

SUPREME COURT OF QUEENSLAND

CITATION: *Renwick v Parole Board Queensland* [2019] QSC 37

PARTIES: **STEPHEN DALE RENWICK**
(applicant)
v
PAROLE BOARD QUEENSLAND
(respondent)

FILE NO/S: No BS13501/18

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 1 March 2019

DELIVERED AT: Brisbane

HEARING DATE: 18 February 2019

JUDGE: Flanagan J

ORDER: **1. The applicant’s application for a statutory order of review filed 6 December 2018 be dismissed.**
2. The applicant pay the respondent’s costs of and incidental to the application.

CATCHWORDS: ADMINISTRATIVE LAW – STATUTORY ORDER OF REVIEW – REFUSAL TO GRANT PAROLE ORDER – where the applicant was convicted of the offence of accessory after the fact to manslaughter and sentenced to a term of imprisonment with a parole eligibility date – where the victim’s body or remains have never been found – where, before being sentenced, the applicant informed police of the location of the victim’s remains – where a new law came into effect while the applicant was in prison requiring the respondent to refuse parole unless it was satisfied the applicant had satisfactorily cooperated in the investigation of the offence to identify the victim’s location – where, subsequent to that new law coming into force, the applicant revealed for the first time that the victim’s body had been cremated – where the respondent refused to grant parole – whether the respondent erred in construing the new law’s definition of “victim’s location” – whether the respondent failed to properly consider the applicant’s cooperation both before and after being sentenced

COUNSEL: J Fenton for the applicant
J M Horton QC, with M J Woodford for the respondent

SOLICITORS: Fisher Dore Lawyers for the applicant
G R Cooper, Crown Solicitor, for the respondent

- [1] The applicant seeks judicial review of the decision of the respondent to refuse to issue a parole order to the applicant on 8 November 2018. The respondent refused parole pursuant to s 193A of the *Corrective Services Act 2006* (Qld), which has sometimes been referred to as the “No Body, No Parole” law.
- [2] While the application for a statutory order of review identifies 14 grounds, in oral submissions counsel for the applicant relied on only two grounds: first, that the respondent misconstrued the definition of “victim’s location” in s 193A(8); and secondly, that the respondent failed to take into account the applicant’s cooperation after the enactment of s 193A.
- [3] The applicant has, in my view, failed to establish that the respondent, in refusing to grant a parole order, committed any reviewable error.

Background

- [4] On 27 June 2012 police commenced an investigation in relation to the suspected unlawful killing of Timothy Pullen following his disappearance from a unit in Mackay in April 2012.¹
- [5] As at April 2012 the applicant and a person called Luke Kister worked together at a nightclub in Mackay.²
- [6] On 12 July 2012 the applicant declined to provide a statement or to be interviewed in relation to the disappearance of Mr Pullen.³ Subsequently on 23 July 2013 the applicant was charged with the offence of accessory after the fact to murder and declined to participate in an interview.⁴ On 4 March 2015 the applicant was additionally charged with the offence of murder and again declined to participate in an interview.⁵
- [7] These charges were subsequently reduced to one count of accessory after the fact to manslaughter which related to the unlawful killing of Mr Pullen by two other persons on or about 16 April 2012. On 31 May 2016, when arraigned, the applicant pleaded guilty to this count.⁶ The sentencing proceedings were adjourned ostensibly for the

¹ Affidavit of Taylor Mobbs, filed 18 January 2019, TM-1, page 13, paragraph 40.

² Affidavit of Taylor Mobbs, filed 18 January 2019, TM-1, page 43, paragraph 34.

³ Affidavit of Taylor Mobbs, filed 18 January 2019, TM-1, page 13, paragraph 40.

⁴ Affidavit of Taylor Mobbs, filed 18 January 2019, TM-1, page 13, paragraph 40.

⁵ Affidavit of Taylor Mobbs, filed 18 January 2019, TM-1, page 13, paragraph 40.

