

CITATION: *Commissioner of NT Police v ND* [2026] NTLC 11
PARTIES: *Commissioner of NT Police*
v
ND
TITLE OF COURT: LOCAL COURT
JURISDICTION: CRIMINAL
FILE NO(s): 22552799
DELIVERED ON: 9 June 2026
DELIVERED AT: Darwin
HEARING DATE(s): 27 January & 17 April 2026
DECISION OF: Judge Macdonald

CATCHWORDS:

CRIMINAL LAW - reportable offender - application for Child Protection Prohibition Order - conditions supplementary to existing parole order - assessment of risk - application declined

Child Protection (Offender Reporting and Registration) Act 2004 ss 3, 71, 72, 87

Attorney-General (NT) v JD [2015] NTSC 28

AX v Mental Health Review Tribunal [2019] NTSC 34

Briginshaw v Briginshaw (1938) 60 CLR 336

Dunn v Woodcock [2003] NTSC 24

Fardon v Attorney-General (2004) 223 CLR 575

George v Rockett (1990) 159 CLR 70

The Queen v Gehan [2019] NTSC 91

The Queen v ND [2014] NTSC 11

REPRESENTATION:

Counsel:

Applicant: Ms E Lymberis

Respondent: Mr S Naylor

Solicitors:

Applicant: Solicitor for the NT

Respondent: Legal Aid NT

Decision category classification: B

Decision ID number: [2026] NTLC 11

Number of paragraphs: 24

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

No. 222552799

BETWEEN:

Commissioner of NT Police

Applicant

AND:

ND

Respondent

REASONS FOR DECISION

(Delivered 9 June 2026)

JUDGE MACDONALD

1. On 17 April 2026 the court declined an Application by the Commissioner of NT Police (Commissioner) under s 71 of the *Child Protection (Offender Reporting and Registration) Act 2004* (the CPORR Act), with reasons to be published. These are those reasons.

Background

2. On 20 September 2021 the Respondent pled guilty to 18 offences contrary to the *Criminal Code Act 1995* (Cth) relating to child abuse material, constituted by creating, developing, altering, controlling, maintaining, possessing and transmitting child abuse material.¹ On 13 October 2022 the Respondent received a total effective sentence of 5 years and 9 months imprisonment, backdated to 25 March 2021. A two-year non-parole period was fixed, such that he was eligible for parole from 24 March 2023. As matters transpired, the Respondent was not granted parole until 24 March 2025.²
3. The Commissioner's Application was made 23 September 2025, seeking a Child Protection Prohibition Order ('CPPO') prohibiting various conduct.³ The prohibitions sought were supplementary or in addition to the conditions prescribed by a Parole Order issued under the *Crimes Act 1914* (Cth)

¹ The offending occurred over a protracted period, commencing in May 2018 and ceasing (upon arrest) in March 2021.

² The Application comprised no evidence as to reasons for delay the grant of parole, despite that may have included aspects militating against release from custody. This could not be inferred.

³ Some of which were prohibitions, but conditioned on exemption by approval of the Commissioner or a delegate. That included in relation to possession of any "electronic device capable of connecting to the Internet" and any "data storage device capable of storing data".

and administered by the Commissioner of Correctional Services,⁴ and in addition to reportable offender conditions imposed on the Respondent vide Part 3 of the *Child Protection (Offender Reporting and Registration) Act 2004* ('CPORR'). An Interim CPPO was made by the court on 6 November 2025, with a listing for hearing made for 27 January 2026. The Parole Order is currently in force until 24 December 2026 and the reportable offender conditions will remain extant until 23 March 2040.⁵

The Application and decision

4. The Application was supported by Affidavit evidence sworn by NT Police member Hayman on 17 September 2025. That evidence included narrative concerning the offending engaged in by the Respondent over May 2018 through to March 2021. The images the subject of the offending were large in number and, in many cases, gravely criminal. The offending also involved some instances of exploiting a 15-year-old via Internet communication in order to obtain child abuse material in exchange for money.
5. The evidence also included a Certificate of Conviction setting out the 18 counts to which the Respondent pleaded guilty on 13 October 2022, resulting in the stern sentence imposed on him.⁶ His Honour Justice Southwood's comprehensive sentencing remarks of 13 October 2022 were also provided, as annexure NH3. That included detailed consideration of two expert reports provided by forensic psychologist Dr Davis.
6. The sentence was imposed more than three years ago, with the last offending being more than five years ago. The sentence was determined on the basis of the evidence at that time, including Dr Davis' opinion that the Respondent had gained some insight into the wrongfulness of his offending, and that he presented as a low to moderate risk of reoffending. The Respondent presented with a below-average number of risk factors at the time of assessment in 2022.
7. The Respondent was released on parole on 24 March 2025, under very strict conditions. However, there is no explanation as to why the possible parole date of 24 March 2023 posited by the Supreme Court was not availed of.⁷ Presumably the Director of the Commonwealth Parole Office of the Attorney-General's Department in Canberra would have some relevant information in that regard. The Respondent's release on parole in March 2025 was conditioned on 28 proscriptions and prescriptions to prevent reoffending and enable rehabilitation.⁸ Responsibility for compliance and

