

Acknowledgement of Country



Tailoring orders for Aboriginal people

Michelle Macdonald
Aunty Glendra Stubbs
Jeremy Styles



Part A: Reporting and Monitoring Obligations

Monitoring and Reporting

1. The defendant must submit to the supervision and guidance of a DSO and obey all reasonable directions of a DSO.
2. Where a direction may conveniently be given in writing (or is required to be given in writing) it may be given electronically including by SMS or other messaging service.
3. The defendant must truthfully answer questions from a DSO, or any other person supervising him, about where he is, where he is going, who he is with, what he is doing and the nature of his associations.

Electronic Monitoring

4. The defendant must wear electronic monitoring equipment as directed by a DSO and must not tamper with, or remove, the equipment.

Schedule of Movements

5. If directed, the defendant must provide a weekly plan (called a schedule of movements) and this is to be provided 3 days before it is due to start.
6. If the defendant wants to change anything in his schedule of movements once it is approved by a DSO, he must seek approval from a DSO about the change 24 hours in advance, unless a DSO approves a shorter period.
7. The defendant must not deviate from his approved schedule of movements except in an emergency.

Part B: Accommodation

8. The defendant must live at an address approved by a DSO and notify a DSO of any intention to change the defendant's address or living arrangements.
9. The defendant must be at his approved address between 9pm and 6pm unless other arrangements are approved by a DSO.
10. The defendant must comply with rules or by-laws (or both) of any approved accommodation for the defendant.
11. The defendant must allow a DSO to visit him at his approved address at any time and, for that purpose, to enter the premises at that address.
12. The defendant must not spend the night anywhere other than his approved address or any alternative approved addresses (if relevant) without the approval of a DSO.
13. The defendant must promptly notify a DSO of any visitor entering and remaining at his approved address and must not permit any person to stay overnight, at his approved address (other than persons who ordinarily reside at his approved address), without the prior approval of a DSO.



Observations about Glen

- Closely connected to his Indigenous culture
- Had difficulties managing his phone
- Had difficulties remembering my name
- Gratuitous Concurrence - responded to questions “Yes, miss” or “No, miss”
- Could not comply with scheduling
- Scared and frustrated



Judicial Information Research System (JIRS)

Crimes (High Risk Offenders) Act 2006 (NSW)

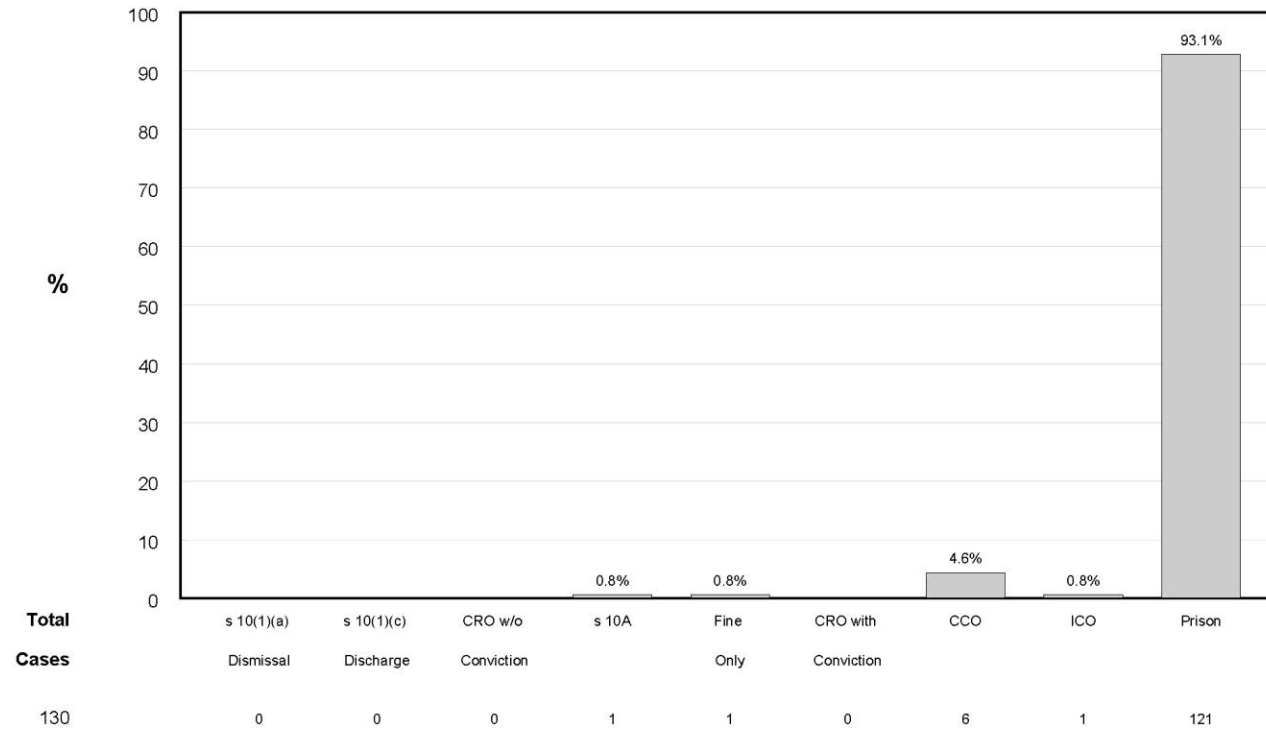
s 12 - fail to comply with extended/interim supervision order

