SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v Newman* [2018] QSC 156
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **BRENTON JAMES NEWMAN** (respondent)
FILE NO:	No 6241 of 2018
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED ON:	6 July 2018
DELIVERED AT:	Brisbane
HEARING DATE:	3 July 2018
JUDGE:	Davis J

ORDER:

1. The application to adjourn the hearing under s 8 of the Dangerous Prisoners (Sexual Offenders) Act 2003 ("the Act") is refused.

2. Being satisfied that there are reasonable grounds for believing that the respondent, Brenton James Newman, is a serious danger to the community in the absence of an Order pursuant to Division 3 of the Act, I order that:

(i) The application for a Division 3 Order be set for final hearing on 3 December 2018.

(ii) Pursuant to s 8(2)(a) of the Act, the respondent undergo examinations by two psychiatrists named by the Court, being Dr Scott Harden and Dr Josephine Sundin, who are to prepare independent reports, which are to be prepared in accordance with s 11 of the Act.

(iii) Being satisfied that it is in the interests of jusice, pursuant to s 39PB(3) of the Evidence Act 1977, the Court directs that Dr Michael Beech, Dr Scott Harden and Dr Josephine Sundin may give oral evidence to the Court other than by audio visual link or audio

link.

(iv) Liberty to apply is granted.

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) will preclude the respondent from making a parole application after the making of preliminary orders – whether preliminary orders can be made if the respondent is on parole – whether the making of preliminary orders should be adjourned to allow the respondent to apply for parole

Corrective Services Act 2006 (Qld) sch

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld) s 2, s 5, s 8, s 13, s 51

Johnston v The Central and Northern Queensland Regional Parole Board [2018] QSC 54, cited
Kynuna v Attorney-General (Qld) [2016] QCA 172, cited
Maycock v Queensland Parole Board [2015] 1 Qd R 408, cited
Minister for Immigration and Citizenship v SZJSS (2010) 243 CLR 164, cited
R v Newman (2007) 172 A Crim R 171, cited
Riddell v Secretary, Department of Social Security (1993) 42 FCR 443, cited
Smoker v Pharmacy Restructuring Authority (1994) 53 FCR 287, cited
Turnbull v Attorney-General (Qld) [2015] QCA 54, cited

COUNSEL: Mr J Tate for the applicant
Ms S Robb for the respondent

SOLICITORS: G R Cooper, Crown Solicitor for the applicant
Legal Aid Queensland for the respondent

[1] The respondent, who is now 29 years of age, is presently in custody serving sentences imposed upon him in the District Court at Townsville on 5 March 2007. Those sentences included one of 13 years' imprisonment for an offence of rape. That offence was declared a serious violent offence.[1] An application for leave to appeal that and other related sentences was refused.[2]

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[1] Affidavit of Stephanie Nicole Hunter, filed 14 June 2018, CFI 3, ex SNH-1 at 1–2, ex SNH-5 at 31–4.

[2] *R v Newman* (2007) 172 A Crim R 171.

[2] The Attorney-General (the applicant) has made application under s 5 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (*DPSOA*) for orders under s 8 (preliminary hearing) and s 13 (final orders). The application for orders under s 8 came before me.

[3] By s 8 of the *DPSOA*, if there are "reasonable grounds for believing the prisoner is a serious danger to the community in the absence of a Division 3 order[3] the court must set a date for the hearing of the application for a Division 3 order".[4]

[4] Section 13(2) defines "serious danger to the community" as:

> "A prisoner is a serious danger to the community as mentioned in subsection (1) if there is an unacceptable risk that the prisoner will commit a serous sexual offence –
>
> (a) if the prisoner is released from custody; or
>
> (b) if the prisoner is released from custody without a supervision order being made."

[5] While s 13(2) defines "serious danger to the community" with reference to s 13(1), the definition in s 13(2) applies consistently throughout the *DPSOA*.[5]

[6] A "serious sexual offence" is one defined as:

> "***serious sexual offence*** means an offence of a sexual nature, whether committed in Queensland or outside Queensland –
>
> (a) involving violence; or
>
> (b) against a child; or
>
> (c) against a person, including a fictitious person represented to the prisoner as a real person, whom the prisoner believed to be a child under the age of 16 years."[6]

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[3] A continuing detention order or a supervision order: s 13.

[4] And also may make an order that the respondent undergo psychiatric examination.

[5] See the consideration of a slightly different issue in *Kynuna v Attorney-General (Qld)* [2016] QCA 172 at [60] and *Turnbull v Attorney-General (Qld)* [2015] QCA 54 at [36].

