SUPREME COURT OF QUEENSLAND

CITATION:	*Jennings v Qld Parole Board* [2007] QSC 364
PARTIES:	**DEAN PHILLIP JENNINGS** (applicant) **v** **QUEENSLAND PAROLE BOARD** (respondent)
FILE NO/S:	BS 7513 of 2007
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	5 December 2007
DELIVERED AT:	Brisbane
HEARING DATE:	5 November 2007
JUDGE:	Martin J
ORDER:	**The application for statutory order for review be dismissed**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – GENERALLY – where applicant seeks review of decision by respondent to refuse the applicant's application for parole – whether the respondent took into account irrelevant considerations – whether the respondent failed to take into account a relevant consideration – whether the respondent observed procedures required by law for the making of such decisions *Acts Interpretation Act 1954* (Qld), s 27B *Corrective Services Act 2006* (Qld), s 193, s 200, s 212, s 217 *McQuire v South Queensland Regional Community Corrections Board* [2003] QSC 414, considered *Petrie v Queensland Community Corrections Board* [2007] QSC 188, considered *Weribone v Chief Executive, Department of Corrective Services* [2007] QSC 129, considered
COUNSEL:	J W J Fenton for the applicant S A McLeod for the respondent
SOLICITORS:	Volk Lawyers for the applicant C W Lohe, Crown Solicitor, for the respondent

[1] **MARTIN J:** This is an application to review the decision by the respondent to refuse to grant the applicant a parole order.

Background

[2] On 21 July 1997 the applicant was sentenced by his Honour Judge Wall QC to a total of 12 years imprisonment for kidnapping for ransom, armed robbery in company, unlawful use of a motor vehicle with circumstances of aggravation, misappropriation, deprivation of liberty, stealing and assault.

[3] On 22 May 2003 the applicant was released on parole after a period of open custody and granted permission to reside in South Australia.

[4] On 7 July 2004 the applicant was convicted in the Wollongong Local Court of a drink driving offence which offence had been committed on 13 June 2004.

[5] On 9 December 2004 the respondent suspended the applicant's parole order indefinitely because the applicant had absconded from supervision and he had been charged with further driving offences, such as driving while under disqualification.

[6] After approximately 12 months at large, the applicant was extradited to Queensland and returned to custody on 21 October 2005.

[7] On 25 November 2005 the respondent cancelled the parole order effective from 24 November 2004.

[8] On 20 September 2006 the respondent's secretariat received an application for parole from the applicant.

[9] On 1 December 2006 the respondent at the meeting held on that day, deferred consideration of the applicant's application for parole in order to obtain and consider a psychological report and a psychiatric report.

[10] At its meeting on 13 April 2007 the respondent considered the applicant's application for parole.

[11] On 30 April 2007 the respondent wrote to the applicant advising him that consideration was being given to not granting his application for parole on the basis that he may not be an acceptable risk to the community. The applicant was invited to make further written submissions within 21 days of receiving the letter. Between 1 May 2007 and 23 May 2007 the applicant sent two letters and four sets of submissions to the respondent.

[12] On 28 May 2007 the applicant wrote to the respondent requesting a statement of reasons in relation to the decision made on 13 April 2007 and communicated by the letter on 30 April 2007.

[13] The respondent declined to provide a statement of reasons on the basis that the final decision had not been made.

[14] On 14 June 2007 the applicant made more written submissions to the respondent and at its meeting on 15 June 2007 the respondent deferred consideration of the applicant's application for parole so that it might obtain further information to assist it in making its determination.

[15] On 13 July 2007 the applicant again sought a statement of reasons from the respondent and the respondent, again, declined to provide a statement of reasons on the basis that the final decision had not been made.

[16] On 6 July 2007 the respondent determined to decline the applicant's application for parole and the respondent advised the applicant of this by its letter of 30 July 2007.

[17] On 6 August 2007 the applicant wrote to the respondent seeking a statement of reasons with respect to its decision of 6 July 2007.

[18] On 31 August 2007 the respondent provided the applicant with a statement of reasons in relation to the decision of 6 July 2007.

Grounds of the application

[19] The application for review contained two grounds supporting the application. At the hearing a third ground was added without objection. The grounds advanced by the applicant are, in summary:

(a) the respondent took into account two irrelevant considerations:
- that the applicant had been waitlisted for the "Making Choices" program; and
- that the informal indication from the relevant New South Wales authority that it was not prepared to accept an application for transfer of the applicant's parole to New South Wales;

(b) the respondent failed to observe procedures required by law in making its decision; and

(c) the respondent failed to take into account a relevant consideration, namely, the facts and circumstances surrounding the offences on which he had been convicted and all of the sentencing remarks of his Honour Judge Wall QC.

***Corrective Services Act* 2006**

[20] Chapter 5 of the *Corrective Services Act 2006* (Qld) ("CS Act") contains the provisions governing the granting of parole.

[21] Section 180 provides that a prisoner may apply for parole. Sections 181-185 deal with parole eligibility dates. Section 186-190 deal with submissions to and appearances before a parole board. Section 191 sets out when an application lapses and s 192 deals with the effect of a recommendation for parole by a sentencing court.