⁴ The Commissioner is appointed under s 17 of the *Correctional Services Act 2014* (NT) and is a member of the Parole Board under the *Parole Act 1971* (NT). The interrelation between parole orders issued under Commonwealth laws and the exercise of powers by a "probation and parole officer" (as opposed to the community corrections officer referred to in the Order) under Territory legislation was not subject of any consideration, and is assumed to be effective.

⁵ Sections 12(1)(b), 36(1)(b) and 37(2)(b) of the CPORR Act.

⁶ The sentence included a 25% discount for an early plea of guilty, the plea having been entered on 20 September 2021, more than one year prior to sentence. The sentence was also backdated to 25 March 2021, reflecting the time the Respondent had spent in custody on remand, following arrest and charge. The Respondent had no prior convictions.

⁷ It is possible that the Respondent was recalcitrant or resistant in relation to any rehabilitative measures made available or sought to be applied while in custody, but no evidence either way was tendered.

⁸ The remedial, protective and corrective measures include to fully disclose all ICT details for any device capable of internet access (approved by community corrections), together with restrictions on movement, presence and

enforcement in relation to some additional or varied conditions was then apparently transferred from the Commissioner of Correctional Services to the Commissioner of NT Police by instrument of amendment dated 19 August 2025.⁹

8. Although not in Affidavit form, some other information was also provided to the court concerning interventions availed of by Respondent while in prison, and as to the changes in parole conditions subsequent to release.¹⁰ A letter written by the Respondent on 1 November 2025 concerning his perspectives at that time was also filed with the court. The court also had the benefit of written submissions from the parties.
9. Section 71 of the CPORR Act enables the Commissioner to make application for a CPPO, with s 72 relevantly providing;

72 Court may make child protection prohibition order

- (1) *A court may make a child protection prohibition order prohibiting a person from engaging in conduct specified in the order if the court is satisfied that the person is a reportable offender and, on the balance of probabilities, that:*
 - (a) *there is reasonable cause to believe, having regard to the nature and pattern of conduct of the person, that the person poses a risk to the lives or sexual safety of one or more children or children generally; and*
 - (b) *the making of the order may reduce that risk.*
- (2) *For subsection (1), it is not necessary that the court be able to identify a risk to a particular child or particular children or a particular class of children.*
- (3) *In determining whether to make an order under this section in respect of a reportable offender, a court must take the following into account:*
 - (a) *the seriousness of the reportable offender's reportable offences and foreign reportable offences;*
 - (b) *the period of time since those offences were committed;*
 - (c) *the age of the reportable offender, and the age of the victims of those offences, at the time those offences were committed;*
 - (d) *the difference in age between the reportable offender and the victims of those offences;*

associations. The last condition imposed on 24 March 2025 was that any computer or electronic device with Internet access must be presented to a 'community corrections officer' on request for examination.

⁹ The amendments and additions were threefold, and expressed to have been effected under s 19APA(1) of the *Crimes Act 1914* (Cth). They comprised, firstly, an amendment compelling the Respondent to allow members of NT Police to inspect any device [in his possession, custody or control?] capable of connecting to the internet or storing data, including by provision of passwords etc. Second, to permit such members to enter any place, premises or vehicle reasonably believed by them to have been or being used by the Respondent, in order to effect the inspection referred to. Thirdly, a prohibition on installing or using any VPN or anti-forensic software on any device.

¹⁰ The former was referred to in written submissions, so was in the nature of evidence from the bar-table. As to the latter, footnote 9 above refers.

- (e) *the reportable offender's present age;*
- (f) *the seriousness of the reportable offender's total criminal record;*
- (g) *the effect of the order sought on the reportable offender in comparison with the level of the risk that a further reportable offence, or an offence that may give rise to an offender reporting order, may be committed by the reportable offender;*
- (h) *to the extent that they relate to the conduct sought to be prohibited – the circumstances of the reportable offender, including the reportable offender's accommodation, employment needs and integration into the community;*
- (i) *in the case of a young reportable offender – the educational needs of the young reportable offender;*
- (j) *any other matter the court considers relevant.*

.....