⁶ Affidavit of Taylor Mobbs, filed 18 January 2019, TM-1, page 13, paragraph 40.

purpose of enabling the applicant and Mr Kister to direct police to the location of the remains of Mr Pullen.⁷

- [8] Two days prior to being sentenced the applicant and his legal representative met with police in order to take them to the remains of Mr Pullen.⁸ The applicant identified a remote area of bushland located at Newlands near Collinsville.⁹ A search area was established and a preliminary search was conducted by police that day: the remains of Mr Pullen were not found.¹⁰
- [9] On 3 June 2016 McMeekin J sentenced the applicant to five years imprisonment with a parole eligibility date of 20 January 2018.¹¹ In his sentencing remarks, his Honour observed:¹²

“... At some point they took the body of Mr Pullen, which was located in Mr Kister’s car; drove for some three hours out of Mackay; on their account, left the roadway; and dumped the body in the bush ...

That the prisoners were involved at a time not long after Mr Pullen’s death seems likely. They were observed to be up and about in the early hours of that morning when it is known that Mr Pullen was taken from the unit. There was an attempted hire of an excavator; whatever the plan was, it seems to have been abandoned, as the excavator was returned unused ... The car was driven out by Mr Renwick, Mr Kister was a passenger ... Mr Kister is not familiar with the area, Mr Renwick was; the body was dumped ...

The sentence proceeds on the basis that the prisoners were involved in the handling of the body, and through their actions potentially valuable evidence was lost. The killers of Mr Pullen have never been identified. It seems very likely that forensic evidence would have been available had the body been available to police. The actions of the prisoners have deprived the prosecution, and indeed the community, of the chance to bring these killers to justice ...”

- [10] On 11 June 2016, a coordinated search involving local police, the Police Search and Rescue Mission Coordinator and SES volunteers was conducted of the area identified by the applicant.¹³ Once again, the remains of Mr Pullen were not found. On 26 September 2017, following the commencement of s 193A on 25 August 2017, the applicant spoke with detectives at the Capricornia Correctional Centre.¹⁴ In the course of this conversation the applicant “identified on a map where Mr Pullen’s body was disposed of, but said the body had been cremated when it was disposed of.”¹⁵ This was the first time that the applicant had revealed to police that the body was burned.

⁷ Affidavit of Taylor Mobbs, filed 18 January 2019, TM-1, page 13, paragraph 40.

⁸ Affidavit of Nicholas Joseph Dore, filed 6 December 2018, NJD-1, page 630.

⁹ Affidavit of Taylor Mobbs, filed 18 January 2019, TM-1, page 13, paragraph 40.

¹⁰ Affidavit of Taylor Mobbs, filed 18 January 2019, TM-1, page 13, paragraph 40.

¹¹ Transcript of proceedings before McMeekin J on 3 June 2016.

¹² Transcript of proceedings before McMeekin J on 3 June 2016, pages 2-3.

¹³ Affidavit of Taylor Mobbs, filed 18 January 2019, TM-1, page 13, paragraph 40.

¹⁴ Affidavit of Taylor Mobbs, filed 18 January 2019, TM-1, page 14, paragraph 40.

¹⁵ *Renwick v Parole Board Queensland* [2018] QSC 169 at [4].

- [11] On 8 October 2017, the Police Search and Rescue Mission Coordinator conducted a comprehensive search for 24 hours, utilising police officers and SES volunteers, based on the information provided by the applicant on 26 September 2017.¹⁶ No remains of Mr Pullen were located.¹⁷
- [12] On 21 July 2017 the applicant filed his application for parole.¹⁸
- [13] On 16 February 2018 the respondent refused the application for parole on the basis that the respondent was not satisfied that the applicant had cooperated satisfactorily in the investigation of the offence to identify the location of Mr Pullen's remains.¹⁹
- [14] The applicant subsequently filed an application for statutory order of review on 16 March 2018. In reaching its decision on 16 February 2018, the respondent had failed to take into account certain material that it was required to consider pursuant to s 193A(7)(a). This material included the transcript from the committal hearing, in particular the transcripts of the sentencing hearing and the subsequent Court of Appeal hearing and material in relation to a bail hearing.²⁰ Accordingly, on 23 May 2018, the respondent repealed its decision pursuant to s 24AA of the *Acts Interpretation Act 1954* (Qld).
- [15] The applicant requested that the respondent, in making a fresh decision regarding his application, "be differently constituted, on the basis of a reasonable apprehension of bias, in the form of prejudgment by the [respondent] as originally constituted, given the conclusion it had previously reached on his application".²¹ The respondent did not accede to this request.
- [16] The applicant subsequently filed a statutory order of review. This application was heard on 26 July 2018. In a judgment delivered on 2 August 2018 Bowskill J allowed the application and directed that, "for the purposes of the fresh consideration of [the applicant's] application for parole, the [respondent] has to be constituted by members who did not constitute the [respondent] when it made its decision on 16 February 2018."²²
- [17] The respondent, as reconstituted, on 17 September 2018 formed the preliminary view that the applicant's application for parole should be refused as the respondent was not satisfied that the applicant had cooperated satisfactorily in the investigation of the offence to identify Mr Pullen's location.²³ The respondent attached a document containing its preliminary view to a letter to the applicant dated 3 October 2018. By its letter, the respondent invited the applicant to make further submissions and supporting documents prior to a final decision.²⁴