[22] Section 193 provides:

"**Decision of parole board**

(1) A parole board required to consider a prisoner's application for a parole order must decide –
(a) to grant the application; or
(b) to refuse to grant the application.

(2) However, the parole board may defer making a decision until it obtains any additional information it considers necessary to make the decision.

(3) The parole board may grant the application even though a parole order for the same period of imprisonment was previously cancelled.

(4) If the parole board refuses to grant the application, the board must –

(a) give the prisoner written reasons for the refusal; and

(b) if the application is for a parole order other than an exceptional circumstances parole order--decide a period of time, of not more than 6 months after the refusal, within which a further application for a parole order (other than an exceptional circumstances parole order) by the prisoner must not be made without the board's consent.

(5) If the parole board fails to decide the application within 120 days after its receipt, the board is taken to have decided to refuse to grant the application."

[23] Section 200 provides:

"**Conditions of parole**

(1) A parole order must include conditions requiring the prisoner the subject of the order –

(a) to be under the chief executive's supervision –

(i) until the end of the prisoner's period of imprisonment; or

(ii) if the prisoner is being detained in an institution for a period fixed by a judge under the *Criminal Law Amendment Act 1945*, part 3 – for the period the prisoner was directed to be detained; and

(b) to carry out the chief executive's lawful instructions; and

(c) to give a test sample if required to do so by the chief executive under section 41; and

(d) to report, and receive visits, as directed by the chief executive; and

(e) to notify the chief executive within 48 hours of any change in the prisoner's address or employment during the parole period; and

(f) not to commit an offence.

(2) A parole order granted by a parole board may also contain conditions the board reasonably considers necessary –

(a) to ensure the prisoner's good conduct; or

(b) to stop the prisoner committing an offence.

Examples –

- *a condition about the prisoner's place of residence, employment or participation in a particular program*
- *a condition imposing a curfew for the prisoner*
- *a condition requiring the prisoner to give a test sample*

(3) The prisoner must comply with the conditions included in the parole order."

[24] Section 217 provides:

"**Functions**

The functions of the Queensland board are--

(a) to decide applications for parole orders, other than court ordered parole orders; and

(b) to approve resettlement leave programs for prisoners; and

(c) to perform other functions given to it under an Act."

[25] The discretion available to the respondent under s 217 is not confined by any set of criteria or other specific matters to which the CS Act directs the respondent's attention. In a decision dealing with a predecessor of the CS Act (in which the provisions were relevantly the same), White J observed in *McQuire v South Qld RCCB* [2003] QSC 414 at [28]:

> "There are no express criteria for application by a Board when considering an application for post-prison release. The discretion is unconfined except as the matter and scope of the statutory provisions will dictate what it is that must be kept in mind. An object of the *Corrective Services Act* 2000 is for 'community safety and crime prevention through humane containment, supervision and rehabilitation', s 3(1). The interests of the public must be a necessary aspect of any decision to grant release."

[26] The same object forms one of the purposes of the CS Act – see s 3(1).

The respondent's reasons

[27] In its letter to the applicant of 30 April 2007 the respondent said:

> "5. Previously the Board had requested that you be assessed for the High Intensity Violent Offending Program. The Parole Board Assessment Report indicated that: 'An assessment for the Cognitive Self-Change: High Intensity Violent Offending Program was withdrawn following offender Jennings' last Offender Management Plan Review due to a 'lack of evidence to indicate a return to the use of violence or violent offending' (Milne; 14/09/2006). This recommendation was replaced by an assessment for a substance abuse program. Further correspondence from program staff, following the completion of the ASSIST assessment on the offender, stated that 'it is...recommended that should he be again released to a community-based supervision order that he be considered for the Recovery Maintenance Program' (31/08/2006). It should be noted that he will only be eligible to attend this program if he completed Getting Smart or Pathways.'
>
> 6. This same report indicated that 'A recent letter from offender Jennings addressed to the General Manager (19/09/2006) states 'I request formally that any program recommendations be removed from my file'. He stated during the interview that he would not be willing to complete an assessment for a substance abuse program whilst in custody as he does not see 'any benefits from repeating' this program.'
>
> 7. In your letter attached to your application you state: 'I have been offered nil programs while being at Wolston both criminogenic and educational therefore I don't feel that I can be held responsible for the failure of Queensland Corrections to supply whatever intervention that they regard as appropriate.'
>
> 8. In a document dated 18 January 2007 you outline your relapse prevention plan and include such matters as your high risk factors and your supports. You also outline your release plan. You state that 'Every aspect of flawed thinking in terms of

addictive behaviour has been addressed.' You also expound on only one high risk situation.

