's expressed willingness to undertake such a program.

THE PROCEEDINGS BEFORE THE AUTHORITY ON 13 MARCH 2025

29. Prior to the matter coming back before the Authority on 13 March, a further report was provided by Community Corrections dated 10 March 2025. Regrettably, that report did

[26] Transcript 14.45.
[27] Transcript 15.45 – 16.1.
[28] Transcript 17.3 – 17.7.

not address any of the matters referred to in [28] above which the Authority had specifically identified as being germane to its determination. The report again recommended the offender's release, making reference to the fact that accommodation had been secured for him.

30. Ms Nicole Ahern attended the hearing to give evidence in her capacity as the Chief Psychologist, Behaviour Change Programs, at Corrective Services. Ms Ahern's evidence included the following:

    (i) the offender is not eligible to participate in a sex offender program (be it residential or non-residential) based on his risk level (which is low);[29]

    (ii) there is capacity for the offender to engage in what was described as "*one on one risk intervention work*" in custody, to which he has consented;[30]

    (iii) there is also capacity for that intervention to be conducted in the community;[31]

    (iv) the primary factor which renders the offender ineligible for programs is his risk assessment in terms of sexual reoffending;[32]

    (v) in terms of "*allocation of resources and eligibility*" the offender was at the "*lower end of risk of reoffending*";[33]

    (vi) the offender's ineligibility was unlikely to change, to the point where a further assessment may see a further decrease in risk level.[34]

31. Ms Ahern was asked further questions about these issues in the course of the hearing. It is appropriate to set out the relevant passages of transcript in full:[35]

> *MEMBER MCCOMISH: Ms Ahern, I'm a community member. One of the things that we struggle with is that the assessment that was relied upon, the serious offender' assessment in 2019, actually* ***their recommendation from looking at those Static and Dynamic risk factors for the case management plan was that he would participate in sex offender programs in custody.***

[29] Transcript 2.13 – 2.20.
[30] Transcript 2.26 – 2.30.
[31] Transcript 2.40.
[32] Transcript 3.1 – 3.8.
[33] Transcript 3.14.
[34] Transcript 4.17 – 4.37.
[35] Commencing at Transcript 3.39

MS AHERN: **Yes.**

MEMBER MCCOMISH: The other concern that we have from that is that, as we understand it, in order to be able to participate in specialised sex offender intervention in the community through the forensic psychology services, he needs to have completed a program in custody, otherwise, he is being seen by a general psychologist and it is not sex offender treatment in any way. First of all, can you explain, if the Serious Offenders Assessment Unit does a thorough assessment of both static and dynamic risk factors and they conclude that he is of high risk of sexual reoffending given his dynamic risk factors and that, therefore, he needs to participate in a sex offender program why he was then not offered one, particularly given what we're told is his willingness over a period of time to participate in a sex offender program?

MS AHERN: That recommendation from the Serious Offender Assessment Unit came in mid-2019, as I understand it, and in the intervening time before April or June 2020, we had, for want of a better phrase, a restructure where we looked at trying to be more strategic around intervention pathways, and what happened through that process is the threshold for inclusion, we had developed a custodial TRAS, which essentially is your risk of reoffending, that's not enough for someone convicted of sexual violence to be eligible or not eligible, and we rely on the Static. So what has happened through that process is we have gone back and done our due diligence as the, I guess, **mechanism for inclusion in programs has changed, and we have what we refer to as a referral checklist, and he was transitioned off our wait list because he no longer met the eligibility.** So I guess it is a little bit, if I can use a metaphor, apples and oranges.

So at the time the SOAU did that assessment, he met that criteria, and then criteria has changed based on best practice and evidence around risk need and responsivity and he was no longer found eligible. I guess the flow-on from that was that we as a department recognised that he needed some form of intervention, and that was the alternative pathway, RUSH, the EQUIPS, to address some of those vulnerabilities and satellite issues that were part of his offending pathway.

MEMBER MCCOMISH: **So there was a clinical decision made and a risk assessment done but because of changes in terms of departmental policy, there's a case management decision made that overrides the clinical decision which is about risk?**

MS AHERN: **No, that's not wholly correct. So we reviewed it, and when I say we I mean psychologists at sex offender programs where we look at from a clinical point of view do we need to make essentially an override and say, yes, this person might have a low risk but we want them to come into programs, and through that process he was reviewed in 2020 and again in February of this year, partly because of these proceedings, and we maintained that position that he was not of the highest risk. So, just as a point of correction, he's not deemed high risk, he's average, and his base rate of reoffending is 4%.**

MEMBER MCCOMISH: But as we understand it, if someone is regarded as average risk of sexual reoffending, as you said, compared to a population of sex offenders, not the general offending population, then, as we understand it,

given certain dynamic risk factors that would lead to their inclusion in sex offenders program, ***but in this case you're saying he was triaged effectively out of that?***

MS AHERN: Yes, because he didn't meet the threshold. The threshold to come into moderate intensity is a combined risk level of above average, so a level 4, and again Mr Windsor is a level 3.