NSW Local Court - as at Mar 2022

Sentences from 24 Sep 2018 to Sep 2021

Penalty Type - Principal Offences Only

All Offenders



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27 July 2021 - Preliminary hearing

State of New South Wales v Devries (Preliminary) [2021] NSWSC 949, Hulme J

- Evidence tendered
 - Neuropsychological report by Dr Sally McSwiggan
 - Affidavit of Michelle Macdonald 20 July 2021

- At [9]:

*“The next issue to decide concerns the conditions that should apply to that interim supervision order. There is a substantial debate between the parties about this. The issue arises because of Mr Devries’ very limited intellectual capacity in relation to understanding and remembering written and oral communications. **His own ability to communicate is hamstrung by certain attributes of his Aboriginality.**”*

- Declined to impose conditions sought by State



Aunty Glendra's report

“Questions to address

Once you have read this letter, enclosed documents and met with Mr Devries, could you kindly prepare a letter directed to:

- 1. The significance of family in Indigenous culture.*
- 2. The significance of family to Glen.*
- 3. Phone communication in Indigenous culture and, if appropriate, whether that impacts Glen.*
- 4. Any cultural issues that may arise with respect to the ‘scheduling’ conditions and contact with family?*
- 5. Any other cultural needs that may be relevant for Mr Devries during the course of his ESO?*
- 6. How cultural awareness can be incorporated into supervision of Mr Devries?*
- 7. How Mr Devries can be given support to re-connect with country.”*



Aunty Glendra's report

On time and scheduling:

“It is well documented that the First Nations concept of time is different from the Western one and that this difference creates difficulties for First Nations people in dealing with the tight scheduling that is often a feature of Western society and activities...In Australia, Janca and Bullen have explored this issue in terms of its impact on First Nations use of mental health services. They note that:

“The Aboriginal concept of time differs from the Judeo-Christian perception of time in that Aboriginal people do not perceive time as an exclusively ‘linear’ category (i.e. past–present–future) and often place events in a ‘circular’ pattern of time according to which an individual is in the centre of ‘time-circles’ and events are placed in time according to their relative importance for the individual and his or her respective community (i.e. the more important events are perceived as being ‘closer in time’). Such an important difference in perception of time contributes to the limited applicability of standard assessment procedures in psychiatry and creates numerous difficulties in providing culturally appropriate mental health services to Aboriginal people in Australia.”

...

The way First Nations family and community life operate is not compatible with the compulsory scheduling of all activities proposed in the ESO. The answer is to develop conditions that are compatible. First Nations people have the knowledge and skills to do this and any conditions which do not use that knowledge and skill in their development, implementation and review have limited chances of success”.



28 October 2021 – Final hearing

State of New South Wales v De Vries (Final) [2022] NSWSC 247, Hulme J

At [7]-[8]:

“...[the] defendant filed...an expert report dated 27 October 2021 from Aunty Glendra Stubbs, an Aboriginal woman of the Wiradjuri People of New South Wales with long experience in issues affecting the wellbeing of Aboriginal people. As I was informed, this was the first occasion when such a report has been put in evidence before the Court in relation to the conditions to be included in an extended supervision order sought to be imposed on an Aboriginal person under the CHRO Act.

On my initial reading of Aunty Glendra’s report, it included significant information and insights into the types of conditions that might be appropriate and inappropriate for an Aboriginal person such as the defendant and the support and management that might assist him to comply with any conditions imposed.”

At [54]:

“Secondly, the Court and the parties had the **considerable benefit of the two reports from Aunty Gledra Stubbs, as well as her input in discussions concerning the form and content of the conditions.** Her evidence, obtained by the defendant’s legal advisers, was **particularly helpful in coming to an appreciation of the cultural, family and social implications of the defendant’s Aboriginal heritage and background as a man of the Gamillaraay people and how the contents of the conditions could best be formulated and expressed to take these matters into account in an appropriate way.** The plaintiff responded positively and constructively to Aunty Glendra’s evidence and input.”



