SUPREME COURT OF QUEENSLAND

CITATION:	*Foster v Shaddock & Ors* [2015] QSC 36
PARTIES:	**SHANE ANTHONY FOSTER** (applicant) **v** **PETER SHADDOCK** (first respondent) and **CHIEF EXECUTIVE, DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL** (second respondent) and **SOUTHERN QUEENSLAND REGIONAL PAROLE BOARD** (third respondent)
FILE NO:	9983 of 2014
DIVISION:	Trial Division
PROCEEDING:	Application for a Statutory Order of Review
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	25 February 2015
DELIVERED AT:	Brisbane
HEARING DATE:	1 December 2014
JUDGE:	Daubney J
ORDERS:	**1. Declare that the first respondent's decision of 22 July 2014 to suspend the applicant's parole order dated 16 July 2014 was invalid and of no effect;** **2. No order as to costs.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – GENERALLY – where the applicant seeks relief under the *Judicial Review Act* 1991 (Qld) - whether the respondents were authorised under the *Corrective Services Act* 2006 (Qld) to suspend the court ordered parole order – whether the applicant can have parole suspended prior to parole release – whether the *Corrective Services Act* 2006 (Qld) was followed – whether the Board disclosed the Board Report amounting in a denial of natural

justice.

ADMINISTRATIVE LAW – JUDICIAL REVIEW – POWER OF A DECISION-MAKER TO REMAKE A DECISION – where the applicant seeks relief under the *Judicial Review Act* 1991 (Qld) - whether the respondents were authorised under the *Corrective Services Act* 2006 (Qld) to suspend the court ordered parole order – where the respondent suspended and remade a decision to refuse an application for a court ordered parole order – where the applicant posed an unacceptable risk to the community, if released – whether the *Corrective Services Act* 2006 (Qld) was followed – whether the respondent's decision was valid and of effect.

Corrective Services Act 2006 (Qld) s 201, s 205, s 199, s 208

Judicial Review Act 1991 (Qld)

Bond v Rockett (Unreported, Supreme Court of Queensland, 24 August 2007)

Donovan v Southern Queensland Regional Parole Board (Unreported, Supreme Court of Queensland, 26 July 2012)

Morgan v Chief Executive of Parole [2014] QSC 253

COUNSEL:	M Black for the applicant D Kent QC, with him A Freeman, for the respondents
SOLICITORS:	Prisoners' Legal Service for the applicant Crown Solicitor for the respondents

Introduction

[1] The applicant, Shane Anthony Foster, is currently in custody at the Southern Queensland Correctional Centre. He was sentenced in the Brisbane Magistrates Court on 7 April 2014 to a period of one year and one month imprisonment for numerous offences including contravening a domestic violence order, common assault, unlawful possession of weapons, possessing dangerous drugs and breaching a bail undertaking. The sentencing Magistrate made an order that the applicant be released to parole on 22 July 2014.

[2] On 16 July 2014, as a consequence of the Magistrate's order and pursuant to s 199 of the *Corrective Services Act* 2006 (Qld) ("the Act"), the second respondent issued a court ordered parole order for the applicant, with the date fixed for release on parole as at 22 July 2014.

[3] On 22 July 2014, the first respondent, Mr Peter Shaddock, a delegate of the second respondent, made a decision suspending the applicant's parole order for a period of 28 days ("the First Decision"). The suspension followed adverse behaviour by the

applicant in the days leading up to his release date. Such adverse behaviour included the applicant attempting to contact the aggrieved using the staff telephone. The aggrieved is the subject of a Protection Order.

[4] The applicant was verbally informed of the First Decision on 22 July 2014. Following a request from the applicant, this decision was communicated to him in writing on 28 July 2014.

[5] A report was prepared on 22 July 2014 ("the Board Report") for the Southern Queensland Parole Board, the third respondent. On 5 August 2014, after considering this report, the third respondent decided that the applicant's parole should be suspended for an indefinite period, on the basis that the applicant posed an unacceptable risk of committing an offence ("the Second Decision").

[6] On 15 September 2014 the third respondent cancelled the court ordered parole order which had been to commence on 22 July 2014.