9. In a psychological report commissioned by the Board and dated 2 February 2007, Mr Palk states among other things:

> 'Finally, in regards to making a recommendation on the prisoner's suitability for release to parole, respectively, the writer does not consider Mr Jennings suitable for parole at this stage. To become suitable for parole Mr Jennings needs to demonstrate that he could benefit from parole by being prepared to confide in and seek the advice of his parole officer as well as complying with conditions to treat his alcohol problem and personality disorder. His past performance on parole does not demonstrate that he has this ability. In fact the evidence suggests that he is prone to manipulating parole conditions to suit his life circumstances (genuinely believing that he knows best) without regard to his parole obligations. In addition, Mr Jennings also needs to develop an adequate relapse prevention plan and make appropriate arrangements to complete the programs proposed by correctional staff (e.g. Making Choices Program & Recovery Maintenance Program). While it is accepted that similar programs could be completed on parole, given Mr Jennings return to alcohol abuse while he was (on) Parole previously, the writer believes his potential for re-offending and alcohol abuse could be reduced if he completed these programs in custody prior to release on parole.'

10. In a psychiatric report prepared by Dr de Leacy and dated 19 March 2007 it is stated:

> 'It is doubtful he would offend again in a serious way. The main issue is whether he would breach parole conditions. His major risk factor is relapse onto alcohol or drugs and if he were to be released he should be carefully monitored in relation to this. I believe that it would be necessary for him to devote more time to considering aspects of a relapse prevention relation to drug and alcohol before his release.
>
> Overall his release plan lacks detail and I believe at the present time that plan is too non-specific to consider. I believe that he has the potential to be released without major difficulties but I consider that at the present time insufficient work has been done in compiling a release plan and a relapse prevention plan.'

11. The Board has some confidence in the expertise of Mr Palk who is an experienced forensic psychologist and Dr de Leacy who is a member of the Faculty of Forensic Psychiatry. It considered that your present relapse prevention plan does lack substance and that you have presently not made yourself available for a program which could specifically aim to address emotional regulation, violence propensity, problem solving, offence related cognitions, criminal associates and attitudes,

impulsivity, motivation to change, and relapse prevention planning.

12. The Board also had before it an indication from New South Wales that it was not prepared to accept an application for transfer of your possible parole to that State. The Board therefore considered that your release plan which was presented to it is not viable at least to the extent that there would be no parole supervision. Release without a viable release and support structure was considered a major risk factor.
13. The Board's primary obligation is the protection of the community and it considered that had you progressed further towards open custody and had you participated in programs designed to developed a release and relapse prevention plan which addressed your substance abuse it would have had some evidence that you were serious about addressing the main risk factor in your offending behaviour and your risk to community safety. You would have also had the opportunity to demonstrate your trustworthiness and your capacity to self regulate in a less supervised environment. If you could abide by the rules and conditions of the custodial system to the extent that you progressed to a trusted environment, the Board considered that it may then have some evidence that you could make choices to work with the authorities in a constructive manner in the community and not just choose your own path as you have done in the past.

After noting the relevant factors and particularly:
Previous response to community based supervision;
Outstanding treatment needs in relation to Making Choices Program;
Insufficiency of relapse prevention plan;
Extensive criminal history including a number of violent offences;
Reliance on relationship and release plan in NSW which will not accept parole transfer;
The findings of the psychologist and psychiatrist.

The Board is minded to refuse your application at this time on the basis that it is not satisfied that your release on a parole order does not pose an unacceptable risk to the community.

You are invited to show cause by a written submission within 21 days of receiving this letter as to why the Board should not decline your application."

[28] In his letter to the respondent of 14 June 2007 the applicant said:

"Please note that on Tuesday 12 June 2007 I received a response from the Queensland Ombudsman in relation to an earlier complaint in addition to finalizing my complaint the Ombudsman notified me that The Making Choices Program would not be available in Residential at Wolston Correctional Centre until 2008,

> As a response to this The Making choices Program would now be available as a Parole condition and could be completed in the community environment.
>
> I request of the Board that this be taken in consideration when finalizing my application, further to this I remind the Board that this application was lodged in August 2006 and request that the matter be finalized immediately."

[29] In response to that letter the respondent wrote to the applicant on 19 June 2007 and said:

> "I advise that the Queensland Parole Board considered your application for parole at its meeting on 15 June 2007.
>
> The Board has requested further information to assist it in the determination of your case. Upon receipt of that information your application will be further considered."

[30] By that same letter the respondent sought information from the General Manager of Wolston Correctional Centre in the following terms:

> "The Board have requested that it be provided with the following information as a matter of urgency:
>
> - whether or not Mr Jennings is waitlisted for the Making Choices and Transitions Programs and the Specialised Assessments for Violence and Substance Abuse needs, and if so are
> - these programs available at Wolston Correctional Centre;
> - what is the likely timeframe for participation".

[31] By its letter of 30 July 2007 the respondent informed the applicant that his application had been refused. The respondent said:

> "The Queensland Parole Board ('the Board') considered your most recent application for a parole order at its meeting on 13 April 2007.
>
> The Board wrote to you on 30 April 2007 outlining the relevant features of your case to that time and inviting you to forward any new information or make such submissions you may wish concerning the matters outlined in that letter. You were given 21 days from reception of the letter to make your submissions. The Board wrote to you again on 3 May 2007 following receipt of a letter dated 28 April 2007 and allowed another 21 days for further possible submissions.
>
> The Board received further correspondence and submissions dated 9 May 2007, 11 May 2007, 17 May 2007, 21 May 2007 and 14 June 2007.
>
> On 15 June 2007 the Board considered your application and submissions and wrote to you on 19 June 2007 indicating that it had requested further information. This information was sought as a matter of urgency form [sic] the Centre and consisted of:

- Whether Mr Jennings is waitlisted fro [sic] the Making Choices and Transitions programs and the Specialised Assessments for Violence and Substance Abuse needs and if so; are
- These programs available at Wolston Correctional Centre;
- What is the likely timeframe fro participation.