28 October 2021 – Final hearing

The Court's acceptance of Aunty Glendra's report, as well as Dr McSwiggan's, ultimately resulted in the State:

- Agreeing to seek 3 year Order
- Agreeing to plain English conditions
- Abandoning its position to seek strict "scheduling" conditions
- Agreeing to include express conditions in the ESO which permitted Mr De Vries to see his children without needing permission.
- Agreeing to include conditions which gave Mr De Vries the right to ask for an Indigenous person about the ESO and to request the presence of an Indigenous person when talking to his supervising officers.



SCHEDULE

CONDITIONS OF SUPERVISION - GLEN DEVRIES

Preamble

These rules are written so they are easy to read. Glen's supervising officer is called a "DSO".

Glen can talk to his lawyer if he has questions about these rules.

Glen can talk to his lawyer if he does not understand what his DSO tells him.

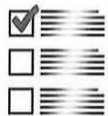
If Glen wants to talk to an Indigenous person about these rules, Glen can tell his DSO.

If Glen wants an Indigenous person to be with him when he talks to his DSO, he can ask his DSO.

Glen must follow these rules from now until **27 October 2024**.

Glen might get in more trouble with the law if he does not follow these rules.

Part A: Reporting and Monitoring Obligations



Monitoring and Reporting

Daily Activities

Monday
Tuesday
Wednesday
Thursday
Friday
Saturday
Sunday

5. Glen must work with a DSO on developing a case management plan for things he might do during the day. Glen should make every effort to attend or take part in any activities in the plan. These activities may include:

- a. Going to rehab programs and meetings
- b. Working with his NDIS support workers (if any) and taking part in activities or attending appointments
- c. Visiting doctors, psychologists and counsellors when he has an appointment
- d. Learning new skills or hobbies
- e. Doing some exercise

6. If Glen has told a DSO what he is planning to do and wants to change where he is going or what he is doing, he should try and tell a DSO before doing so, unless there is an emergency.

7. [Deleted]



Overview

- **Aboriginal experiences of settler systems and institutions**
- **Glen de Vries' experiences**
- **Aboriginal and non-Aboriginal cultural differences**
- **Impacts of experiences and differences on criminal justice system**
- **A just way forward**



Aboriginal experiences of settler systems and institutions – 1 of 2

- **Disruption of culture**
 - **Connection to Country**
 - **Connection to family and community**
 - **Transmission of culture**
 - **Poor socio-economic outcomes**
- **Trauma**



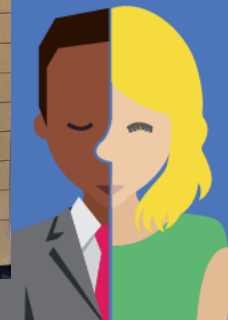
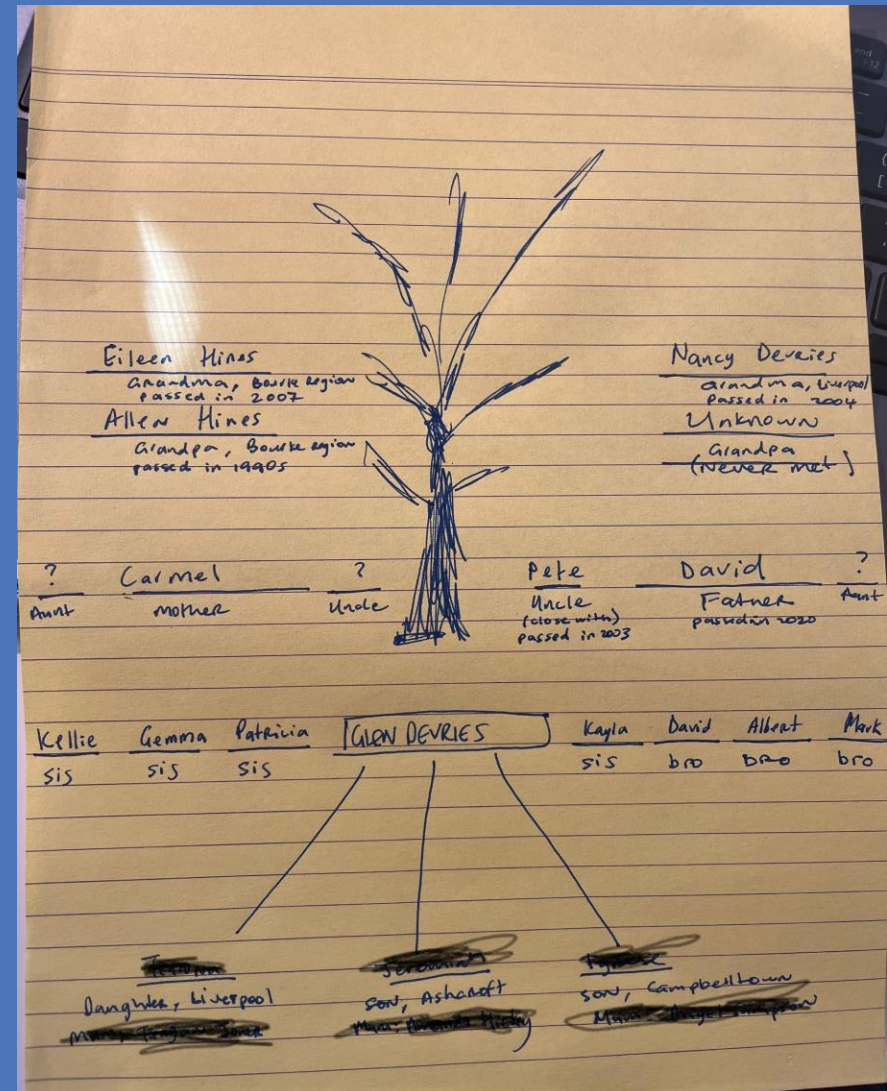
Aboriginal experiences of settler systems and institutions – 2 of 2

