SUPREME COURT OF QUEENSLAND

CITATION:	*Coolwell v Chief Executive, Department of Justice and Attorney-General & Anor* [2015] QSC 213
PARTIES:	**COOLWELL** (applicant) v **CHIEF EXECUTIVE, DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL** (first respondent) and **SOUTHERN QUEENSLAND REGIONAL PAROLE BOARD** (second respondent)
FILE NO/S:	BS3363/15
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED ON:	31 July 2015
DELIVERED AT:	Brisbane
HEARING DATE:	23 July 2015
JUDGE:	Jackson J
ORDER:	**The order of the court is as follows:** **1. The decision of the second respondent on 19 September 2014 to grant a parole order subject to conditions and the parole order made on that date are set aside.** **2. The decision of the second respondent on 19 September 2014 to suspend the parole order and the order for suspension of the parole order made on that date are set aside.** **3. The decision of the second respondent on 17 December 2014 to cancel the parole order and the order to cancel the parole order made on that date are set aside.** **4. Declare that the applicant was entitled to be released on parole on 9 October 2014.** **5. Declare that the first respondent is obliged to release the applicant on parole by issuing a parole order.**

CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – FAILURE TO OBSERVE STATUTORY PROCEDURE – where the applicant was sentenced to detention for 5 years for offences committed as a child – where the applicant became eligible for parole after serving 70 per cent of the period of detention – where the second respondent made decisions to grant a parole order and to suspend the parole order on the same day and to cancel the parole order at a later date – where the applicant applied for a statutory order for review of the decisions of the second respondent – where the applicant sought an order in the nature of mandamus for release on parole and an injunction against a further suspension or cancellation order – whether the second respondent's decisions and orders were made invalidly *Acts Interpretation Act* 1954 (Qld), ss 4, 32A, 32AA *Corrective Services Act* 2006 (Qld), ss 176, 180, 187, 193, 194, 199, 194, 200, 201, 205 *Youth Justice Act* 1992 (Qld), ss 132, 138, 175, 227, 228, 276B, 276D, 363 *Youth Justice Act Amendment Act* 2014 (Qld), s 20 *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27; [2009] HCA 41, cited *Attorney-General v Great Eastern Railway Co* [1880] 5 App Cas 473, followed *Egan v Willis* (1998) 195 CLR 424; [1998] HCA 71, followed *Fenton v Hampton* (1858) 11 Moo PCC 347; 14 ER 727, followed *Foster v Shaddock* [2015] QSC 36, considered *Plaintiff M47/2012 v Director-General of Security* (2012) 251 CLR 1; [2012] HCA 46, applied *Trolly, Draymen and Carters Union of Sydney and Suburbs v Master Carriers Association of New South Wales* (1905) 2 CLR 509; [1905] HCA 20, followed
COUNSEL:	S Keim SC and M Black for the applicant D Kent QC and M Woodford for the respondent
SOLICITORS:	Prisoners' Legal Service for the applicant Crown Solicitor for the respondent

[1] **Jackson J**: On 19 September 2014, the second respondent purported to make a parole order under s 276D(9) of the *Youth Justice Act* 1992 (Qld) ("YJA") that the applicant as a "prisoner is to be released to a parole order on 19 September 2014", subject to conditions. I will describe the decision to make the parole order as "the parole decision".

[2] Second, also on 19 September 2014, the second respondent made an order to suspend the parole order. I will describe the decision to make the suspension order as "the suspension decision". The ground of the decision was that the second respondent "reasonably believes that the prisoner poses an unacceptable risk of committing an offence". The power relied on was s 205(2) of the *Corrective Services Act* 2006 (Qld) ("CSA").

[3] Third, on 17 December 2014 the second respondent made an order to cancel the parole order. I will describe the decision to make the cancellation order as "the cancellation decision". The ground of the decision is that the second respondent "reasonably believes that the prisoner poses an unacceptable risk of committing an offence." The power relied on was s 205(2) of the CSA.