[6] Schedule to *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld).

[7] During argument, Ms Robb for the respondent conceded that the evidence demonstrated that there are, within the meaning of s 8, "reasonable grounds for believing the [respondent] is a serious danger to the community in the absence" of a supervision order.[7] Ms Robb did not concede, and it is not suggested by the medical evidence before me, that the respondent ought arguably be subject to a continuing detention order. What the medical evidence shows is that the respondent is a serious risk to the community if released unsupervised. However, the doctors opine that parole may constitute appropriate supervision.[8] The respondent made an application for parole in 2016 which was denied, but a second application for parole is to be heard by the Parole Board on 20 July 2018. By s 51 of the *DPSOA*, once an order is made under s 8, a prisoner becomes ineligible for parole. Ms Robb applies to adjourn the s 8 hearing until some time after 20 July 2018 when the parole application is to be determined. Ms Robb's concession then, when properly understood, is:

(i) There are reasonable grounds for believing that the respondent is a serious danger to the community if released without some supervision;

(ii) If an adjournment of this application is not granted and therefore parole cannot be granted, it is conceded that there are reasonable grounds for believing that he is serious danger to the community in the absence of a supervision order.

[8] Ms Robb's concession was not, of course, that a supervision order ought be made on the final hearing.

[9] Mr Tate for the applicant resists the adjournment. He does so on three bases. Firstly, he submits that on a proper construction of the *DPSOA*, if the respondent is released on parole, then the applicant's opportunity to secure orders under s 8 and Division 3 is lost. This is because, Mr Tate submits, a s 8 order or Division 3 order can only be made against a prisoner who is in actual custody. Secondly, he submits that, as a matter of discretion, now that the applicant has made an application under s 5 for orders under s 8 and Division 3, it is inappropriate to adjourn the application to facilitate the parole application. Thirdly, and

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7 Transcript of the hearing at 1-19.

8 Affidavit of Dr Michael Beech, filed 14 June 2018, CFI 2, ex MJB-2 at 19; Report of Dr Gavin Palk at 21: Affidavit of Menaka Wickramasinghe, filed 14 June 2018, CFI 14, ex MW-1 at 41.

perhaps as part of his second submission, he submits that the parole application is unlikely to be successful in any event.

The proper construction of the *DPSOA*

[10] Section 5 of the *DPSOA* provides as follows:

> "**5 Attorney-General may apply for orders**
>
> (1) The Attorney-General may apply to the court for an order or orders under section 8 and a division 3 order in relation to a prisoner.
>
> (2) The application must –
>
> (a) state the orders sought; and
>
> (b) be accompanied by any affidavits to be relied on by the Attorney-General for the purpose of seeking an order or orders under section 8; and
>
> (c) be made during the last 6 months of the prisoner's period of imprisonment.
>
> (3) On the filing of the application, the registrar must record a return date for the matter to come before the court for a hearing (preliminary hearing) to decide whether the court is satisfied that there are reasonable grounds for believing the prisoner is a serious danger to the community in the absence of a division 3 order.
>
> (4) The return date for the preliminary hearing must be within 28 business days after the filing.
>
> (5) A copy of the application and any affidavit to be relied on by the Attorney-General must be given to the prisoner within 2 business days after the filing.
>
> (6) In this section –
>
> ***prisoner*** means a prisoner detained in custody who is serving a period of imprisonment for a serious sexual offence, or serving a period of imprisonment that includes a term of imprisonment for a serous sexual offence, whether the person was sentenced to the term or period of imprisonment before or after the commencement of this section."

[11] It can be seen that s 5 contemplates a single application being filed by the Attorney-General which may lead to orders both under s 8 (preliminary hearing) and Division 3[9] (final orders). Therefore, that means that the application filed by the Attorney-General will necessitate at least one, if not two, hearings, depending on the outcome of the preliminary hearing contemplated by s 8. Before turning to s 8, it should be noted that the definition of "prisoner" in s 5(6) is specifically expressed to be a definition for s 5.

[12] Section 8 provides as follows:

> "**8 Preliminary hearing**
>
> (1) If the court is satisfied there are reasonable grounds for believing the prisoner is a serious danger to the community in the absence of a division 3 order, the court must set a date for the hearing of the application for a division 3 order.
>
> (2) If the court is satisfied as required under subsection (1), it may make –
>
> (a) an order that the prisoner undergo examinations by 2 psychiatrists named by the court who are to prepare independent reports; and
>
> (b) if the court is satisfied the application may not be finally decided until after the prisoner's release day –
>
> (i) an order that the prisoner's release from custody be supervised; or
>
> (ii) an order that the prisoner be detained in custody for the period stated in the order."