[7] On 9 October 2014, following representation on behalf of the applicant, the third respondent decided to rescind the cancellation of the court ordered parole order, and advised that the suspension of the court ordered parole order remained active ("the Third Decision").

[8] The applicant seeks relief under the *Judicial Review Act* 1991 (Qld). A number of the grounds stated in the originating application were abandoned. The contentions ultimately advanced on behalf of the applicant were as follows:[1]

(a) Neither the First Decision nor the Second Decision was authorised by the Act because s 201(2)(b) and s 205(2)(a)(iii) do not authorise suspension of the court ordered parole order prior to the prisoner being released on parole (Grounds 2 and 4 of the application);
(b) The First Decision was invalid and of no effect because the first respondent did not make a "written order", as required by s 201(2) of the Act (Ground 1 of the application);
(c) There was a breach of the rules of natural justice in relation to the Third Decision because the Board failed to disclose the Board Report to the applicant.

The first contention

[9] Section 201 and s 205 of the Act provide:

> "**201 Amendment or suspension**
>
> (1) The chief executive may, by written order, amend a parole order if the chief executive reasonably believes the prisoner–
>
> (a) has failed to comply with the parole order; or
> (b) poses a serious and immediate risk of harm to himself or herself.
>
> *Example of an amendment –*
> the addition of a condition imposing a curfew for the prisoner

[1] Applicant's outline of submissions, para 5.

(2) The chief executive may, by written order, suspend a parole order if the chief executive reasonably believes the prisoner–

(a) has failed to comply with the parole order; or
(b) poses a serious and immediate risk of harm to someone else; or
(c) poses an unacceptable risk of committing an offence;or
(d) is preparing to leave Queensland, other than under a written order granting the prisoner leave to travel interstate or overseas.

(3) A written order amending a parole order has effect for the period of not more than 28 days, stated in the written order, starting on the day the written order is given to the prisoner.

(4) A written order suspending a parole order has effect for the period of not more than 28 days, stated in the written order, starting on the day the order is made.

…

205 Amendment, suspension or cancellation

(1) A parole board may, by written order, amend a parole order–

(a) by amending or removing a condition imposed under section 200(2) if the board reasonably believes –

(i) the condition, as amended, is necessary for a purpose mentioned in the subsection; or
(ii) the condition is no longer necessary for a purpose mentioned in the subsection; or

(b) by inserting a condition mentioned in section 200(2) if the board reasonably believes the condition is necessary for a purpose mentioned in the subsection; or

(c) if the board reasonably believes the prisoner poses a serious risk of harm to himself or herself.

(2) A parole board may, by written order –

(a) amend, suspend or cancel a parole order if the board reasonably believes the prisoner subject to the parole order –

(i) has failed to comply with the parole order; or
(ii) poses a serious risk of harm to someone else; or
(iii) poses an unacceptable risk of committing an offence; or
(iv) is preparing to leave Queensland, other than under a written order granting the prisoner leave to travel interstate or overseas; or

(b) amend, suspend or cancel a parole order, other than a court ordered parole order, if the board receives information that, had it been received before the parole order was made, would have resulted in the parole board that made the order making a different parole order or not making a parole order; or

(c) amend or suspend a parole order if the prisoner subject to the parole order is charged with committing an offence.

(3) If practicable, a parole board must, before amending a prisoner's parole order, give the prisoner an information notice and a reasonable opportunity to be heard on the proposed amendment.

(4) A parole board is not required to give the prisoner an information notice or a reasonable opportunity to be heard if the parole board suspends or cancels the prisoner's parole order.

(5) A written order amending, suspending or cancelling a parole order has effect from when it is made by the parole board.

(6) In this section –

information notice means a notice –

(a) stating the parole board is proposing to amend the parole order; and

(b) advising the reason for the proposed action; and

(c) inviting the prisoner to show cause, by written submissions given to the board within 21 days after the notice is given, why the board should not take the proposed action."