An email was received from the Centre on 21 June 2007 and the Board considered your matter again on 6 July 2007. A copy of this email is enclosed for your information.

At its meeting on 6 July 2007, the Board fully considered your submission. Among other things, the Board took into account information in your submission of 11 May 2007 which indicated:

- that you had made yourself available for the Making Choices program but had never been offered a placement;
- that you were never informed that NSW would not accept your parole supervision;
- that your Review recommended that you stay at Wolston so you have not had the opportunity to go to a farm;
- that your present employment was one demanding discipline and indicated a strong measure of trust;
- that you had made every effort to regain your strength of mind and that you were confident that you could reintegrate into the community without a lapse into substance abuse;
- that you had sought to arrange a Brisbane based release plan.

Your letters of later May enclosed support letters from Catholic Prison Ministry and Centacare. In considering your submissions the Board had evidence that you are waitlisted for the Making Choices program and that this was due to outstanding needs. The psychological and psychiatric reports both considered that such a program would be a prudent step prior to re-release to parole.

Also, the Board's concern about a viable relapse prevention plan was not addressed in your submissions.

It was appreciated that your proposed release plan in Brisbane was thrust upon you but it considered that you have some helpful supports but no concrete plans in place. Also you do not mention how the emotional support which, in your application, you considered was a major factor in your compliance with parole conditions

The fact that a Review said that Wolston was where you should presently remain did not preclude your progress in the future but the Board had no control over this and its reasons for such progress, as evidence of your readiness to comply with the parole conditions you previously breached, remain valid.

For the reasons set out in this letter and its previous letter to you the Board decided that you would be an unacceptable risk to the

community on a parole order at this time and your application has been declined.

The Board consents to you lodging a new application at any time from 6 January 2008."

[32] On 6 August 2007 the applicant sought a statement of reasons from the respondent and on 31 August the respondent provided that statement. Part of the reasons are set out:

"STATEMENT OF REASONS:
IN RELATION TO THE QUEENSLAND PAROLE BOARD'S DECISION MADE ON 13 APRIL 2007 TO DECLINE TO DEAN PHILLIP JENINGS A PAROLE ORDER.
(PROVIDED PURSUANT TO S 33 OF THE *JUDICIAL REVIEW ACT 1991*.)

Introduction

[A history of the application is set out.]

Evidence or other material on which findings of fact were based

The material listed below was disclosed to you unless otherwise indicated.

1. All the earlier material mentioned in its previous correspondence including the statement of reasons dated 6 July 2006 was again before the Board. However, the Board accepted the Parole Board Assessment Report dated 27 October 2006 as an adequate summary of the relevant material previously before the Board. It considered that this report effectively summarised any previous positive and adverse material before the Board.
2. Statement of Reasons dated 6 July 2006.
3. South Australian Offender History Report.
4. Sentence Calculation Details – created on 15/11/2006.
5. Your Application for Parole and submission dated 28/08/2006 (Not supplied to you as you had given these to the Board.)
6. Your Security Classification History – created on 21/09/2006.
7. Parole Board Assessment Report dated 27/10/2006.
8. Letter from NSW Department of Corrections to Designated Authority dated 23 November 2006.
9. Your Relapse Prevention Plan dated 18/01/2007.
10. Your Application to Appear (date indistinct).
11. Psychological Report by Gavan Palk date 02/02/2007,
12. Psychiatric Report by Dr de Leacy dated 19 March 2007.
13. Letters from you to the Board dated 28 April 2007; 9 May 2007; 11 May 2007; 17 May 2007 (enclosing a letter to the Board from Catholic Prison Ministry dated 16 May 2007); 21 May 2007 (enclosing a letter 'To Whom It May Concern' from Doug Herrington dated 17 May 2007); 28 May 2007; and 14 June 2007. (Copies of these letters were not provided to you as you had sent them to the Board.)

14. Letters from the Board to you dated 3 May 2007; 5 June 2007; and 19 June 2007.
15. Email from Terri Skellern to Margaret Cameron dated 21 June 2007.