MEMBER MCCOMISH: There's no ability for him to access forensic psychology services in the community.

MS AHERN: No, and I say that with a small caveat and, again, we're going to come up against resources and risk. So, generally, forensic psychological services are dealing with people who are well above average, so a 4A or 4B in terms of the risk, and I guess there is a tension personally but also from a departmental point of view where if you have 12 positions to offer, and you've got people scoring 6, 7, 8, 9, 10, 11 on a Static as compared to a 2 and you can only offer ten people, there are some difficult choices to be made about who receives treatment, but in terms of what Mr Windsor would be afforded at forensic psych services, it would be risk intervention guides which is what we're proposing either can occur in custody at Cessnock or within the community through Leichhardt or the City office. So he essentially will get offered the same opportunity to engage in those interventions.

MEMBER MCCOMISH: But not with specialised psychologists, not with psychologists who are specialised in treating sex offenders?

MS AHERN: Well, I can't answer that in the sense of I'm not sure which senior psych would be doing the work. All Correctional psychologists will have some expertise in the treatment of offending behaviour, whether that's violent or sexual violence, and so we would ensure that the person doing that work obviously has a level of expertise in that. We don't want to do harm to Mr Windsor by, you know, not making sure he's getting the best treatment, and we also provide clinical supervision to that senior psych to ensure that they are following best practice.

32. The Authority is left to reach the following findings on the basis of this evidence.

33. First, in 2019, that is to say some 6 years ago, the offender underwent an assessment, the result of which was that he met the criteria for eligibility for inclusion in sex offender programs in custody. Based on that assessment, it was clearly proposed that he would participate in such programs.

34. Secondly, there was, subsequent to that assessment, a *"restructure",* the precise details of which remain somewhat oblique.

35. Thirdly, as a consequence of the restructure, the threshold for inclusion in sex offender programs was altered and the *"mechanism for inclusion in programs changed"*. That, apparently, affected the offender's eligibility.

36. Fourthly, the application of a "*referral checklist*" resulted in the offender no longer meeting eligibility for custody-based sex offender programs.

37. Fifthly, "*resources*" led to "*some difficult choices to be made about who receives treatment*". The Authority construes this evidence as amounting to the proposition that the decision as to whether an offender was to be included in a sex offender program was, at least in part, resource-based.

38. Sixthly, and in any event, there is no sex offender program available at the correctional facility at which the offender is currently being held.

39. Given these matters, the Authority is left to conclude that policy and related considerations resulted in the offender being rendered ineligible for a custody-based sex offender program ***after*** he had met the criteria for eligibility, and a determination was made that he would participate in such a program.

40. In light of this evidence, the State abandoned the necessity for the offender to undertake a sex offender program as a basis for opposing his release. However, the State maintained its opposition to release, submitting that there was a necessity for the offender to undergo the sessions identified by Ms Ahern. The basis of this revised position was expressed in terms that a *"formal sex offender program remained elusive"*.[36] That was, with respect, a somewhat charitable description of the true position. It is not the case that a sex offender program is "*elusive*" at all. The reality is that no such program has been made available to this offender. This is so, notwithstanding that the offender was assessed as being eligible for, and a recommendation was made for his inclusion in, such a program as long ago as 2019. On the evidence before the Authority, that position changed in or about mid 2020. The

[36] Submissions of 12 March 2025.

catalyst for that change was what was described in the evidence as a Departmental "*restructure*", as a consequence of which the offender was *"transitioned off the wait list …. because he no longer met the eligibility"* (based on) "*best practice".*

THE RELEVANT STATUTORY PROVISIONS

41. Section 135(1) of the 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 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, although many of them have already been addressed in substance.

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)

42. There is a risk to the safety of members of the community of releasing the offender on parole, although that risk is assessed as low. There is a clear 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. The offender has spent a long period of time in custody. Even though, on the evidence, he has made advances in terms of his rehabilitation in that period, he will need considerable assistance, support and supervision to assist in re-integrating into the community. Successful reintegration is obviously conducive to community safety.

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

43. The risk of further re-offending has, as outlined, been assessed as low.

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

44. The nature and circumstances of the offending have been set out. Its seriousness is self-evident.

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

45. These have been summarised above.

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

46. The offender has no prior history.

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

47. It is evident that the offender's release would have a significant effect upon Mr Windsor. 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. All of that material has been considered carefully.