[10] Central to the arguments advanced on behalf of the applicant was the assertion that neither the power to suspend conferred by s 201(2) (relevant to the First Decision) nor the power to suspend conferred by s 205(2) (relevant to the Second Decision)

could be exercised unless, and until, the prisoner was actually released from custody on parole. It was argued that these subsections "operate only in relation to a parole order that has taken effect through the release of the prisoner in question".[2]

[11] As appears from the chronology set out above, the court ordered parole order, which needed to be issued as a consequence of the Magistrate having fixed a parole release date, was issued on 16 July 2014. Such an order is a "parole order" for the purposes of both s 201 and s 205.[3]

[12] Each of s 201(2) and s 205(2) posits the existence of a parole order at the time the power to suspend is exercised. That must obviously be so, otherwise there would be nothing to suspend.

[13] But in my view, nothing in either of these subsections imposes the sort of limitations suggested by the applicant; in particular, nothing in either subsection predicates the exercise of the power to suspend on the actual release of a prisoner under a parole order. All that is required is that there be a parole order in existence.

[14] As was canvassed in argument, acceptance of the applicant's proposition would have potentially farcical outcomes. It would mean that in a case such as the present, where the prisoner's conduct which justifies suspension occurs prior to actual release, the prisoner would have to be released, the suspension order made, and the prisoner then immediately returned to custody.

[15] Counsel for the applicant submitted that the wording of s 201(2)(a) and (d) and s 205(2)(a)(i) and (iv) were "clearly limited to circumstances where the prisoner has in fact been released to parole, because only then might the prisoner have "failed to comply" with the order or be "preparing to leave Queensland"".[4] This is clearly not correct. It is, for example, obvious that a prisoner is quite capable, after a parole order is made, but before actual release, of "preparing to leave Queensland".[5]

[16] To the extent that the decision to suspend a parole order has the effect of impinging on an entitlement which a prisoner with the benefit of a court ordered parole order has to be released on parole on a fixed date, it seems to me that the words of both s 201(2) and s 205(2) are sufficiently clear in indicating that it was the legislature's intention that the power to suspend a parole order would override that entitlement.

[17] Counsel for the applicant also sought to rely on general statements made by de Jersey CJ in *Bond v Rockett* [6], which was a case concerning a prisoner's right to be released on the court ordered parole date fixed by the Court. That case, however, was concerned with a completely different situation, namely whether the issuing of a court ordered parole order was effectively overridden by a breach by the prisoner of a previous exceptional circumstances parole order. That case is distinguishable from the present, and in any event, nothing said by de Jersey CJ in that case directly supports the construction arguments advanced on behalf of the present applicant.

[18] It seems to me that on the proper construction of the subsections, once a court ordered parole order is issued pursuant to s 199, there is no temporal limitation, by

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2 Applicant's outline of submissions, para 11.
3 See Schedule 4 to the Act, definition of "parole order".
4 Applicant's outline of argument, para 19.
5 Applicant's outline of argument, para 19.
6 Unreported, Supreme Court of Queensland, 24 August 2007.

reference to the fixed released date, on the powers to suspend conferred by s 201(2) and s 205(5) of the Act. As counsel for the applicant conceded in argument, that finding disposes completely of the applicant's first contention.

The second contention

[19] The applicant's second contention was that the First Decision was invalid because there was no "written order" as required by s 201(2) and consequently there was a failure to comply with s 201(4).

[20] It was clear on the material before me that there was no "written order" by the first respondent on 22 July 2014 by which he suspended the applicant's parole order.

[21] The highest the case could be put on behalf of the respondents was to point to an entry made in the "Integrated Offender Management System" ("IOMS"). That is the internal record-keeping system operated by Queensland Corrective Services. The IOMS record for the applicant relevantly recorded an "incident" on 22 July 2014:[7]

> "4. General Manager, Operational Service Delivery, State-wide Operations Peter Shaddock has suspended prisoner Foster's court ordered parole in the interests of … safety and to establish a detailed transition plan."

The entry also recorded under the heading "Further Action" that the applicant "has been advised of his court ordered parole suspension". [8]

[22] The circumstances of the creation of this record were described by the first respondent in his affidavit as follows:[9]

> "7. On 22 July 2014, I made a decision to suspend the prisoner's court ordered parole order pursuant to s 201(2)(b) of the *Corrective Services Act 2006*.
>
> 8. The prisoner was verbally informed of my decision by Mr Clint Bambrick, Deputy Director, Southern Queensland Correctional Centre, on 22 July 2014. The decision was also recorded in IOMS on 22 July 2014 by way of generation of an Incident Report Number 142255. This Incident Report was authored by Mr Bambrick. Attached and marked 'PS-3' is a true copy of Incident Report 142255."