¹⁶ Affidavit of Taylor Mobbs, filed 18 January 2019, TM-1, page 14, paragraph 40.

¹⁷ Affidavit of Taylor Mobbs, filed 18 January 2019, TM-1, page 14, paragraph 40.

¹⁸ Affidavit of Nicholas Joseph Dore, filed 6 December 2018, NJD-1, pages 718-736.

¹⁹ Affidavit of Taylor Mobbs, filed 18 January 2019, TM-3, page 56, paragraph 2.

²⁰ *Renwick v Parole Board Queensland* [2018] QSC 169 at [7].

²¹ *Renwick v Parole Board Queensland* [2018] QSC 169 at [10].

²² *Renwick v Parole Board Queensland* [2018] QSC 169 at [29].

²³ Affidavit of Taylor Mobbs, filed 18 January 2019, TM-1, page 42, paragraph 30.

²⁴ Affidavit of Taylor Mobbs, filed 18 January 2019, TM-1, page 37.

- [18] On 16 October 2018 the respondent received a further submission and affidavit material on behalf of the applicant in response to the preliminary view formed.²⁵
- [19] On 7 November 2018 the respondent decided that the application for parole should be refused as it was not satisfied that the applicant had cooperated satisfactorily in the investigation to identify the location of Mr Pullen’s remains.²⁶
- [20] On 14 January 2019 the respondent provided a statement of reasons for this decision.²⁷ The present application for a statutory order of review was filed on 6 December 2018.

Section 193A of the *Corrective Services Act 2006 (Qld)*

- [21] Section 193A is central to this application. It was inserted into the *Corrective Services Act* by s 4 of the *Corrective Services (No Body, No Parole) Amendment Act 2017 (Qld) (Amendment Act)* which was assented to and commenced on 25 August 2017. Section 193A therefore came into force approximately one month after the applicant had filed his application for parole. The Amendment Act also inserted ss 490U and 490V into the *Corrective Services Act*. Section 490U provides that s 193A “applies to a prisoner’s application for a parole order whether the prisoner was convicted of, or sentenced for, the offence before or after the commencement” of the Amendment Act. Accordingly, it is immaterial that the applicant was sentenced approximately one year before s 193A came into force.
- [22] Section 193A relevantly provides:

“193A Deciding particular applications where victim’s body or remains have not been located

- (1) This section applies to a prisoner’s application for a parole order if the prisoner is serving a period of imprisonment for a homicide offence and—
 - (a) the body or remains of the victim of the offence have not been located; or
 - (b) because of an act or omission of the prisoner or another person, part of the body or remains of the victim has not been located.
- (2) The parole board must refuse to grant the application under section 193 unless the board is satisfied the prisoner has cooperated satisfactorily in the investigation of the offence to identify the victim’s location.
- (3) For subsection (2), the cooperation may have happened before or after the prisoner was sentenced to imprisonment for the offence.

²⁵ Affidavit of Taylor Mobbs, filed 18 January 2019, TM-3, page 57, paragraph 8.

²⁶ Affidavit of Taylor Mobbs, filed 18 January 2019, TM-3, page 57, paragraph 10.

²⁷ Affidavit of Taylor Mobbs, filed 18 January 2019, TM-3.