[4] The applicant applies for judicial review and an order quashing or setting aside the parole decision, the suspension decision and the cancellation decision and the orders made by or under those decisions.

[5] As well, the applicant applies for an order in the nature of mandamus directing the first respondent to issue a parole order requiring that the applicant be released to parole effective 9 October 2014.

[6] Lastly, the applicant applies for an injunction restraining the first and second respondents from suspending or cancelling any parole order issued to the applicant before he is in fact (meaning physically) released on parole.

[7] The applicant was and is in custody by reason of an order made under s 175(1)(g) of the YJA. The order was that he be detained for a period of five years. Under s 227(1) of the YJA he must be released from detention after serving 70 per cent of the period of detention. Taking into account the period of pre-sentence custody which he had served at the time the detention order was made, the five year period of detention expires on 10 April 2016. Accordingly, although there was some confusion about the date at the time of the parole order and the suspension order, the applicant was entitled to be released on a supervised release order under ss 227 and 228 of the YJA on 9 October 2014.

[8] The applicant was not released from custody on that day because of the parole order and the suspension order.

Part 8 Division 2A of the YJA

[9] As previously stated, the second respondent purported to make the parole order under s 276D(9) of the YJA. Section 276D is contained in Pt 8 Div 2A of the YJA.

[10] Sections 276B and 276D in their present form were introduced to the YJA by s 20 of the *Youth Justice Act Amendment Act* 2014 (Qld) ("YJAA2014"). They commenced on 28 March 2014. They relevantly provide:

> "**276B Application of div 2A**
> This division applies to the following (each a ***relevant individual***)—
> (a) a child who—
> (i) has been ordered to serve a period of detention under a detention order; and
> (ii) will, during the period of detention, turn 17 years; and
> (iii) from the day the child turns 17 years (the ***transfer day***), has to serve part of the period of detention for a period (the ***unserved period of detention***) that is 6 months or more; and
> (iv) will not, within 6 months after the transfer day, be required to be released under section 227;

(b) an adult who—
(i) either—
(A) is 17 years and is sentenced for an offence committed by the adult as a child; or
(B) was 17 years at the time the adult was found guilty of an offence committed as a child and is 18 years or more at the time the adult is sentenced for the offence; and
(ii) is ordered to serve a period of detention under a detention order (the ***transferred detention order***) that is 6 months or more; and
(iii) will not, within 6 months after being sentenced, be required to be released.

…

276D Application of Corrective Services Act 2006

(1) The *Corrective Services Act 2006* applies to the relevant individual.
(2) A prison transfer direction or a transferred detention order is taken for all purposes to be a sentence to a period of imprisonment equal to the unserved period of detention or the period of detention.
(3) Subject to subsection (4), the relevant individual must be released on parole on the day the relevant individual would have been released under a supervised release order as if the prison transfer direction had not been given or transferred detention order had not been made.
(4) Subsection (3) does not prevent—
(a) the earlier release of the relevant individual under an exceptional circumstances parole order; or
(b) the continued custody of the relevant individual for the unserved part of any other sentence of imprisonment imposed against the relevant individual."

[11] Section 276D of the YJA applies to a "relevant individual". As defined in s 276B(b) a "relevant individual" includes an "adult"[1] who "is 17 years and is sentenced" for an offence committed by the adult as a child or an adult who "was 17 years at the time the adult was found guilty" "and is 18 years or more at the time the adult is sentenced for the offence" and who "is ordered" to serve a period of detention under a detention order that is six months or more and will not within six months after being sentenced be required to be released under s 227.

[12] By its text, s 276B applies where an individual "is sentenced". It operates from the time of its commencement. Neither s 276B nor s 276D applied to the applicant when the parole order was made because he was sentenced before s 276B and s 276D commenced, unless a transitional provision has that effect, because he was sentenced before 28 March 2014.

[13] Section 363 of the YJA, which was also introduced by YJAA2014, applies to a child who at the commencement was serving a period of detention. However, the applicant was then an adult, not a child.