Findings on material questions of fact

- On 21 July 1997 you appeared in the Townsville District Court and pleaded guilty in relation to offences including Kidnapping and Armed robbery in company. You were sentenced to a total of 12 years' imprisonment. Pre-sentence custody of 528 days was declared as time served. Sentencing transcripts indicated that the offences involved a significant degree of premeditation; that the victim was detained for a significant period of time in her car and was assaulted by you; and that the offences had a terrible impact on the victim. The victim escaped from her vehicle and you and your co-offender made attempts to locate the victim after her escape. His Honour Judge Wall commented that 'the whole experience must have been and was in fact very frightening and terrifying for Ms Kenny. You abused her physically and mentally. You caused her to be very scared and fearful for her life.' At the time of sentencing His Honour took into account your guilty plea, your failure to provide details of your co-offender; that you were armed with two firearms and had ammunition for each of the firearms and that you had served three years and seven months' imprisonment in South Australia for offences committed on 19 July 1992.
- You were released to parole on 22 May 2003 after a period in open custody. You lived in South Australia with your father and received favourable reports from your supervising office. However, in July 2004 you appeared in the Wollongong Local Court and were fined for Drink driving, On 9 December 2004 your parole was suspended as you had absconded from supervision and had been charged with further driving offences. You were returned to custody in Queensland in October 2005.
- You have received positive unit behaviour and employment reports and have incurred no breaches since your return to custody. You are presently in the residential section of the Centre.
- The Parole Board Assessment Report indicated that 'A recent latter from offender Jennings addressed to the General Manager (19/09/2006) states 'I request formally that any program recommendations be removed from my file'. He stated during the interview that he would not be willing to complete an assessment for a substance abuse program whilst in custody as he does not see 'any benefits from repeating' this program.'
- In your letter attached to your application you state: 'I have been offered nil programs while being at Wolston both criminogenic and educational therefore I don't feel that I can be held responsible for the failure of Queensland Corrections to supply whatever intervention that they regard as appropriate.'

- In a document dated 18 January 2007 you outline your relapse prevention plan and include such matters as your high risk factors and your supports. You also outline your release plan. You state that 'Every aspect of flawed thinking in terms of addictive behaviour has been addressed.' You also expound on one high risk situation.
- In a psychological report commissioned by the Board and dated 2 February 2007, Mr Palk states among other things:

  > 'Finally, in regards to making a recommendation on the prisoner's suitability for release to parole, respectively, the writer does not consider Mr Jennings suitable for parole at this stage. To become suitable for parole Mr Jennings needs to demonstrate that he could benefit from parole by being prepared to confide in and seek the advice of his parole officer as well as complying with conditions to treat his alcohol problem and personality disorder. His past performance on parole does not demonstrate that he has this ability. In fact the evidence suggests that he is prone to manipulating parole conditions to suit his life circumstances (genuinely believing that he knows best) without regard to his parole obligations. In addition, Mr Jennings also needs to develop an adequate relapse prevention plan and make appropriate arrangements to complete the programs proposed by correctional staff (e.g. Making Choices Program & Recovery Maintenance Program). While it is accepted that similar programs could be completed on parole, given Mr Jennings return to alcohol abuse while he was (on) Parole previously, the writer believes his potential for re-offending and alcohol abuse could be reduced ff he completed these programs in custody prior to release on parole.'

- In a psychiatric report prepared by Dr de Leacy and dated 19 March 2007 it is stated:

  > 'It is doubtful he would offend again in a serious way. The main issue is whether he would breach parole conditions. His major risk factor is relapse onto alcohol or drugs and if he were to be released he should be carefully monitored in relation to this. I believe that it would be necessary for him to devote more time to considering aspects of a relapse prevention relation to drug and alcohol before his release.
  >
  > Overall his release plan lacks detail and I believe at the present time that plan is too non-specific to consider. I believe that he has the potential to be released without major difficulties but I consider that at the present time insufficient work has been done in compiling a release plan and a relapse prevention plan.'

- The Board has some confidence in the expertise of Mr Palk who is an experienced forensic psychologist and Dr de Leacy who is a member of the Faculty of Forensic Psychiatry. It considered that your present relapse prevention plan does lack substance and that

you have presently not made yourself available for a program which could specifically aim to address emotional regulation, violence propensity, problem solving, offence related cognitions, criminal associates and attitudes, impulsivity, motivation to change, and relapse prevention planning.

- The Board also had before it an indication from New South Wales that it was not prepared to accept an application for transfer of your possible parole to that State. The Board therefore considered that your release plan which was presented to it is not viable at least to the extent that there was a high risk that there would be no parole supervision. Release without a viable release and support structure was considered a major risk factor.
- In your letter dated 11 May 2007 in response to the Board's letter of 30 April 2007, you make among other things the following submissions:
  - that you had made yourself available for the Making Choices program but had never been offered a placement;
  - that you were never informed that NSW would not accept your parole supervision;
  - that your Review recommended that you stay at Wolston so you have not had the opportunity to go to a farm;
  - that your present employment was one demanding discipline and indicated a strong measure of trust;
  - that you had made every effort to regain your strength of mind and that you were confident that you could reintegrate into the community without a lapse into substance abuse;
  - that you had sought to arrange a Brisbane based release plan.
- In an Email dated 21 June 2007, which was made available to you, the Board was informed that it was considered appropriate that you be waitlisted for the Making Choices program to address a number of outstanding needs linked to risk.