[23] Subsequently, on 28 July 2014, the first respondent gave the applicant a written notice which stated: [10]

> "I, Peter Shaddock, General Manager, Statewide Operations, Queensland Corrective Services, reasonably believed that you posed a serious and immediate risk of harm to someone else.

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7 Affidavit of Peter Shaddock, filed 20 November 2014, PS-3.
8 Affidavit of Peter Shaddock, filed 20 November 2014, PS-3.
9 Affidavit of Peter Shaddock, filed 20 November 2014, para 7 and para 8.
10 Affidavit of Peter Shaddock, filed 20 November 2014, PS-6.

> As the authorised delegate, I ordered the suspension of your Court Ordered Parole under s 201(2)(b) of the Corrective Services Act."

[24] To my mind, the requirements of s 201 are quite clear. A chief executive who decides, on any one of the bases set out in s 201(2)(a) – (d), to suspend a parole order can only put that decision into effect "by written order". Such written order must state the period of not more than 28 days, starting on the day on which the order was made, during which the suspension has effect – s 201(4).

[25] At its highest, the IOMS record might be evidence of the first respondent having decided to exercise the discretion in a particular way. But the IOMS record was clearly not a "written order", nor did it comply with s 201(4). Contrary to the submissions of the respondents, this was not a case where all that was required was that the order be reduced to writing, and this was achieved by the IOMS record. Putting the exercise of the discretion into effect required that the chief executive make a written order which complied with s 201(4).

[26] Counsel for the respondents submitted that there was no requirement in s 201 that the order be communicated in writing but simply that the chief executive may, by written order, suspend a parole order. This, it was said, was achieved by the relevant IOMS entry.[11] Regardless of whether it needs to be shown to the prisoner, however, s 201(2) clearly requires that there be a "written order" by the chief executive (for present purposes, it can be accepted that such a written order may be made by the chief executive's delegate). There was simply no such written order. The IOMS entry was not even a record by the chief executive. It was a record made by someone else of what they had been informed was the decision.

[27] Moreover, the absence of a statement of the period of suspension would itself found a finding of invalidity – see *Morgan v Chief Executive of Parole*.[12]

[28] A chief executive's power to suspend is limited by the fact that such suspension can only have effect for the period of not more than 28 days stated in the order. This is to be contrasted with the power to suspend conferred on a parole board by s 205 which contains no such temporal limitation. It is clear that s 201(4) imposes a limit on a chief executive's power to suspend, and it is in my view, necessary for there to be compliance with s 201(4) in order to give proper effect to the purpose of s 201.

[29] It follows that the purported suspension on 22 July 2014 was invalid, and the applicant would be entitled to a declaration to that effect.

[30] There is a degree of inutility to making such a declaration. The impugned decision to suspend on 22 July 2014 was, in both practical and legal terms, overtaken by the suspension by the third respondent on 5 August 2014, i.e. the Second Decision. It was common ground before me that no issues were taken with respect to the formalities of the Second Decision. In other words, on the basis of my ruling concerning the applicant's first contention, there is no issue before me about the lawfulness of the Second Decision and the applicant accepted that the parole order had been properly suspended from 5 August 2014.

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11 Respondents' Outline of Submissions, para 32.

12 [2014] QSC 253 at [26].

[31] Given, however, that the invalidity arose from what was, to my mind, a clear failure to follow the requirements of s 201, it seems to me appropriate to make a declaration of invalidity concerning the First Decision.