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1 "Adult" is defined in Schedule 4 to be a person who is not a child. "Child" is defined to mean a person who has not turned 17 years.

[14] The applicant was not, therefore, a "relevant individual" for the purposes of s 276D at the time of the parole decision.

[15] As previously stated, the second respondent, not the first respondent, purported to make the parole decision and to make a parole order relying on s 276D(9) of the YJA and s 200 of the CSA. Subsection 276D(9) did not exist as at the date of the parole decision. That subsection was deleted on 28 March 2014, by s 20 of YJAA2014, although the current s 276D(3) makes similar provision. However, as previously explained, the applicant was not a "relevant person" within the meaning of s 276D as it operated after 28 March 2014.

[16] Section 200 is not the source of any power to make a parole order. It only provides for the conditions that may be attached to a parole order.

Part 6 Division 11 of the YJA

[17] Part 6 Division 11 of the YJA also makes provision for a child offender who becomes an adult. Under s 132, "offender" in Pt 6 Div 11 of the YJA means a person who has committed an offence as a child and since that offence has become an adult. That includes the applicant.

[18] Under s 138(3) of the YJA, a period of detention to which the offender is sentenced for a child offence must be served in a corrective services facility. A "child offence" is one committed by a "child". The applicant's offence was a child offence.

[19] By s 138(6) of the YJA, the CSA applies to the applicant in relation to the period of detention served in a corrective services facility under s 138(3). Section 138(7) provides:

> "However, the offender may only, and **must**, **be released on parole** on the day the offender would have been released under a supervision order if the offender was serving a period of detention in a detention centre." (emphasis added)

[20] Under Sch 4 of the YJA, "parole" is defined to mean a parole order under the CSA. It follows that the provision for release on parole under s 138(7) of the YJA requires the making of a parole order under the CSA.

[21] As already mentioned, s 227(1) of the YJA provides that a child sentenced to serve a period of detention must be released from detention after serving 70 per cent of the period of detention.

[22] Section 228(1) of the YJA provides that at the end of the period after which a child is required to be released under s 227, the chief executive must make an order releasing the child from detention. Such an order is termed a "supervised release order".

[23] There is no dispute that although the applicant was an adult at the time of sentence he was a child within the meaning of s 227. There is no dispute that s 227(1) would have applied to him, but for s 138 of the YJA.

[24] Thus, according to s 138(7), the applicant should have been released on parole on 9 October 2014.

[25] Subsection 138(7) of the YJA does not expressly provide that the chief executive (under the CSA) or a parole board is to issue or make a parole order. Instead, it operates as a positive statutory command that the offender must be released on parole on the day they would have been released under a supervised release order. Taken together with the definition of "parole" in Sch 4 of the YJA, the subsection contemplates that a supervised release order will not in fact be made and provides instead that a release on parole will occur by means of a parole order under the CSA.

Parole under the CSA

[26] Under the CSA, a release on parole order is made by the "issue"[2] of a court ordered parole order or "by"[3] a parole order. There are three main pathways.

[27] The first pathway is that a prisoner may apply for an "exceptional circumstances parole order" under s 176 of the CSA. The application is made to the parole board that may hear and decide the application under s 187. The applicant did not apply for an exceptional circumstances parole order.

[28] The second pathway is for the chief executive to issue a court ordered parole order under s 199(1) of the CSA. Section 199 provides:

> "**199 Court ordered parole order**
> (1) The chief executive must issue a court ordered parole order for a prisoner in accordance with the date fixed for the prisoner's release on parole under the *Penalties and Sentences Act 1992*, part 9, division 3.
> (2) However, if the prisoner is being detained on remand for an offence, the chief executive can not issue the court ordered parole order unless—
> (a) the prisoner is granted bail in relation to the offence under the *Bail Act 1980*; or
> (b) the charge for the offence is withdrawn.
> (3) The chief executive must give a copy of the court ordered parole order to the prisoner.
> (4) The prisoner must—
> (a) keep the copy of the court ordered parole order in the prisoner's possession while released on parole; and
> (b) if asked by a police officer or corrective services officer, produce the copy for the officer's inspection.
> (5) Subsection (1) does not apply in relation to a prisoner to whom section 185A applies."