Reasons for the decision

1. The Board weighed up the assessment in the psychological report prepared for the Board that your past performance on parole does not demonstrate that you have the ability to utilise the benefits of parole supervision by working with parole officers nor comply with parole conditions which addressed your specific issues of alcohol and personality disorder which were linked to your offences. In fact the evidence suggests that you are prone to manipulating parole conditions to suit your life circumstances, believing that you know best, without regard to your parole obligations. The Board therefore considered that you needed to have in place a very detailed and viable release and relapse prevention plan to counter the evidence of your past performance on parole and the assessment of the psychologist. However, such evidence was not before the Board and you did not address this point when the Board indicated its concern in its letter dated 30 April 2007. Your present relapse prevention plan does not

identify the factors and triggers that led to your offending nor have you stated realistic protective strategies to assist you in not offending in the future.

2. The Board had assessments from Mr Palk and from the email of 21 June 2007 that you have outstanding needs linked to your criminal history which may be addressed in the Making Choices Program. The Board made enquiries as to the availability of this program and your suitability for it. It appreciated that you have indicated that you are willing to do the program and that you suggested that it may be available in the community. The psychologist counselled that it would be safer that you address the issues he had highlighted in custody as you had returned to alcohol abuse when last on parole. In considering the matter of the program, the Board appreciated that there may be a delay in being able to access it in custody but weighted [sic] this up against your breach of parole previously and that you have nothing in place over and above your good intentions to assist you to uphold the conditions of parole. The psychiatrist also indicated that the main issue linked to a breach of parole conditions was the matter of a possible relapse into drugs or alcohol. The Board was not insisting on the program as such but there was no evidence that you have yet addressed the assessed needs in custody. The Board therefore returned to the absence of viable relapse and release plans. Should these have been in place there would have been a better argument for participation in the program or addressing the risks and needs in some other manner in the community.
3. The Board was very concerned that it had strong evidence that your release plan to NSW was not practical. In your submission you had indicated how supportive your release back to NSW would be. Once it was made known to you that the NSW authorities had indicated that should you be released on parole they would not register your parole order there, you attempted to made [sic] arrangements for a residence in Queensland. However, the Board had no concrete, sustainable release plan before it when it considered your application. As such the support which would assist you to comply with the conditions of parole and avoid the risks and triggers associated with your previous offending was not in place.

The Board considered that its primary obligation remains the protection of the community and, despite taking all matters in favour of granting your application into account, it considered you may not be an acceptable risk to the community if released to parole at this time and refused your application.

Dated this thirty-first day of August 2007.

J Dwyer
Secretary”

Grounds for review – irrelevant considerations

[33] The applicant says the respondent took into account two irrelevant considerations:

- that the applicant had been waitlisted for the "Making Choices" program; and
- the informal indication from the relevant New South Wales authority that it was not prepared to accept an application for transfer of the applicant's parole to New South Wales.

Waitlisted for program

[34] The "Making Choices" program is one of a number offered from time to time within the prison system to assist prisoners to overcome problems or to assist them with dealing with their imminent release. The applicant points to a number of authorities which have considered the relevance of rehabilitation courses. The principles to be applied in a similar situation (that of a refusal to grant remissions of sentences) to this were considered by Chesterman J in *Weribone v Chief Executive, Department of Corrective Services* [2007] QSC 129 at [25]-[28].

> "[25] Prisoners such as the applicant, who for no discernibly intelligible reason decline to admit their guilt of a serious sexual offence, and thereby preclude themselves from undertaking a program designed to address any propensity for further such offences in the future, pose a particular problem for those charged with the decision whether to release them on parole or by way of remissions. The law though, is clear. As Dutney J pointed out in *Batts v Department of Corrective Services* [2002] QSC 206:
>
> > 'To refuse to grant remissions solely on the basis that there has been no admission of guilt or a failure to undertake a particular course is an entirely improper exercise of the relevant power. See *Yeo v Queensland Corrective Services Commission*; *Felton v The Queensland Corrective Services Commission*; and *Wiskar v Queensland Corrective Services Commission*. A refusal on this basis is unacceptable because if fails to consider, in the case of the particular applicant, whether or not he is, in terms of s 75(2)(a) an unacceptable risk to the community. Rather, it focuses narrowly on two factors which may or may not in the particular case bear upon the relevant question of whether the applicant poses an unacceptable risk. It is, of course, true that any decision to release an offender carries with it some risk of re-offending. To be unacceptable the risk to the community must go beyond the ordinary risk attendant upon any unsupervised release.'
>
> [26] An application for judicial review was allowed in *Webster v Queensland Corrective Services Commission* (5120 of 1998) because, as White J said:

> 'The conclusion seems plain that the delegate decided that the applicant, a sexual offender of no unusual sort, constituted a risk of re-offending because he would not admit his guilt and address his behaviour. That constituted a failure to exercise the delegated discretion according to law in not considering the real merits of the case.'

[27] Dowsett J pointed out in *Yeo*:

> 'It is clear that what must be considered are the circumstances in which the denial has been made, and it must be considered against the applicant's background and conduct. To focus narrowly on his refusal to acknowledge guilt, accompanied by the consequence that he has not undergone a relevant program would, in my view, be an inappropriate approach because of its over-simplification of the complexities involved in the situation.'