[13] Section 8 refers to "the prisoner". That term as used in s 8 is not as defined in s 5(6). For sections other than s 5, the term "prisoner" is defined in the Schedule. That definition is:

> "***prisoner*** means a prisoner within the meaning of the *Corrective Services Act 2006*."

[14] The *Corrective Services Act* 2006 defines "prisoner" as:

> "***prisoner—***
>
> 1 Prisoner

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[9] A reference to Division 3 of Part 2.

(a) means a person who is in the chief executive's custody, including a person who is released on parole; and

(b) for chapter 5, part 1, includes a classified patient under the *Mental Health Act 2016* who is serving a period of imprisonment.

2 However, a prisoner does not include a person who is released on parole, or a supervised dangerous prisoner (sexual offender), for the following provisions—

- sections 12 to 24, 28 to 40 and 43
- chapter 2, part 2, divisions 4 to 9A
- chapter 3, parts 1 and 2
- chapter 4, parts 2 and 4
- chapter 6, parts 5, 6 and 11

3 Also, prisoner does not include a detained dangerous prisoner (sexual offender) for the following provisions—

- chapter 2, part 2, division 8, subdivision 2
- chapter 2, part 2, division 10 or 11
- chapter 5."

[15] It is unnecessary to descend into an examination of the various sections of the *Corrective Services Act* 2006 referred to in the definition of "prisoner". Suffice to say that, for present purposes, a "prisoner" for that definition includes a prisoner who is on parole.

[16] Mr Tate's submission was that, construing the *DPSOA* as a whole, I would conclude that the legislative intention was that, despite the definition of "prisoner" in the *Corrective Services Act* 2006,[10] prisoners who may be the subject of a s 8 order or a Division 3 order were ones who were "detained", not prisoners who were on parole. In particular, he says this is shown by the sections which refer to prisoners being "released" on supervision. A prisoner could not be "released" if the prisoner is already on parole so, Mr Tate submits, a prisoner must be a prisoner "detained" to be the subject of a s 8 or Division 3 order. It follows, so he submits, that if the respondent was released on parole, no s 8 or Division 3 order could be made against him.

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[10] The definition is adopted for the purposes of ss 8 and 13 by s 2 and the Schedule.

[17] Mr Tate referred, in support of this submission, to ss 9A and 43A of *DPSOA*. They are in these terms:[11]

> "**9A Court may adjourn hearing for division 3 order**
>
> (1) The court may, on application or on its own initiative, adjourn the hearing of an application for a division 3 order.
>
> (2) If the court adjourns the hearing of the application and is satisfied the application may not be finally decided until after the prisoner's release day, the court may make an order—
>
> (a) that the prisoner's release from custody be supervised; or
>
> (b) that the prisoner be detained in custody for the period stated in the order."
>
> "**43A Persons who remain prisoners for particular purposes**
>
> (1) This section provides for the application of this Act to a person.
>
> (2) A person who is subject to a continuing detention order or interim detention order remains a prisoner.
>
> (3) A person who is subject to a supervision order or interim supervision order remains a prisoner for the purposes of any relevant application, appeal or rehearing.
>
> (4) A person who is released from custody, without an interim supervision order having being made, after the court sets a date for the hearing of an application for a division 3 order relating to the person remains a prisoner for the purposes of the application.
>
> (5) A person who is released from custody, without an interim supervision order having being made, after the Court of Appeal makes an order under section 43(2)(d) relating to the person remains a prisoner for the purposes of the rehearing.
>
> (6) A person who is released from custody after the hearing of any application under this Act, without an interim supervision order having being made, remains a prisoner for the purposes of any appeal against the decision and for any subsequent appeal."

[18] Mr Tate's submission must be rejected. True it is that some provisions of *DPSOA* seem to assume that a prisoner the subject of orders made will be a prisoner detained in custody. That

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[11] Mr Tate also referred to ss 6 and 7 of the *Corrective Services Act* 2006 (Qld).

will usually, in practice, be the case. The interaction of various provisions of Part 2[12] is, though, quite clear.