[29] Under s 199(1), the chief executive must issue a "court ordered parole order" for a prisoner in accordance with the date fixed for the prisoner's release on parole under the *Penalties and Sentences Act* 1992, Pt 9, Div 3. A "court ordered parole order" is defined in Sch 4 of the CSA to mean an order issued by the chief executive under s 199 in accordance with a court order made under the *Penalties and Sentences Act* 1992, s 160B(3) fixing the date for the prisoner to be released on parole. That is, an

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2 *Corrective Services Act* 2006 (Qld), s 199(1).
3 *Corrective Services Act* 2006 (Qld), s 194(1).

order where a court fixes a parole release date, when imposing a sentence for a period of imprisonment of three years or less.

[30] The power and duty under s 199(1) are conferred on the chief executive. But it is a power confined to issuing a "court ordered parole order". The release of an offender under s 138(7) of the YJA is not the issue of a "court ordered parole order". No date for the applicant's release was fixed under the *Penalties and Sentences Act* 1992 (Qld), Pt 9 Div 3.

[31] The third pathway applies when the sentencing court determines or fixes a "parole eligibility date". A "parole eligibility date" is defined in Sch 4 of the CSA to mean, for a prisoner, the parole eligibility date applying to the prisoner under Ch 5 Pt 1 Div 1 Subdiv 2 of the CSA. In that case, under s 180(1) of the CSA, a prisoner may apply for a parole order if the prisoner has reached the prisoner's parole eligibility date.

[32] Section 180 of the CSA provides:

> "**180 Applying for parole order etc.**
> (1) A prisoner may apply for a parole order if the prisoner has reached the prisoner's parole eligibility date in relation to the prisoner's period of imprisonment.
> (2) However, a prisoner can not apply for a parole order—
> (a) if a previous application for a parole order made in relation to the period of imprisonment was refused—
> (i) until the end of the period decided by the parole board that refused the previous application; or
> (ii) unless a parole board consents; or
> (b) if an appeal has been made to a court against the conviction or sentence to which the period of imprisonment relates—until the appeal is decided; or
> (c) otherwise—more than 180 days before the prisoner's parole eligibility date.
> (3) The application must be made—
> (a) in the approved form; and
> (b) to the parole board that may, under section 187, hear and decide the application.
> (4) A parole order for a prisoner may start on or after the prisoner's parole eligibility date."

[33] When an application for parole is made under s 180, a parole board, which is either the Queensland board or a regional board such as the second respondent, must hear and decide the application for parole under s 187 of the CSA. Under s 193(1), the parole board required to consider a prisoner's application for a parole order must decide either to grant the application or to refuse to grant the application. When it decides to grant an application for parole, under s 194(1) of the CSA, a parole board may release a prisoner on parole by a parole order.

[34] Section 194 provides:

> "**194 Types of parole orders granted by parole board**
> (1) A parole board may, by a parole order—

(a) release any prisoner on parole, if the board is satisfied that exceptional circumstances exist in relation to the prisoner; or

(b) release an eligible prisoner on parole.

(2) If the prisoner is to be released on parole as mentioned in subsection (1)(a), the board must note on the order that it is an exceptional circumstances parole order.

(3) The board must give a copy of the parole order to the prisoner.

(4) The prisoner must—

(a) keep the copy of the parole order in the prisoner's possession while released on parole; and

(b) if asked by a police officer or corrective services officer, produce the copy for the officer's inspection.

(5) In this section—

eligible prisoner means a prisoner, who—

(a) may apply for the parole order under section 180(1); and

(b) is eligible for the parole order under section 181, 181A, 182, 182A, 183, 184, 185 or 185B."