- (4) After receiving the application, the board must, by written notice, ask the commissioner for a report about the prisoner's cooperation as mentioned in subsection (2).
- (5) In its request, the parole board must state the day it proposes to hear the application (the proposed hearing day).
- (6) The commissioner must comply with the request by giving the parole board, at least 28 days before the proposed hearing day, a written report that states whether the prisoner has given any cooperation as mentioned in subsection (2) and, if so, an evaluation of—
 - (a) the nature, extent and timeliness of the prisoner's cooperation; and
 - (b) the truthfulness, completeness and reliability of any information or evidence provided by the prisoner in relation to the victim's location; and
 - (c) the significance and usefulness of the prisoner's cooperation.
- (7) In deciding whether the parole board is satisfied about the prisoner's cooperation as mentioned in subsection (2), the board—
 - (a) must have regard to—
 - (i) the report given by the commissioner under subsection (6); and
 - (ii) any information the board has about the prisoner's capacity to give the cooperation; and
 - (iii) the transcript of any proceeding against the prisoner for the offence, including any relevant remarks made by the sentencing court; and
 - (b) may have regard to any other information the board considers relevant.
- (8) In this section—

homicide offence means any of the following offences—

 - (a) an offence against any of the following provisions of the Criminal Code—
 - (i) section 236(2);
 - (ii) sections 302 and 305;
 - (iii) sections 303 and 310;
 - (iv) section 307;
 - (v) section 309;
 - (vi) section 314A;

- (b) an offence of becoming an accessory after the fact to an offence mentioned in paragraph (a)(i), (iii), (v) or (vi);

...

victim's location means—

- (a) the location, or the last known location, of every part of the body or remains of the victim of the offence; and
- (b) the place where every part of the body or remains of the victim of the offence may be found.”

[23] It is common ground that s 193A applies to the application for parole because the applicant is serving a period of imprisonment for a homicide offence and the body or remains of Mr Pullen have not been located. “Homicide offence” is defined in s 193A(8)(a) and (b) to include an offence of becoming an accessory after the fact to manslaughter.

[24] The respondent, in its preliminary view, detailed some of the history of the Amendment Act:²⁸

“6. This amendment implemented Recommendation 87 of the Queensland Parole System Review Report (the Report) which recommended the establishment of a No Body, No Parole policy in Queensland.

7. The Report acknowledged that:

Withholding the location of a body extends the suffering of victims' families and all efforts should be made to attempt to minimise this sorrow.

8. The Amendment Act is designed to help victims' families and aims to encourage and incentivise prisoners to whom section 193A of the CSA applies to assist in finding and recovering the body or remains of a victim by making parole release contingent on his/her satisfactory cooperation in the investigation of the homicide offence to identify the victim's location.

9. As stated in the Report

... such a measure is consistent with the retributive element of punishment. A punishment is lacking in retribution, and the community would be right to feel indignation, if a convicted killer could expect to be released without telling what he did with the body of the victim.”

The first alleged error

[25] The applicant submits that the respondent erred in deciding that the definition of “victim's location” in s 193A(8) required a two stage test whereby the applicant had to

²⁸ Affidavit of Nicholas Joseph Dore, filed 6 December 2018, NJD-2, paragraphs 6-9; Explanatory Notes, Corrective Services (No Body, No Parole) Amendment Bill 2007, page 1.

satisfy the respondent that he had cooperated satisfactorily to identify the location and then the place where the body may be found.²⁹ According to the applicant, the terms “location” and “place” are interchangeable and synonymous. Section 193A(8) does not require the respondent to be satisfied first that the applicant identified the “location” where the remains are or were, and then further identified a “place” within that “location” that the remains are or were.³⁰ The applicant submits that the proper construction of s 193A(8) is that the “victim’s location” includes both the location and the place where the body was. They are one and the same. There is no two stage test that the respondent need be satisfied first that the applicant has identified the correct location of the body and has then further identified a place within that location.³¹ This error is said to be evident from the following reasoning of the respondent. The first extract is from paragraphs 41 to 44 of the respondent’s preliminary view attached to its letter of 3 October 2018:³²