10. The grant of a section 71 Application by making a CPPO must have regard to a number of criteria. That is in the context of the principal object of the CPORR Act being to “*protect the community*”.¹¹ The text, context and purpose of the CPORR Act are critical in construing and applying its provisions.¹² It is common ground that the Respondent is a reportable offender, so the primary criterion for consideration is “*risk*”.
11. In particular, the court must be satisfied on the balance of probability that “*there is reasonable cause to believe that ... the Respondent poses a risk to the lives or sexual safety of one or more children or children generally*”. That risk is to be determined or otherwise “*... having regard to the nature and pattern of conduct*” of the Respondent.
12. In relation to “*reasonable cause to believe*”, due to the standard of proof prescribed by s 72(1), the latitude discussed by the High Court in *George v Rockett* does not apply.¹³ That is consistent with the application being to a court rather than to the mind of an investigator, such that the proposition that formation of a “*belief*” may “*involve an element of surmise or conjecture... [although] ...there must exist some facts which are sufficient to induce that state of mind in a reasonable person*” does not apply.¹⁴
13. The Application is in the criminal jurisdiction of the Local Court.¹⁵ The Commissioner bears the onus of proof in an application for a CPPO, noting there is nothing to prevent any respondent from

¹¹ *The Queen v ND* [2014] NTSC 11 at [23].

¹² *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27 at [47] and *DZY v Trustees of The Christian Brothers* [2025] HCA 16 at [23].

¹³ *George v Rockett* (1990) 159 CLR 70 at [14] being; “*The objective circumstances sufficient to show a reason to believe something need to point more clearly to the subject matter of the belief [as compared to suspicion], but that is not to say that the objective circumstances must establish on the balance of probabilities that the subject matter in fact occurred or exists: the assent of belief is given on more slender evidence than proof.*”

¹⁴ *The Queen v Gehan* [2019] NTSC 91 at [39].

¹⁵ Section 70A of the CPORR Act.

adducing rebuttal evidence.¹⁶ It was also common ground that the *Briginshaw* principle applied to the Application, requiring evidence which is “...clear, compelling and of high probative value” in order to sustain an adverse finding or conclusion.¹⁷ The positive finding sought by the Application would “produce grave or adverse consequences” for the Respondent, such that “inexact proofs, indefinite testimony or indirect inferences” would be insufficient to found a CPPO.¹⁸

14. It may be noticed that the legislature has seen fit to not prescribe any particular level or acuity to the concept of “risk”.¹⁹ However, the non-exhaustive criteria prescribed by s 72(3) make clear that the determination on whether to make a CPPO is to be decided including having regard to the circumstances in existence at the time of the application, rather than simply at the time of offending.²⁰
15. An express focus in ascertaining the level and extent of “risk” is “the nature and pattern of conduct” of the Respondent.²¹ Subsection 72(3) then enumerates nine criteria against which the Respondent’s “nature and pattern of conduct” must be evaluated in order to determine the level and extent of risk. I consider any risk sufficient to found a CPPO would need to be a real and present risk. Any risk which was minimal or less than contemporaneous would be insufficient. I take that view despite the protective and preventative object of the CPORR Act, due to the significant impost and restrictions which a CPPO may impose on a respondent.
16. The general effect of the Application, if granted, would be to extend onerous obligations in relation to the Respondent beyond the expiration of the parole period in December 2026, for a period of five years. That extends to a prohibition on the purchase or possession of “mobile phones which do not have internet access, USB flash drives, external hard drives, hard disks and memory cards”, and against utilisation of virtually all social media. Those provisions would be subject to a discretionary exemption being “except if approved by the Commissioner of police or delegate”, and “registered with the Child Protection Offender Registry.”²² The existence of a discretionary exemption does not generally ameliorate the burden of any condition, including due to the potential for misuse.²³
17. It is also noted that, in contrast to the terms of the current Parole Order, the CPPO sought provides no express power in the Commissioner to facilitate or enable compliance or enforcement in the ICT

¹⁶ That course was not adopted by the Respondent, noting that the usual procedure in contested applications is to file and serve affidavit evidence. The spectre of cross-examination on content may disincentivise that course, however the procedure should nonetheless be followed.

¹⁷ And; “reasonable satisfaction” should not be produced by inexact proofs, indefinite testimony, or indirect inferences”; *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361

¹⁸ *AX v Mental Health Review Tribunal* [2019] NTSC 34 at [33].

¹⁹ Compare for example the ‘serious danger’ and “unacceptable risk” required in *Fardon v Attorney-General* (2004) 223 CLR 575.

²⁰ Reading Part 5 of the CPORR Act as a whole, including s 87.

²¹ Subsection 72(1) of the CPORR Act.

²² Proposed form of CPPO filed in court by the Commissioner on 27 January 2026.