Chapter 5 Part 1 Division 5 of the CSA

[35] Chapter 5 Part 1 Division 5 of the CSA confers powers to amend, suspend or cancel a parole order. Under s 201(2) the chief executive may, by written order, suspend a parole order if the chief executive reasonably believes the prisoner, inter alia, poses a serious and immediate risk of harm to someone else or poses an unacceptable risk of committing an offence.

[36] Further, under s 205(2)(a) of the CSA, a parole board may by written order suspend or cancel a parole order if the board reasonably believes the prisoner subject to the parole order, inter alia, poses a serious risk of harm to someone else or poses an unacceptable risk of committing an offence.

[37] In the present case, the suspension decision and the cancellation decision were both purportedly made under s 205(2)(a) of the CSA by the second respondent.

No power to make a parole order under s 194

[38] The applicant's principal contention is that the second respondent had no power to make a parole order under s 194 of the CSA because there was no relevant application before it and no power otherwise to make a parole order. The applicant was simply a person entitled to release under s 138(7) of the YJA on the day that he would have been released under a supervised release order.

[39] In my view, the second respondent had no power to make a parole order under s 194 of the CSA in relation to the applicant. The applicant was not an "eligible prisoner" within the meaning of s 194(1)(b). He did not make an application under s 180. He was not a person who had reached a "parole eligibility date". An "eligible prisoner" under s 194(1)(b) is at least someone who has reached the prisoner's parole eligibility date in relation to the prisoner's period of imprisonment under s 180(1). It may also be required that the prisoner makes an application for parole under s 180. Either way, the applicant was not an "eligible prisoner".

[40] It follows that the parole decision was not authorised by s 194. Unless some other section of the YJA or CSA authorised the second respondent to make the parole decision and to grant the parole order, it was made without power granted or provided for under that Act.

[41] The respondent relied on s 138(7) of the YJA. No other section was identified by the parties.

[42] The surprising outcome of the examination of the CSA set out above is that it does not expressly provide for either the chief executive or a parole board to make a parole order in respect of a person entitled to release on parole under s 138(7) of the YJA. Nevertheless, the clear meaning of s 138(7) is that a release on parole is to be made if the subsection applies.

[43] It is a well established principle of construction that where a statute provides that something is to be done but makes no machinery provision as to how it is to be done, the power of the appropriate officer to do the thing will be implied.[4] As French CJ recently put it in *Plaintiff M47/2012 v Director-General of Security*,[5]

> "Where a statute expressly confers upon a person or a body a power or function or a duty, any unexpressed ancillary power necessary to the exercise of the primary power or function, or discharge of the duty, may be implied."

[44] The question that arises in the present case is whether the necessary power to issue or make a parole order is to be exercised by the chief executive or a parole board.

[45] In my view, the proper construction of s 138(7) of the YJA is that the chief executive under the CSA is commanded to make a release of the offender or relevant individual on parole. That construction is to be preferred because there is no discretion to be exercised in complying with the statutory command that the offender is to be released. There is no reason, therefore, for the question whether a parole order should be made to go before a parole board.

[46] The respondent submits that s 199 of the CSA is the only power of the first respondent to make a parole order under the CSA. I reject that submission because, in my view, s 138(7) of the YJA operates impliedly to confer the power upon the first respondent.

[47] It follows that the parole decision was made without power because the second respondent had no power to make a parole order. The power and duty to make a release on parole by making a parole order was that of the chief executive.

[48] It also follows that the suspension decision and the cancellation decision were made invalidly, because those decisions were conditioned on the existence of a parole order made by the second respondent as a result of the parole decision.

[49] All three decisions must be set aside.

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4 *Fenton v Hampton* (1858) 11 Moo PCC 347; 14 ER 727, 732; *Trolly, Draymen and Carters Union of Sydney and Suburbs v Master Carriers Association of New South Wales* (1905) 2 CLR 509, 523; *Attorney-General v Great Eastern Railway Co* [1880] 5 App Cas 473, 478, 481; *Egan v Willis* (1998) 195 CLR 424, [83].