- Trauma and distrust of anybody in a position of power
- Flows down through the generations
- Affects attendance at services, and engagement



Glen de Vries' experiences – 1 of 2

- Intergenerational trauma
 - Stolen Generations history
 - Impact on families
 - Family tree
 - Name - not Devries but de Vries



Glen de Vries' experiences – 2 of 2

- Individual trauma
- Cognitive difficulties
- Identity
- Cumulative impacts



Cultural differences - examples – 1 of 2

- Lived culture
- Country
- Family and community
- Social Structure
- Health



Cultural differences - examples – 2 of 2

- Time
- Protocols
- Phones
- Trauma and trust



Impacts of experiences and differences on criminal justice system – 1 of 3

- Interviews and assessments
 - Police
 - Corrections
 - Health experts
 - Lawyers



Impacts of experiences and differences on criminal justice system – 2 of 3

- **Orders and conditions**
- **Compliance**



Impacts of experiences and differences on criminal justice system – 3 of 3

- **Courts**
 - **Protecting community safety**
 - **Enhancing rehabilitation**



A just way forward – 1 of 2

- Narrative and how it's delivered
- Recognising differences
- Understanding differences
- Understanding impacts on criminal justice system



A just way forward – 2 of 2

- Integrating conditions and rehabilitation
- Aboriginal staff
- Tools and training
- Resources



Conclusion

- Hope for the future
- Let's keep working together



Culturally coloured orders in a white legal system

State of New South Wales v De Vries (Final)
[2022] NSWSC 247



State of New South Wales v De Vries (Final) [2022] NSWSC 247

- A. ~~Judicial consideration~~**
- B. Basis for admission of cultural evidence**
- C. Other examples of accepted cultural evidence**
- D. Propositions**
- E. Issues with broad application of the Judgment**
- F. Evidence in future matters**
- G. Broadening the cultural background**
- H. Broadening the type of orders**
- I. Advocacy Points**
- J. Conclusion**



State of New South Wales v De Vries (Final) [2022] NSWSC 247

D. Propositions

FIRST, HRO conditions should be tailored to ensure the immediate protection of the community and encourage rehabilitation (to effect long term protection) at [52].

SECOND, psychological and psychiatric evidence can be relevant to the determination of appropriate conditions for an HRO order, including informing the following (at [55]): Order terms which were able to be understood and recalled

THIRD, Aboriginal Cultural Evidence can be relevant to the determination of appropriate conditions for an HRO order, including informing the following (at [56]):

- a. Whether a weekly schedule was appropriate [it was not]
- b. Whether a case management plan was appropriate [it was]
- c. Whether compliance with plans was strict or flexible [flexible – in this case Glen “should make every effort to attend or take part in activities”]
- d. That an Aboriginal Support person should be made available



State of New South Wales v De Vries (Final) [2022] NSWSC 247

D. Propositions

FOURTH, parties to an HRO application can guide the Court through agreement on the basis of evidence: this is “commendable good sense”: [17]

FIFTH, conditions of an HRO do not need to mirror the precise wording of the statutory provision governing orders, if it will enhance the effectiveness of the condition: [53].

SIXTH, a preamble to HRO orders can assist the ends of the order, in outlining (at [55]):

- a. the nature and purpose of the orders,
- b. that a person has available legal support,
- c. that a person has available cultural support through an Aboriginal support person in communication with supervisors,
- d. that there will be consequences for breach.

SEVENTH, the comprehension of orders can be assisted by pictures which inform the person reading the order: [53].



State of New South Wales v De Vries (Final) [2022] NSWSC 247

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