[28] Counsel for the respondent in his careful submission pointed out that the court should not be too astute to find an error in the delegate's reasons when a fair reading would show that he had taken into account all relevant factors and not 'focused narrowly' on the failure to undertake the Sex Offenders' Treatment Program. Reliance was put upon *Minister for Immigration and Ethnic Affairs v Wuu Shan Liang* (1996) 185 CLR 259 at 272 per Brennan CJ, Toohey, McHugh and Gummow JJ:

> '… the reasons of an administrative decision-maker are meant to inform and not be scrutinised upon overzealous judicial review by seeking to discern whether some inadequacy may be gleaned from the way in which the reasons are expressed.'

Their Honours approved the remark in *Collector of Customs v Pozzolanic* (1993) 43 FCR 280 at 287:

> 'The reasons for the decision under review are not to be construed minutely and finely with an eye keenly attuned to the perception of error.'"

[35] Mr Fenton, for the applicant, also directed my attention to the decision of Philippides J in *Petrie v Queensland Community Corrections Board* [2006] QSC 188 as authority for the propositions that:

- it is an error to conclude that a prisoner is not an acceptable risk to the community because he has failed to complete a course that has never been offered to him; and
- if a parole board wishes to take into account the fact that a prisoner has not completed a recommended treatment program, the parole board must take into account the reason for the recommendation.

[36] In her conclusions, her Honour said, at [29]:

> "…the respondent in refusing the application for [parole] had regard to considerations which were irrelevant to the exercise of its power,

> namely their views as to the expectation of the community and the sentencing judge, failed to consider relevant considerations, including how matters not before the sentencing judge affected the applicant's suitability for release in terms of the safety of the community, the actual assessment for the [rehabilitation program] and whether given that assessment the applicant represented a risk to the community without undergoing the [rehabilitation program] so as to be unsuitable for [parole]."

[37] Philippides J found that the Board had fallen into error by its apparent reference to the "generally beneficial purposes of such programs" without having considered properly the treatment needs of the applicant and whether, as such, he was rendered unsuitable for release without undergoing such a program. (See [25])

[38] The respondent in this case has, in my view, properly assessed the role to be played by the "Making Choices" program. As the Board noted in paragraph 2 of its reasons for decision:

> "The Board made enquiries as to the availability of this program and your suitability for it. It appreciated that you have indicated that you are willing to do the program and that you suggested that it may be available in the community. The psychologist counselled that it would be safer that you address the issues he had highlighted in custody as you had returned to alcohol abuse when last on parole. In considering the matter of the program, the Board appreciated that there may be a delay in being able to access it in custody but weighted [sic] this up against your breach of parole previously and that you have nothing in place over and above your good intentions to assist you to uphold the conditions of parole. The psychiatrist also indicated that the main issue linked to a breach of parole conditions was the matter of a possible relapse into drugs or alcohol. The Board was not insisting on the program as such but there was no evidence that you have yet addressed the assessed needs in custody. The Board therefore returned to the absence of viable relapse and release plans."

[39] It is clear that the Board, while taking into account the "Making Choices" program took it into account as part of its general consideration of the capacity of the applicant to constitute an acceptable risk.

[40] The Board, in its reasons, did not conclude that the applicant was an unacceptable risk to the community *merely* because the applicant had not completed the relevant course. In the circumstances of this case, and in the light of the psychologist's report, whether or not the applicant had undertaken such a course was a relevant consideration. The Board acknowledged that there would be a delay in the applicant being able to undertake such a course but, as they were entitled to do, weighed that against the other considerations which they took into account.

Information from the New South Wales authority

[41] In a letter from the New South Wales Corrective Services to the Queensland Community Corrections Board of 23 November 2006, the Registrar of Transferred Parole Orders (New South Wales) set out the following with respect to the applicant:

> "An application to transfer the above named parole order to New South Wales upon release and reside at 4/27 Nicholson Street Woonona was submitted earlier this year. The transfer was declined by the Commissioner, New South Wales Department of Corrective Services on 3 March 2006 due to the proposed accommodation being assessed as unsuitable.
>
> In October 2006 a further application to transfer was received by my Branch and a home visit and assessment was conducted at the same address as nominated in the previous application.
>
> As the address at 4/27 Nicholson Street Woonona has again been assessed as unsuitable the request to transfer cannot proceed."

[42] At the time of that letter the applicant was not on parole and, therefore, there was nothing which could be transferred. There is legislation in New South Wales and, it appears, in other States, which allows for parole orders to be transferred between States. This allows, for example, persons on parole to be able to live close to their family or in a position where they are more likely to obtain employment. No formal application had been made to the New South Wales Department of Corrective Services but I was informed that there is an informal process which takes place when an application for parole is made. If the application for parole contains an indication that the applicant for parole proposes to reside interstate then an informal inquiry is made and information of the type set out above is provided by the counterpart State body. The practical sense of doing this is obvious. It allows a body such as the respondent to have before it relevant information as to the practicality of an applicant's proposal.

[43] The applicant attacks the reliance by the respondent on this letter and the alleged failure by the respondent to consider whether there could be sufficient supervision of the applicant in the absence of registration of the parole order in New South Wales. Mr Fenton said that the statement contained within the letter was wrong in law and was a nullity.