²³ *Dunn v Woodcock* [2003] NTSC 24 at [13].

space.²⁴ That is despite the focus of any CPPO being potential future “conduct” of a respondent.²⁵ It is of course an offence to engage in conduct proscribed by any CPPO, which conduct empowers members of NT Police to arrest in response.²⁶ However, neither the CPORR Act nor *Child Protection (Offender Reporting and Registration) Regulations 2004* appear to provide any cybersecurity means by which the authorities can seek to ascertain compliance with conduct proscribed by CPPO. It is uncertain whether any CPPO would be interpreted to carry with it all necessary and convenient powers in order to do so.²⁷

18. Regardless, some circumspection will always be necessary where the court is responsible to make orders curtailing or restricting a person’s liberty, movement or association.²⁸ Although a CPPO is not a sentence, due to its analogy to conditional release, proportionality is relevant.²⁹
19. The accepted principle that restrictions to be imposed by the courts when ordering conditional liberty must be proportionate to the risk to be addressed has some role in applications for a CPPOs.
20. In relation to the subject Application, s 87 of the CPORR Act relevantly provides;

87 Commissioner to be given information relating to reportable offenders

- (1) *When determining whether to make an application under this Part, or when making an application under this Part, the Commissioner may, by notice in writing, direct” the Commissioner, on or before a day specified in the notice, any information held by the public authority that is relevant to an assessment of whether the reportable offender poses a risk to the lives or the sexual safety of one or more children or children generally.*
- (2) *A public authority to which a direction under subsection (1) is given is authorised and required to provide to the Commissioner the information sought by the direction.*
- (3) *A public authority is not required to give information that is subject to client legal privilege.*

21. The Respondent spent four years incarcerated at Darwin Correctional Centre and, subsequently, has been subject to close supervision by the Commissioner of Correctional Services on parole.³⁰ That Commissioner will have formal records containing information relevant to whether the Respondent

²⁴ Paragraphs 3(o) of the Parole Order (by amendment made 19 August 2025) requires the Respondent to “present” any relevant device to a “community corrections officer” and “allow a police officer to inspect” any relevant device, and to provide “any passwords, codes or information to assist in their search or inspection”. Paragraph 3(p) also directs the Respondent to “allow a police officer to enter into, search and inspect any place, premises or conveyance” being “used by” the Respondent, for the purpose of enforcing condition 3(o).

²⁵ Section 73 of the CPORR Act refers.

²⁶ Section 83 of the CPORR Act.

²⁷ This may raise issues and the principle discussed in *Attorney-General (NT) v JD* [2015] NTSC 28 at [3].

²⁸ This is particularly so where, as with the current Parole Order, private property or premises may be subject to intrusion. However, conditions have also been set aside due to uncertainty, being surplus, unrealistic, unduly onerous, and even “undesirable” due to excess; *Dunn v Woodcock* [2003] NTSC 24 at [7] and [8].

²⁹ *Dunn v Woodcock* (supra) at [11] and [12].

³⁰ As a servant or agent of the Commonwealth Attorney-General, who granted the Respondent parole on 24 March 2025.

engaged in any positive rehabilitation while an inmate and on parole. Similarly, other public authorities may hold some relevant information.

22. Section 87 confers a broad power on the Commissioner to “*direct any public authority to provide*” any information “*that is relevant to an assessment of whether the reportable offender poses a risk to the lives or the sexual safety of one or more children or children generally*”. The term “*public authority*” is defined by s 3 of the CPORR Act and includes emanations of the Crown such as the Agency known as Department of Corrections and the officer fulfilling the statutory office of Commissioner of Correctional Services. It would also extend to public health authorities.
23. It is unclear whether the compelling reach of s 87 extends to the Attorney-General’s Department of the Commonwealth. However, intergovernmental arrangements together with the agency which apparently exists through the Parole Order of 24 March 2025 would be inclined to the release of relevant information.³¹ Due to the two-year delay between commencement and effect of the parole period, it is very possible that the Commonwealth Attorney-General’s Department is in possession of such information.
24. The “*nature and pattern of conduct*” of the Respondent between May 2018 and March 2021 is clear, due to his plea of guilty in September 2021 and the Supreme Court’s remarks on sentence of 13 October 2022. However, due to the period of time which has elapsed since the Respondent’s offending and the paucity of information one way or the other concerning potentially relevant matters which may or have not occurred since the Respondents incarceration and release on parole (together with the fact that the extensive parole conditions will be extant until December 2026), the Application is declined.

³¹ Section 3 of the CPORR Act includes any “*Agency or department of the Public Service*” within the meaning of “*public authority*”, however the *Interpretation Act 1978* (NT) does not define the term “*Public Service*”. It may be paragraph (c) of the definition could also apply, through Commonwealth legislation.