Police v X

Burwood Local Court
XX November 2025
2024 / 1234 5678

Respondent's Submissions

Introduction

1. On 12 September 2024, the Respondent pleaded guilty to one charge under s474.22A Criminal Code (Cth) – Possessing or controlling child abuse material obtained or accessed using a carriage service.

2. Section 474.22A is <u>not</u> a registrable offence under the Child Protection (Offenders Registration) Act (NSW) 2000 **(the Act)**.

3. On 1 October 2024, the Applicant served an application for a Child Protection Registration Order (CPRO) under s3E of the Act.

Issue for Determination

4. The issue to be determined is whether, having regard to all the evidence, the court is satisfied on the balance of probabilities that the Respondent poses a ***risk to the lives or sexual safety of one or more children, or of children generally***. [1]

The Law

5. Amendments to the Act commenced on 29 September 2025. Section 474.22A is listed as a Class 2 registrable offence in Schedule 1B, Part 2 of the new Act. It was not a registrable offence before the amendments came into force.

6. Offences which became registrable offences as a result of the insertion of Schedules 1A and 1B are taken not to be registrable offences if committed before those amendments commenced on 29 September 2025. [2] The current offence falls into this category.

7. Section 3E provides that the Police Commissioner can apply to the Local Court for a CPRO within 60 days of sentencing for an offence that is not a Class 1 or Class 2 offence.

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1 Section 2C Child Protection (Offenders Registration) Act
2 Sch 2, Pt 12, cl 33 Child Protection (Offenders Registration) Act

The Test

8. Section 2C provides the test and criteria that must be considered by the court:

> ***2C Risk to sexual safety of children—meaning***
>
> *(1) For the purposes of this Act, a person poses a* ***risk to the lives or sexual safety of one or more children, or of children generally*** *if there is a risk that the person will engage in conduct that may constitute a Class 1 offence or a Class 2 offence against or in respect of a child or children.*
>
> *(2) In order for a court to be satisfied that a person poses a risk to the lives or sexual safety of one or more children, or of children generally, it is not necessary for the court to be able to identify a risk to particular children, or a particular class of children.*
>
> *(3) A court is to take the following into account in determining whether a person poses a risk to the lives or sexual safety of one or more children, or of children generally —*
>
> *(a) the seriousness of each registrable offence committed by the person,*
> *(b) the age of the person at the time each of those offences was committed,*
> *(c) the age of each victim of each of those offences at the time that the offence was committed,*
> *(d) the seriousness of any other offences committed by the person,*
> *(e) the impact on the person if the order being sought is made compared with the likelihood that the person may commit a registrable offence,*
> *(f) any other matter that the court considers to be relevant.*

The Leading Case

9. The leading case is O'Neil v Commissioner of Police. [3] This case was decided before the amendments but the test and mandatory considerations haven't changed.

10. Mr O'Neil was convicted of driving a motor vehicle with an illicit drug present in his blood and possession of a prohibited drug. Neither of these offences involved a child and, indeed, there was no evidence that he had ever inappropriately dealt with a child. Nevertheless, police made the application and, despite being represented, Mr O'Neil inexplicably consented to the order being made.

11. Mr O'Neil subsequently came to his senses and appealed to the Supreme Court which promptly quashed the order. The court had multiple bases for this. Firstly, the police had filed their application outside the 60 day time limit from the date of conviction. Secondly, they had filed papers seeking a different order under a different act. But most importantly, Fagan J found that the magistrate could not have been satisfied that Mr O'Neil posed a risk to the life or sexual safety of children.

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[3] [2020] NSWSC 1805

12. Fagan J found that at [12]:

> *Section 3AA makes it clear that the enquiry under s 3E(2)(a) about whether the person poses a risk to children is not at large but is constrained and directed by the statute. It shows that a conclusion as to the existence of a risk cannot be drawn lightly.*
>
> *The first three considerations listed in s 3AA, pars (a), (b) and (c), contemplate that the respondent has been proved beyond reasonable doubt to have committed an offence against a child or children. As earlier mentioned, a conviction for such an offence is not a prerequisite to the making of an order under s 3E. However, the fact that three out of six mandatory considerations are directed to cases where the respondent has been so convicted is a clear indication that, in other cases, the contention that a respondent is a threat to children would have to be based upon something stronger than a police officer's speculation or suspicion.*
>
> *The remaining considerations under s 3E(3) are to be construed, applied and weighed having due regard to their context, juxtaposed with considerations (a), (b) and (c). For example, the "seriousness of any other offence" referred to in par (d) must be measured with particular regard to whether any such other offence involved a child victim, which is the focus of pars (a), (b) and (c). A drug possession charge or a driving infringement, as in the present case, could not be regarded as "serious" within the meaning of par (d), given its context.*
>
> *Underlining added by Counsel*

13. The upshot is that the police carry the burden of proving that the offender is a risk to the life or sexual safety of children and that the court must have regard to the six mandatory factors in s2C. The court should not make such an order based on speculation or suspicion by the police.