- “41. The co-operation given by Mr Renwick to identify Mr Pullen’s location is comprised of his efforts on 1 June 2016 to direct the police to where he says is the location of and place where Mr Pullen may be found; and his discussion with police on 26 September 2017 at the Capricornia Correctional Centre.
42. Having regard to the information as a whole, which necessarily includes that provided by Mr Renwick, the Board is of the view that the body of Mr Pullen was disposed of at the one place within the one location; as compared to, for example, him having been dismembered and his body thereafter disposed of across multiple locations and/or places.
43. It is not in issue that Mr Renwick has nominated both a location and, more specifically, a place where he says Mr Pullen was left by him and Mr Kister on or about 17 April 2012.
44. It is clear on the drafting of section 193A of the CSA that the provision does not require the body (or remains) to in fact be found in order for the Board to be satisfied that the prisoner has cooperated satisfactorily.”

[26] To similar effect is the respondent’s reasoning at paragraph 50:³³

“In terms of the *place* nominated by Mr Renwick (within the location that he identified) where Mr Pullen may be found, the only source of information in this regard is Mr Renwick; he and Mr Kister are the only two people who know the place where Mr Pullen was left – there is no other independent evidence about that. Accordingly, the credibility of Mr Renwick is pertinent when considering whether he cooperated satisfactorily in accordance with section 193A of the CSA.”

²⁹ Outline of Submissions on Behalf of the Applicant, paragraph 24.

³⁰ Outline of Submissions on Behalf of the Applicant, paragraph 25.

³¹ Outline of Submissions on Behalf of the Applicant, paragraph 31.

³² Affidavit of Nicholas Joseph Dore, filed 6 December 2018, NJD-2.

³³ Affidavit of Nicholas Joseph Dore, filed 6 December 2018, NJD-2.

[27] The third extract is from paragraphs 11 to 15 of the respondent's statement of reasons dated 14 January 2019.³⁴

“Location and place

11. When determining the veracity of the information you have provided regarding the location you have nominated where Mr Pullen was left, regard can be had to other sources of information independent of your account, such as mobile phone tower records and evidence provided by witnesses.
12. The Board accepts that the mobile phone tower records (referred to during oral submissions made on your behalf) support the view that for about a twelve hour period on or about 17 April 2012, you and Mr Kister were absent from the Mackay/Mackay South area and that the majority of your time was spent somewhere within or around the triangular zone of Exe Creek radio tower, Glenden radio tower, Newlands radio tower and Collinsville.
13. The Board agrees that the reasonable inference is that this is the location where Mr Pullen was left, which is consistent with the location identified by you to police in June 2016 and September 2017.
14. The Board considers that the location identified is also supported by the evidence provided by witnesses such as Juanita GAKOWSKI, Stephen ORGLIASSO and police officer KNACK.
15. However, the Board is of the opinion that in terms of the particular place you nominated (within the location that you identified) where Mr Pullen's body or remains may be found, there is no other evidence available to the Board independent of that given by you. Accordingly, the Board considers that your credibility falls to be assessed.”

[28] In my view, upon a proper construction of s 193A and in particular s 193A(8) and the definition of “victim's location”, these extracts of the respondent's reasoning do not reveal reviewable error. The applicant refers to this alleged error as “jurisdictional error”. The alleged error does not, however, go to jurisdiction, but rather should be considered in terms of s 20(2)(f) of the *Judicial Review Act 1991* (Qld), namely that the decision involved an alleged error of law in that the respondent misconstrued the definition of “victim's location”. For the reasons developed below, however, the respondent's reasoning does not reveal any such error of law.

[29] On an ordinary and natural reading, the definition of “victim's location” encompasses two discrete concepts which the legislature has made conjunctive. The first limb of the definition deals with the concept of a “location”, that is, the location or last known location of, to paraphrase, the victim's remains. The second limb then deals with the concept of a “place”, being the place where those remains may be found. If these two concepts were intended to be interchangeable or synonymous, as submitted by the applicant, why would the legislature have used two different words in the two limbs of the definition, namely “location” and “place”? One should instead start from the

³⁴ Affidavit of Taylor Mobbs, filed 18 January 2019, TM-3, pages 59- 60.

rational presumption that the legislature intends different words to have different meanings, especially where, as is the case here, those words appear in different limbs of the same provision.