The third contention

[32] The Third Decision was made under s 208 of the Act, which provides:

> "**208 Reconsidering decision to suspend or cancel parole**
>
> (1) If a parole board makes a written order suspending or cancelling a prisoner's parole order, the board must give the prisoner an information notice on the prisoner's return to prison.
>
> (2) The parole board must consider all properly made submissions and inform the prisoner, by written notice, whether the board has changed its decision and, if so, how.
>
> (3) If the board changes its decision, the changed decision has effect.
>
> (4) In this section –
>
> ***information notice*** means a notice –
>
> (a) stating the parole board has decided to suspend or cancel the parole order; and
>
> (b) advising the reason for the decision; and
>
> (c) inviting the prisoner to show cause, by written submissions given to the board within 21 days after the notice is given, why the board should change its decision.
>
> ***properly made submissions*** means written submissions given by or for the prisoner to the parole board within 21 days after the information notice inviting the prisoner to make the submissions is given."

[33] As noted previously, on 5 August 2014 the third respondent made a decision indefinitely suspending the parole order which was to commence on 22 July 2014. On the day it made that decision, the third respondent gave the applicant an "Information Notice" which stated:[13]

> "Prisoner: **SHANE ANTHONY FOSTER**
> Date of Birth: **01 October 1991**
> Address: **Southern Queensland Correctional Centre**
> Identification Number: **E29960**

[13] Affidavit of James Male, filed 31 October 2014, JM-2.

> Notice is given that on 05 August 2014 the Queensland Parole Board indefinitely suspended the court ordered parole order granted to you which was to commence on 22 July 2014.
>
> The reason for the Board's decision is:
>
> The Board reasonably believes that you pose an unacceptable risk of committing an offence. The Board considered the contents of a Board Report dated 22 July 2014 informing of your behaviour and also noted a home assessment had been requested.
>
> At that meeting the Board also decided to request that a psychological assessment be prepared. The Board also decided to defer consideration of your case until the psychological assessment has been received.
>
> When preparing this report the psychologist may be required to have access to your medical information. Accordingly, you will be asked to sign a Consent Form authorising the psychologist, on behalf of the Board, to have access to your medical file.
>
> Further, to assist it in the determination of your case, the Board has requested that it be provided with a home assessment report for your proposed community address.
>
> You are therefore encouraged to provide the name and address of a suitable sponsor to the Sentence Management Unit at your custodial centre as soon as possible to enable a home assessment to be conducted.
>
> You are hereby invited to show cause, by written submission given to the Queensland Parole Board within 21 days of receiving this notice, why the Queensland Parole Board should change its decision."

[34] On 18 August 2014, the applicant provided the third respondent with written submissions in response to the "Information Notice". Those submissions commenced:[14]

> "My name is Shane Foster … . I am deeply ashamed and remorseful for my actions which have resulted myself serving my first time of imprisonment. I have been invited to show cause by the Parole Board as my parole has been suspended indefinitely. I feel the decision which has been made is wrong as I have not even been released into the community to prove I can follow the parole conditions."

The submissions then refer to the circumstances of an altercation in which the applicant had been involved in prison the previous week, his plans for work after

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[14] Affidavit of James Male, filed 31 October 2014, JM-3.

release, and his previous work history and qualifications. The submissions concluded:[15]

> "I believe that I am at no risk to anyone or at no risk whatsoever of committing an offence and will be able to follow the conditions of parole until my custodial end date. May you please reconsider the decision which has been made as I feel I will be able to follow the conditions of my court ordered parole."

[35] On 26 August 2014, consequent upon receipt of those submissions, the third respondent provided the applicant with a statement of reasons for its decision of 5 August 2014. This statement of reasons again referred specifically to the Board Report dated 22 July 2014 to which the third respondent had regard, and on which it relied in forming the opinion that "the Applicant posed an unacceptable risk of committing an offence and decided to suspend the Applicant's order for an indefinite period in accordance with section 205(2)(a)(iii) …".[16]

[36] The third respondent had also, on 25 August 2014 considered a "home assessment report" in relation to a particular property in Caloundra. On 5 September 2014, the third respondent wrote to the applicant advising that the Board "has deemed the proposed address as unsuitable for the purpose of your parole and has deferred making a decision regarding your matter until in receipt of an alternative home assessment report".[17]

[37] On 3 September 2014, the applicant pleaded guilty in the Magistrates Court to one charge of unlawful use of a vehicle and one charge of stealing. On the first charge, he was convicted and fined $300, while of the second he was convicted with no further penalty imposed.