[44] It was then contended for the applicant that the error of the respondent was compounded by its failure to consider a relevant part of the CS Act, namely s 212. That section provides:

> "**Travelling interstate while released on parole**
>
> (1) The chief executive may, by written order, grant leave to a prisoner who is released on parole to travel interstate for a period of not more than 7 days.
> (2) However, if the prisoner is subject to a court ordered parole order, the period of leave may be more than 7 days.
> (3) The parole board that released a prisoner on parole may, by written order, grant leave to the prisoner to travel interstate for a period of more than 7 days.
> (4) Leave granted under this section is subject to the conditions the entity granting the leave decides."

[45] It was submitted for the applicant that this section allows a parole board to grant leave to a prisoner on parole to move interstate. That is a misreading of the section. The section allows for a prisoner on parole to travel interstate for certain periods

with the leave of certain bodies. For example, s 212(1) allows the Chief Executive to grant leave for a prisoner on parole to travel interstate for a period of not more than seven days. That period may be longer than that if the prisoner is subject to a court ordered parole order: see s 212(2). A prisoner may be allowed to travel interstate for a period of more than seven days if the Parole Board grants leave by way of written order – s 212(3). The use of the word "travel" combined with the nominated period of "7 days" (or more in particular circumstances) leads me to the conclusion that the purpose of this section is to allow a prisoner on parole to leave the State but return within an identified period. It is not intended to allow a prisoner to leave the State and reside elsewhere.

[46] The Board was entitled to consider the material it had before it with respect to the suitability of the place at which the applicant proposed to reside if granted parole. This was closely related to the applicant's proposal for post-release living. As it said in its reasons:

> "The Board was very concerned that it had strong evidence that your release plan to NSW was not practical. In your submission you had indicated how supportive your release back to NSW would be. Once it was made known to you that the NSW authorities had indicated that should you be released on parole they would not register your parole order there, you attempted to made arrangements for a residence in Queensland. However, the Board had no concrete, sustainable release plan before it when it considered your application. As such the support which would assist you to comply with the conditions of parole and avoid the risks and triggers associated with your previous offending was not in place."

[47] This consideration seems to me to be entirely appropriate and, notwithstanding the informality of the indication from the New South Wales authority, it was a relevant consideration.

Failure to observe procedures

[48] On this ground the applicant's argument proceeds on these lines:

- section 193(4)(a) of the CS Act provides:
  "(4) If the parole board refuses to grant the application, the board must –
  (a) give the prisoner written reasons for the refusal;…";
- section 27B of the *Acts Interpretation Act* 1954 provides:
  "Content of statement of reasons for decision
  If an Act requires a tribunal, authority, body or person making a decision to give written reasons for the decision (whether the expression 'reasons', 'grounds' or another expression is used), the instrument giving the reasons must also -
  (a) set out the findings on material questions of fact; and
  (b) refer to the evidence or other material on which those findings were based.";
- the respondent's letter of 30 July 2007 declining the application for parole does not comply with s 27B of the *Acts Interpretation Act*. Therefore, the decision of 6 July 2007 referred to in that letter is a nullity because procedures required by law have not been observed.

[49] A failure to comply with s 193(4)(a) cannot, of itself, render an otherwise valid decision, invalid. At most, it makes the decision-maker susceptible to a request for a statement of reasons under the *Judicial Review Act.* The *Judicial Review Act,* in s 32, allows a person to request a statement of reasons. That was done in this case and a statement of reasons was provided in the document dated 31 August 2007. The applicant concedes, properly, that the statement of reasons given on 31 August 2007 does comply with the requirements of the *Acts Interpretation Act* in the sense set out above. The argument that the decision of 6 July 2007 must be a nullity because a letter relating the fact of that decision does not comply with s 27B of the *Acts Interpretation Act* cannot, in light of the provisions of the *Judicial Review Act*, be correct. Mr Fenton, though, went further and said that it was open to quash the decision on the basis that it took two months for the process of obtaining the statement of reasons, that meant that his client was in jail for two months during that period of time and that the applicant can "never recover the loss of that liberty". That argument has no basis in law and assumes error on the part of the respondent.

Failure to take into a relevant consideration

[50] The applicant argued that the respondent failed by not considering the whole of the relevant background of the nature and circumstances of the offences committed by the applicant including the sentencing remarks of the trial judge. It was contended that the respondent was bound to look at the sentencing remarks and the facts and circumstances regarding the offences for which the applicant was incarcerated.

[51] I do not need to consider whether the respondent was required to take into account all the circumstances of the offences and the sentencing remarks of the trial judge. It is clear from the reasons given on 31 August 2007 that the respondent had disclosed to the applicant that it had taken into account, in the statement of reasons dated 6 July 2006, the sentencing remarks of Judge Wall QC and that those reasons from July 2006 were before it in its decision-making conducted in 2007.

Order

[52] The applicant has been unsuccessful in establishing in any of the grounds advanced for review of the respondent's decision. It follows that the application for statutory order of review should be dismissed. Costs should follow the event, but I invite the parties to make submissions on costs, before any order is made.