5 (2012) 251 CLR 1, [48].

Order in the nature of mandamus

[50] It follows, in my view, from the combined operation of s 227 and s 138(3) of the YJA that the applicant is entitled to have the first respondent make a parole order.

[51] I infer that the first respondent has not done so or refused to do so to date because of the contention of the respondents that the second respondent had the power to do so. As a matter of discretion, the court may decline to grant an order in the nature of mandamus in circumstances where it appears that a repository of power under a duty to exercise the power has declined to do so because of a mistaken construction of the statute granting the power. Once disabused of the erroneous construction of s 138(7), there is no reason to think that the first respondent will not comply with his legal duty.

[52] In my view, it would be more appropriate, in these circumstances, to declare the applicant's right than to make an order in the nature of mandamus.

Injunction against a further suspension order or cancellation order

[53] The applicant also applies for an injunction to prevent the respondents from making another decision that would result in the applicant physically not being released on parole, whether by way of a decision by the first respondent under s 201(1) of the CSA to suspend the operation of a parole order, or a decision by the second defendant under s 205(1) of the CSA to suspend or cancel a parole order.

[54] To obtain such a final order, the applicant must prove that the respondents threaten to make such a decision or decisions in circumstances where they will not have any power to make another order to suspend a parole order made by the first respondent or an order to cancel the parole order.

[55] Subsection s 138(6) has the purpose of applying the provisions of the CSA to an offender being held in custody in a corrective services facility.

[56] Before any decision to suspend or cancel a parole order might be made under s 201(2) or s 205(2) of the CSA, the applicant must be released on parole by the first respondent under s 138(7), by making a parole order under the implied power to do so. When that occurs, the question will arise whether the first respondent's power under s 201(2) or the second respondent's powers under s 205(2) are available.

[57] Those sections provide, in part:

> "**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
> (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…"

[58] The expression "parole order" is defined in Sch 4 of the CSA to mean, inter alia, either a parole order mentioned in s 194 or a court ordered parole order (one made under s 199). Neither of those categories of parole order is the basis of the parole order to which the applicant is entitled. The other categories within the definition of "parole order" do not apply either.

[59] That is, there is no express provision of the definition of "parole order" that encompasses a parole order of the kind that might be made under the implied power to grant one in s 138(7) of the YJA.

[60] Therefore, there is a question whether the powers under s 201(2) or s 205(2) of the CSA are available if a parole order is made by the first respondent in respect of the applicant. However, that point was not argued by the applicant or made a ground of the application for an injunction.

[61] In these circumstances, it would not be appropriate to finally decide whether a parole order made by the first respondent under s 138(7) is a "parole order" within the meaning of ss 201(2) and 205(2) of the CSA because, properly construed, a "contrary intention" sufficiently appears in those subsections or that the definition of "parole order" in Sch 4 of the CSA, by reason of "the context or subject matter", is not to be treated as exhaustive and to that extent does not apply.[6]

[62] The applicant's point was a different one, namely that the power in s 201(2) or the powers in s 205(2) are not engaged until a prisoner has been physically released on parole. That is, there is no power to make a decision to suspend a parole order or a decision to cancel a parole order until the applicant is physically released into the community.

[63] In my view, that argument must be rejected. There is no textual support for it in the language of the sections or their statutory context. The powers in ss 201(2) and 205(2) of the CSA apply to a court ordered parole order made under s 199 of the CSA. In *Foster v Shaddock*[7] Daubney J held, in my view rightly, that a court ordered parole order made under s 199 may be suspended under s 201(2) before the prisoner has been physically released.[8]

[64] It is not clear that any order to suspend or to cancel a parole order made by the first respondent in respect of the applicant before his physical release would be invalid. Accordingly, I decline to grant the injunction applied for by the applicant.

[65] I will hear the parties on the question of costs.

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6 *Acts Interpretation Act* 1954 (Qld), ss 4, 32A and 32AA; *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27.

7 [2015] QSC 36.

8 [2015] QSC 36, [11]-[16].