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

48. Reference has already been made to some of the information provided by Community Corrections. In addition to that information, the Authority was provided with an initial pre-release report of 20 December 2024 which recommended the offender's release. The report noted that during his period in custody, Mr Windsor did not present any management issues and had not engaged in any institutional misconduct. It was also emphasised that the offender had completed a number of programs including RUSH, EQUIPS Foundations and EQUIPS Addictions. The report also confirmed the evidence of Ms Ahern that the offender was deemed *"not suitable for participation in sexual offending programs in custody"* due to being assessed at a low risk, and outlined a comprehensive supervision plan which included referral to a psychologist.

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

49. An initial report of the Serious Offenders Review Council (the Council) dated 26 November 2024 advised that in the Council's view, the offender's release to parole was appropriate. That report did not address the fact that the offender had not participated in a sex-offender program in custody.

Other relevant factors – s 135(4)(j)

The evidence of Ms Ahern

50. This has been summarised above.

SUBMISSIONS OF THE PARTIES

51. The general tenor of the State's position has already been set out. The State accepted that the interventions which were identified as being presently available would not offer the same degree of treatment as would a formal sex offender program,[37] but submitted that *"to put it bluntly, something is better than nothing"*.[38]

52. The State's position was diametrically opposed to that of Community Corrections who, in their various reports, have consistently advocated for the offender's release. That position was supported by Ms Ahern.[39]

53. Mr Naidoo, who appeared for the offender, pointed to that evidence in support of the offender's release. He also pointed to the fact that the treatments contemplated by Ms Ahern was available to the offender in the community, and submitted that it would be open to the Authority to impose additional conditions to ensure the safety of the community.

CONSIDERATION

54. There are, to say the least, difficulties in the State opposing release based upon the offender's need to take identified remedial steps which only the State can provide, but which are not made available. In this case, those identified steps are firstly a structured sex offender program, and secondly, the offender's participation in pre-release leave. The circumstances in which these options have not been made available have been discussed at length.

55. The Authority is also concerned about aspects of the evidence given by Ms Ahern. In saying that, the Authority should make it clear that its concern it is not, in any sense, a criticism of Ms Ahern who gave evidence in a candid, forthright, honest and straightforward manner, in keeping with a person of her seniority and level of responsibility. Rather, the Authority's concerns stem from what appear to be inconsistencies in the process undertaken in respect of the offender's risk assessment,

[37] Submissions at [8].
[38] Transcript 11.16.
[39] Transcript 12.23 – 12.28.

in circumstances where that assessment is inextricably linked to the offender's eligibility to undertake a sex offender program. On the basis of the evidence before it, the Authority is driven to the conclusion that as a consequence of a change in Departmental policy, the offender was (to adopt a phrase used in an exchange during the second day of hearing) *"triaged"* out of eligibility. What is also clear on the evidence, is that the proposed individual sessions cannot, on any reasonable view, be seen to equate to a formal sex offender program of the kind that can be undertaken in custody by those who are found to be eligible.

56. Ultimately, the Authority must be satisfied that the test posed in s 135(1) of the Act is met before it can order that the offender be released. As is often the case in matters of this kind, some of the mandatory factors which the Authority is required to consider arguably support the offender's release, whilst others do not. The Authority acknowledges the progress which has been made by the offender in custody, his commensurate degree of rehabilitation, and the comprehensive supervision plan to which he would be subject if released. The Authority also acknowledges that after spending a significant period in custody the offender will require considerable support, over an extended period of time, to reintegrate into the community.

57. However, taking into account all of the relevant factors, the Authority cannot be satisfied that it is in the interests of the safety of the community to release the offender at this point. In the Authority's view, the serious nature of the offending, and the consistency with which it was committed over a significant period of time, require that the offender satisfactorily undertake some form of treatment, directed to the nature of his offending, before he is released.

58. It is to the offender's credit that he has expressed a willingness to engage in the treatment which has been identified as being available. That expressed willingness gives the Authority some reason for optimism that the offender will participate in that treatment, complete it satisfactorily, and benefit from it. If all of those circumstances come to pass, it will hopefully mean that when the offender is eventually released, as he must be at some point in the future, the community will be better protected. In reaching the view that the offender should not be released at this point, the Authority

has taken into account the fact that the treatment in question can be provided in the community. However, the Authority considers that community safety requires that it be administered in custody.

59. Bearing in mind the entirety of the circumstances of this case as outlined above, and also bearing in mind that it will have to consider the offender's release again at some point in the future, the Authority expects that all necessary steps will be taken by the State to have the identified treatment commence in custody immediately.

60. Finally, the Authority has not been required to make a determination in relation to the issue of pre-release leave because of the circumstances which have been outlined. If it remains the State's position that it is necessary for the offender to satisfactorily undertake and complete a program of structured leave before being released, then the Authority would also expect that this issue would be addressed by those responsible with the priority to which Ms Crellin referred when dealing with the issue during the hearing.

ORDER

61. For the reasons given, the Authority determines that the offender should not be release on parole.

24 March 2025