[38] On 15 September 2014, the third respondent considered the Verdict and Judgment Record relating to the 3 September 2014 convictions, and determined to cancel the applicant's court ordered parole because he had failed to comply with condition (f) of the parole order, namely that he "not commit an offence". On 23 September 2014, the third respondent issued an order for cancellation of parole order which relevantly stated:[18]

> "Prisoner: **SHANE ANTHONY FOSTER**
> Date of Birth: **01 October 1991**
> Identification Number: **E29960**
>
> The above mentioned prisoner was to be released to Court Ordered Parole by the Brisbane Magistrates Court on 22 July 2014.
>
> The Board reasonably believes that the prisoner has failed to comply with condition (f) of the Court Ordered Parole Order, namely, "not commit an offence". The prisoner was convicted of an offence on 03 September 2014.

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15 Affidavit of James Male, filed 31 October 2014, JM-3.
16 Affidavit of James Male, filed 31 October 2014, JM-4.
17 Affidavit of James Male, filed 31 October 2014, JM-11.
18 Affidavit of James Male, filed 31 October 2014, JM-13.

> It is ordered on 15 September 2014 that the Court Ordered Parole Order be cancelled."

[39] On that same day, the third respondent issued the applicant with an Information Notice relating to the cancellation order. After reciting the terms of the order, the Information Notice stated:[19]

> "The reason for the Board's decision is:
>
> The Board reasonably believe that you have failed to comply with condition (f) of the Court Ordered Parole Order, namely, "not commit an offence". You were convicted of an offence on 03 September 2014.
>
> You are hereby invited to show cause, by written submission given to the Southern Queensland Regional Parole Board within 21 days of receiving this notice, why the Southern Queensland Regional Parole Board should change its decision."

[40] On 29 September 2014, a case manager from "Mission Australia" wrote a reference on behalf of the applicant. This reference confirmed that the applicant had registered with Mission Australia's program, and outlined the support which would be provided by Mission Australia to the applicant on his release.

[41] On 20 September 2014, the applicant provided a written submission to the third respondent in which he referred to the assertion that he had failed to comply with condition (f) of the parole order. He pointed out that the matters for which he was before the Court on 3 September 2014 dated back to December 2013, and therefore pre-dated the current period of incarceration. He submitted, in essence, that condition (f) of his court ordered parole order related to the commission of offences during the course of the parole period. He sought a review of the Board's decision to cancel his parole order "given that there has been no offences committed in the period of time after 22 July 2014".[20]

[42] On 30 September 2014, the applicant provided the third respondent with a typed version of the handwritten submission he had made the previous week.

[43] On 2 October 2014, Prisoners' Legal Service Inc wrote to the third respondent. The letter addressed the chief executive's decision of 22 July 2014, the third respondent's decision of 5 August 2014 and the third respondent's decision of 15 September 2014. In relation to the First Decision and the Second Decision, the Prisoners' Legal Service advanced the argument which I have dealt with under the applicant's first contention in the present application. In relation to the third respondent's decision of 15 September 2014, the Prisoners' Legal Service advanced the argument foreshadowed in the applicant's own submission, and said:[21]

> "It is submitted the Board has acted beyond the authority conferred by the statute by suspending our client's court ordered parole order for being convicted of offences that took place prior to the court granting that court ordered parole order. He did not fail to comply

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19 Affidavit of James Male, filed 31 October 2014, JM-14.
20 Affidavit of James Male, filed 31 October 2014, JM-16.
21 Affidavit of James Male, filed 31 October 2014, JM-18.

> with the condition of his parole because he was not on parole at the time he committed these offences."