Evidence

14. The following material is before the court:

    a. The Application by SC Elliott Ness dated XX October 2024,
    b. The CAN & Facts Sheet upon which the Respondent was sentenced,
    c. Criminal Antecedents showing no other offences,
    d. Case Note from Department of Corrections dated XX August 2024,
    e. Sentencing Assessment Report dated XX September 2024,
    f. Report from Psychiatrist Dr Jeckyll dated XX October 2025,
    g. Reports from Psychologist Professor Freud dated XX October 2025,
    h. Criminology Paper – 'What is the profile of child exploitation material offenders?'

i. Form 3 Notice dated 12 September 2024.

Applicant's Case

15. The Police Commissioner's case is stated in the application of SC Elliott Ness. Firstly, and appropriately, the Applicant concedes that the offence is not registrable. This reflects parliament's intention that it should not lead to an automatic CPRO.

16. The Applicant also acknowledges the Respondent's diagnosis of Major Depressive Disorder and Chronic Hoarding Disorder for which he is now receiving treatment.

17. The only subjective material provided by the Applicant is the Sentencing Assessment Report. The Applicant has provided no statistical or academic material regarding recidivism rates and simply asks the court to assume that the Respondent is a risk.

Respondent's Case

18. Mr X is a 71 year old man with only one conviction on his criminal history.

The Department of Corrections Case note

19. Ms Parole Officer conducted a risk assessment of the Respondent using the Child Pornography Offender Risk Tool (CPORT) and the Respondent scored 0. She gives her conclusions that:

> *... Taking into account Mr X's CPORT score and the known details of his sexual offending, it seems appropriate to consider his risk of future sexual reoffending as low. Were he to reoffend sexually, the literature suggests it is more likely that he would be found with further child abuse material than engage in alternate sexual offending behaviour.*

20. Counsel submits that 'low' is the best possible risk assessment outcome. No one is ever assessed as being 'no risk'.

Sentencing Assessment Report

21. A Senior Community Corrections Officer assessed Mr X as a **Low** risk of general reoffending according to the Level of Service Inventory – Revised.

Psychiatrist Dr Jeckyll

22. Mr X has been consulting Dr Jeckyll since XX November 2023. Dr Jeckyll reports in his report dated XX September 2025, that he conducted a risk assessment of Mr X and offers his conclusion on page 7:

> *I have no evidence to suggest that he is a paedophile or has a paedophilic tendency. I do not believe that child pornography consumption alone is sufficient enough to make the diagnosis of paedophilia. However, given the sensitivity and seriousness of the expressed concerns made by police in relation to the safety of children in the community, I recommend that he receives regular ongoing monitoring of his mental state, including the assessment and monitoring of his sexual urges and fantasies. I also recommend an effective and ongoing treatment, including pharmacotherapy, psychotherapy and psychoeducation for his major depression and hoarding disorder for a period determined by his treating psychiatrist and psychologist.*
>
> *In conclusion, Mr X is assessed to be of low risk to the safety of children and is not a paedophile. I hope this brief report is helpful.*

23. In his subsequent report dated XX October 2025, Dr Jeckyll opines:

> *Having reviewed the available clinical history and conducted a contemporaneous mental state examination, I consider the risk of reoffending to be minimal – that is, at the lowest of risk that can reasonably be assigned within psychiatric evaluation standards.*
>
> *I acknowledge that in medico-legal practice, no individual can be designated as zero risk; however, in my expert opinion, the probability of reoffending in this case is negligible to the point of being clinically insignificant.*

24. Dr Jeckyll then lists five protective factors before concluding:

> *In forensic risk formulation, the presence of strong dynamic protective factors materially reduces risk to a level where punitive intervention is unlikely to yield additional preventative value.*
>
> *Accordingly, while I must as a matter of clinical prudence, avoid asserting absolute zero risk, I state that the likelihood of reoffending is – based on psychiatric standards – as low as can be meaningfully determined.*