- [30] It can be accepted that the words “location” and “place” are sometimes used interchangeably in everyday speech and writing. When directly juxtaposed, however, it is evident that the words “location” and “place” have separate and distinct ordinary meanings. One of the meanings of “location” is “a tract of land located, or of designated situation or limits”.³⁵ The meaning of “place” includes “a particular portion of space, of definite or indefinite extent” and “the portion of space occupied by anything”.³⁶ Applied here, “location” refers to where the victim’s remains are in a general sense, and “place” refers to specifically where, within that location, the remains may be found. This interpretation is consistent with the legislature’s use of the verb “locate” in s 193A(1)(a) and (b), which on an ordinary and natural reading means “to discover the place or location of” something,³⁷ encompassing both the meanings of “location” and “place” referred to above.
- [31] Given that the words “location” and “place” have discrete ordinary meanings, the applicant’s submissions that the legislature intended these words to be synonymous and interchangeable cannot be accepted. I accept the respondent’s submission that s 193A(8) is not ambiguous or obscure. There is nothing to justify an adoption of the construction of that provision which departs from its plain and ordinary meaning.³⁸ It follows that the respondent did not commit reviewable error by applying a two stage test when considering what cooperation had been offered by the applicant.
- [32] Nor is there anything about the subject matter, scope and purpose of s 193A to support a submission that the legislature intended that the definition “victim’s location” in s 193A(8) should have a meaning other than disclosed on a plain reading, which indicates a two staged approach.³⁹
- [33] Section 193A(2) mandates that the respondent must refuse to grant the application unless it is satisfied that the prisoner cooperated satisfactorily in the investigation of the offence to identify the victim’s location. In determining whether it is satisfied with the prisoner’s cooperation, the respondent will be faced with many varying factual scenarios where, for example, a body was dismembered and disposed of in differing ways or where a body was disposed of at sea, or where a body was buried in bushland. The definition of “victim’s location”, for the purposes of assessing a prisoner’s cooperation, must be sufficiently broad to cater for all possible scenarios. For example, the full extent of a prisoner’s cooperation may be limited to his or her ability to identify a general location of the remains of the victim of the offence. The extent of another prisoner’s cooperation may be an ability to not only identify the location, but also the place where the remains may be found. What is being assessed in both scenarios is not whether the remains are actually found, but the respondent’s satisfaction that the prisoner has cooperated satisfactorily in the investigation of the offence to identify the

³⁵ Macquarie Concise Dictionary, 5th ed.

³⁶ Macquarie Concise Dictionary, 5th ed.

³⁷ Macquarie Concise Dictionary, 5th ed.

³⁸ Outline of Submissions on Behalf of the Respondent, paragraph 8.

³⁹ Outline of Submissions on Behalf of the Respondent, paragraph 6.

victim's location. A construction of the definition as containing two discrete concepts best achieves the policy behind the enactment of s 193A, which is described in the Explanatory Notes as follows:⁴⁰

“The No Body, No Parole policy is predicated on the notion that by making a parole release for particular prisoners contingent on them satisfactorily cooperating in the investigation of the offence to identify the victim's location, it will encourage and provide incentive for these prisoners to assist in finding and recovering the body or remains of the victim. This will in turn, it is hoped, offer some comfort and certainty to the families of the victims.”

The second alleged error

- [34] The applicant submits that the respondent committed an error of law because the respondent failed to properly consider, pursuant to s 193A(3), the applicant's cooperation both before and after he was sentenced. According to the applicant, the respondent in effect found that the applicant did not cooperate satisfactorily with the investigation because he did not reveal that the body was burned until 26 September 2017.⁴¹ This was after he had been sentenced.
- [35] According to the applicant the error is revealed in the respondent's reasoning in the preliminary view attached to its letter of 3 October 2018. At paragraph 58 the respondent noted that the applicant told police about the body being burned for the first time on 26 September 2017 in circumstances where he had failed to reveal this fact during the police's preliminary search undertaken on 1 June 2016, two days prior to being sentenced.⁴² Further, the applicant was not sentenced on the basis that Mr Pullen had been cremated by the applicant and Mr Kister and nor was there any mention by the applicant of having cremated the body of Mr Pullen following the sentencing proceedings despite the applicant knowing that searches for the body (or remains) were continuing.⁴³ There was also no mention of the applicant having cremated the body of Mr Pullen in his parole application dated 21 July 2017.⁴⁴ The respondent's preliminary view attached to its letter of 3 October 2018 continues:⁴⁵

“However, if the body of Mr Pullen was cremated, as discussed above, this vital information was not revealed by him to the police until September 2017. That is, over five years after the unlawful killing of Mr Pullen; but importantly, approximately 15 months after he had taken the police to the search site in June 2016.