[44] On 8 October 2014, the third respondent further considered the applicant's matter, and determined to rescind its decision of 15 September 2014. At the meeting on 8 October 2014, the third respondent also considered further material, including a psychological report concerning the applicant. On 9 October 2014, the third respondent wrote to the applicant in the following terms:[22]

> "Dear Mr Foster
>
> I advise that at its meeting on 08 October 2014 the Southern Queensland Regional Parole Board considered an email, dated 01 October 2014 from the Offender Management Manager, Southern Queensland Correctional Centre, your submissions dated 20 and 30 September 2014, a memorandum, dated 16 September 2014 from Emerald Probation and Parole District Office and a psychological report received on 02 October 2014. The Board also considered correspondence from the Prisoners' Legal Service Inc, dated 02 October 2014.
>
> Having regard to the above, the Board decided to rescind its decision of 15 September 2014 to cancel your court ordered parole order. Accordingly, the suspension of your court ordered parole order remains active.
>
> To assist in the determination of your case, the Board has deferred making a decision and requested that it be provided with a home assessment report for your proposed community address. You are, therefore, encouraged to provide the name and address of your proposed accommodation to the Sentence Management Unit at your centre as soon as possible so that arrangements for a home assessment can be made.
>
> Upon receipt of that information your matter will be further considered."

[45] On the present application, it was contended on behalf of the applicant that there had been a denial of natural justice in connection with the third respondent's reconsideration under s 208. The submission was founded on an assertion that the third respondent had "relied heavily" on the Board Report dated 22 July 2014, but had not disclosed a copy of the Board Report to the applicant prior to making the reconsideration decision under s 208. It was argued that the Board did not "disclose the substance of that material or the main factors considered adverse to the applicant".[23]

[46] The applicant's complaint about the Third Decision clearly cannot relate to the decision insofar as it amounted to a rescission of the decision to cancel the parole order. Otherwise, the Third Decision constituted a reaffirmation by the third respondent of the Second Decision. The Second Decision had, of course, been

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22 Affidavit of James Male, filed 31 October 2014, JM-16.

23 Applicant's outline of submissions, para 44.

made pursuant to s 205, and the Third Decision, relevantly, was a reconsideration pursuant to s 208(2).

[47] There was no requirement under s 205 for the third respondent to provide the applicant with an Information Notice or a reasonable opportunity to be heard if it suspended or cancelled the applicant's parole order – s 205(4). In *Donovan v Southern Queensland Regional Parole Board*,[24] Applegarth J observed that s 205(4) "alters what would otherwise be an obligation to accord natural justice and that is explicable because of circumstances which might involve circumstances of urgency."[25]

[48] In relation to a reconsideration under s 208, s 208(1) compels a parole board which makes a written order suspending or cancelling a prisoner's parole order to give an Information Notice to the relevant prisoner. Section 208(4) prescribes the matters which must be contained in that Information Notice. Nowhere in s 208 is it prescribed that a parole board must provide a prisoner with copies of the documents to which the parole board have regard in reaching its decision.

[49] In argument, counsel for the applicant sought to highlight the notion that the applicant had effectively been denied the opportunity to make submissions concerning the contents of the Board Report. In fact, however, as is apparent from the chronology set out above, the third respondent had disclosed the existence of the Board Report to the applicant in the Information Notice given on 5 August 2014. It expressly referred to its reliance on the contents of that report. The third respondent called for the applicant to show cause, which the applicant did by his submissions delivered on 18 August 2014. The applicant did not at that time, or at any time thereafter, call for a copy of, or even refer to, the Board Report. Nor did the legal service which was engaged to act on his behalf. In circumstances where the existence of the Board Report was clearly disclosed to the applicant but, for whatever reason, no notice was taken of it in the responses by or on behalf of the applicant, it is difficult how it can now be said that there was a denial of natural justice to the applicant. There is no suggestion that the third respondent did not provide the Information Notices which it was required to give under the Act. I reject the applicant's contention that he was denied natural justice by reason of not being provided with a copy of the Board Report.

Conclusion

[50] For the reasons I have set out above, the only relief to which I consider the applicant is entitled is a declaration concerning the First Decision.

[51] In relation to costs, the applicant has achieved partial, but by no means complete success on his application. It was common ground in argument before me that, in those circumstances, it is appropriate that there be no order as to costs.

[52] There will be the following orders:

1. Declare that the first respondent's decision of 22 July 2014 to suspend the applicant's parole order dated 16 July 2014 was invalid and of no effect;

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24 Unreported, Supreme Court of Queensland, 26 July 2012.

25 *Donovan v Southern Queensland Regional Parole Board* (Unreported, Supreme Court of Queensland, 26 July 2012).

2. No order as to costs.