Report of Professor Freud

25. Mr X has consulted with psychologist Professor Freud since XX November 2023. Professor Freud has provided a report dated XX September 2025 and gives his opinion:

> *Based on his adherence to the therapeutic suggestions, support network from his church, his understanding, acceptance, and remorse of his past behaviour, commitment not to relapse, and his distress at the possibility of not being able to visit his siblings in Singapore; I am of the opinion that Mr X will be a low risk to the safety of children.*
>
> *In addition, based on my assessment and sessions with Mr X, I am on the opinion that there is no evidence that Mr X has a sexual interest in children.*

26. Professor Freud made a subsequent report dated XX October 2025 in which he clarified at points 3 & 4 that 'low risk' is the lowest possible rating:

> *3. From a clinical and medico-legal point of view, no individual can be considered as absolute zero no risk.*
>
> *4. Based on the abovementioned protective factors, the chance of Mr X reoffending is extremely low. From clinical perspective, this is the lowest risk rating that can be provided.*

'What is the profile of child exploitation material offenders?'

27. This paper was published by the Australian Institute of Criminology and was recommended and provided to me by psychiatrist Dr Richard Furst in another, unrelated matter.

28. The researchers give their conclusion at page 9 of the report:

> *In general, less than one in 10 has a previous criminal justice sanction for a contact child sexual offence, although this may mask much higher actual rates of offending. Few CEM offenders go on to reoffend — either with a further CEM offence or with a contact child sexual offence — and they are less likely to reoffend than contact child sexual offenders.*
>
> *These general findings suggest that the profile of CEM offenders may be different to that of other types of sexual offenders, especially those who commit contact sexual offences against children. Less is known about how similar or different CEM offenders are to the general population, although there is tentative evidence to suggest they may be different in certain important respects*.

Section 2C Factors

The seriousness of each registrable offence committed by the person

29. The Respondent has not been convicted of a registrable offence.

30. He pleaded guilty to possessing child abuse material and accessing it via a carriage service.

The age of the person at the time each of those offences was committed

31. Mr X was 69 years old at the time of his arrest.

The age of each victim of each of those offences at the time that the offence was committed

32. The children have not been identified. The Facts Sheet refers to 'a male and female toddler aged between 3-5 years old'.

The seriousness of any other offences committed by the person

33. Mr X has no other criminal convictions.

The impact on the person if the order being sought is made compared with the likelihood that the person may commit a registrable offence

34. The 'Form 3' Notice states at point 8 that Mr X would be required to notify the Police Crime Manager seven (7) days before travelling interstate or overseas. It further states that the Federal Police and Foreign Law Enforcement officials may also be notified of your travel. It finishes with the blunt statement that 'Foreign countries may refuse you entry'.

35. This would be particularly onerous on Mr X as he is a Singapore citizen and has family in Singapore.

Any other matter that the court considers to be relevant

36. Counsel submits that the court should have regard to Mr X's progress in treatment for his medical conditions. Both his Psychiatrist and Psychologist attest to his progress and cooperation with treatment. Both opine that he is not a paedophile and presents a low risk (the lowest possible) to the safety of children.

Submissions

37. The purpose of these proceedings is not to punish the offender. The offender was adequately punished when the court sentenced him to a nine month Intensive Corrections Order. He has now served that sentence and cannot be subject to further punishment.

38. The purpose of these proceedings is to determine whether Mr X poses a risk to the lives or sexual safety of one or more children, or of children generally.

39. The Police Commissioner has brought the application and carries the burden of proving that risk on the balance of probabilities. The Supreme Court held in O'Neil that this requires 'something stronger than a police officer's speculation or suspicion.'

40. Indeed, it cannot be sufficient to prove there is 'a risk' because every person could theoretically be 'a risk' and then every person would qualify for a CPRO.

41. The act does not require Mr X to prove himself to be 'no risk' as that would be an impossible task. The court must balance the potential risk to children against the civil rights of one of its citizens.

42. Counsel submits that the evidence before the court and, in particular, the medical evidence, must lead the court to the conclusion that Mr X is not an unacceptable risk to the lives or sexual safety of one or more children, or of children generally.

43. Those are my submissions.