This additional information (i.e. that Mr Pullen was cremated) then raises concerns for the Board regarding the significance and usefulness of his cooperation. As discussed above, to have withheld that information in June 2016 (if it is true) fundamentally impacts upon the search that was conducted at that time; a point in time prior to Cyclone Debbie.”

⁴⁰ Explanatory Note, Corrective Services (No Body, No Parole) Amendment Bill 2017, page 1.

⁴¹ Outline of Submissions on Behalf of the Applicant, paragraphs 14 and 15.

⁴² Affidavit of Nicholas Joseph Dore, filed 6 December 2018, NJD-1, page 765, paragraph 58.

⁴³ Affidavit of Nicholas Joseph Dore, filed 6 December 2018, NJD-1, page 765, paragraph 58.

⁴⁴ Affidavit of Nicholas Joseph Dore, filed 6 December 2018, NJD-1, page 765, paragraph 58.

⁴⁵ Affidavit of Nicholas Joseph Dore, filed 6 December 2018, NJD-1, page 764, paragraphs 63-64.

- [36] The respondent's statement of reasons for refusing parole reproduces the above excerpt in materially the same terms.⁴⁶
- [37] The applicant submits that if the respondent's reasoning, as outlined above, was a correct application of s 193A(3), the applicant can never obtain parole because of an omission that occurred before the commencement of the Amendment Act.⁴⁷ Section 193A, according to the applicant, reveals no intention to create such a harsh result.⁴⁸ The applicant further submits that prior to the passage of s 193A there was no obligation to reveal the location of a victim's body as a statutory pre-condition to the granting of a parole order. If the intent of the legislature was to make the applicant ineligible for parole because of conduct that occurred before the passage of the law, it would have said so in the clearest of terms.⁴⁹
- [38] The reasoning of the respondent does not reveal any reviewable error. The respondent accepts that it was required to consider, pursuant to s 193A(3), the applicant's cooperation both before and after the applicant was sentenced. The statement of reasons reveals that the respondent did in fact consider both pre- and post-sentencing cooperation. The respondent expressly referred to the requirements of s 193A(3) and said that it formed its view in relation to the standard of cooperation given by the applicant, taking into account the background and chronology of events both before and after conviction and sentence:⁵⁰

“Section 193A(3) provides that cooperation may have happened before or after the prisoner was sentenced to imprisonment for the offence.

In forming its view in relation to your standard of co-operation with the investigation of the offence to identify the location of the body or remains, the Board had regard to the background and chronology of events as set out in its decision, delivered on 8 November 2018. In doing so, the Board considered relevant the periods before and after conviction and sentence, and in-between.”

- [39] There is nothing in the words of s 193A(3) that prevents the respondent from having regard to post-sentence cooperation for the purposes of assessing the nature, extent and timeliness of the pre-sentence cooperation.

Disposition

- [40] I order that:
1. The applicant's application for a statutory order of review filed 6 December 2018 be dismissed.
 2. The applicant pay the respondent's costs of and incidental to the application.

⁴⁶ Affidavit of Taylor Mobbs, filed 18 January 2019, TM-1, page 63, paragraphs 35-36.

⁴⁷ Outline of Submissions on Behalf of the Applicant, paragraph 16.

⁴⁸ Outline of Submissions on Behalf of the Applicant, paragraph 16.

⁴⁹ Outline of Submissions on Behalf of the Applicant, paragraphs 17-18 citing *Williams v The Queen* (1986) 161 CLR 278 at 292 per Mason and Brennan JJ; *Re Bolton; Ex parte Beane* (1987) 162 CLR 514 at 523 per Brennan J; *Uittenbosch v Department of Corrective Services* [2006] 1 Qd R 565.

⁵⁰ Affidavit of Taylor Mobbs, filed 18 January 2019, TM-3, page 58, paragraph 8.