[19] As already observed, by s 5, the Attorney-General only files one application and that application leads both to a preliminary hearing under s 8, and if that preliminary hearing is resolved favourably to the Attorney-General, a hearing under s 13 for final orders. Section 5 prescribes the circumstances in which an application can be made by the Attorney-General. The application can only be made against a "prisoner" and by force of s 5(6), the "prisoner" is a "prisoner detained in custody who is serving a period of imprisonment for a serious sexual offence." A prisoner who is on parole is not "a prisoner detained in custody who is serving a term of imprisonment for a serious sexual offence".[13] The prisoner is one who is not "detained in custody" but is one "serving a term of imprisonment for a serious sexual offence", in the community on parole. It follows then that there is no power for the Attorney-General to file an application against a prisoner who has been granted parole.

[20] Section 8 fulfils a different function to s 5. While s 5 vests a right in the Attorney-General to file an application in certain circumstances, s 8 vests jurisdiction upon the Court to make orders. Those orders may be made in relation to a "prisoner". The "prisoner" against whom orders may be made under s 8 is not only "a prisoner detained in custody". By force of the definition of "prisoner" in the Schedule to the *DPSOA* which picks up the definition of "prisoner" in the *Corrective Services Act* 2006, the Court's jurisdiction includes the power to make an order against a prisoner on parole.

[21] Section 13 then provides as follows:

> "**13 Division 3 orders**
>
> (1) This section applies if, on the hearing of an application for a division 3 order, the court is satisfied the prisoner is a serious danger to the community in the absence of a division 3 order (a ***serious danger to the community***).
>
> (2) A prisoner is a serious danger to the community as mentioned in subsection (1) if there is an unacceptable risk that the prisoner will commit a serious sexual offence –

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[12] In which ss 5 to 25, relevantly and in particular ss 5, 8 and 13, are contained.

[13] Emphasis added.

(a) if the prisoner is released from custody; or

(b) if the prisoner is released from custody without a supervision order being made.

(3) On hearing the application, the court may decide that it is satisfied as required under subsection (1) only if it is satisfied –

(a) by acceptable, cogent evidence; and

(b) to a high degree of probability;

that the evidence is of sufficient weight to justify the decision.

(3) In deciding whether a prisoner is a serious danger to the community as mentioned in subsection (1), the court must have regard to the following –

(aa) any report produced under section 8A;

(a) the reports prepared by the psychiatrists under section 11 and the extent to which the prisoner cooperated in the examinations by the psychiatrists;

(b) any other medical, psychiatric, psychological or other assessment relating to the prisoner;

(c) information indicating whether or not there is a propensity on the part of the prisoner to commit serious sexual offence sin the future;

(d) whether or not there is any pattern of offending behaviour on the part of the prisoner;

(e) efforts by the prisoner to address the cause or causes of the prisoner's offending behaviour, including whether the prisoner participated in rehabilitation programs;

(f) whether or not the prisoner's participation in rehabilitation programs has had a positive effect on the prisoner;

(g) the prisoner's antecedents and criminal history;

(h) the risk that the prisoner will commit another serious sexual offence if released into the community;

(i) the need to protect members of the community from that risk;

(j) any other relevant matter.

(5) If the court is satisfied as required under subsection (1), the court may order –

(a) that the prisoner be detained in custody for an indefinite term for control, care or treatment (***continuing detention order***); or

(b) that the prisoner be released from custody subject to the requirements it considers appropriate that are stated in the order (***supervision order***).

(6) In deciding whether to make an order under subsection (5)(a) or (b) –

(a) the paramount consideration is to be the need to ensure adequate protection of the community; and

(b) the court must consider whether –

(i) adequate protection of the community can be reasonably and practicably managed by a supervision order; and

(ii) requirement sunder section 16 can be reasonably and practicably managed by corrective services officers.

(7) The Attorney-General has the onus of proving that a prisoner is a serious danger to the community as mentioned in subsection (1)."

[22] The term "prisoner" in s 13 bears the same meaning as the term "prisoner" in s 8.

[23] Consequently, the Attorney-General may only file an application against a prisoner "detained in custody". However, if, after the filing of the application, the prisoner is released on parole, the Court retains jurisdiction to make both s 8 and s 13 orders.

Discretionary consideration on the application for adjournment

Prospects of the parole application being successful

[24] Mr Tate submitted that the application for parole was unlikely to be successful. Ms Robb on the other hand submitted that the application for parole was a strong one from the point of view of the present respondent. The invitation by both parties for me to assess the likely outcome of the exercise of executive power by the Parole Board is not attractive. However, a matter of construction of the *Corrective Services Act* 2006 and the ministerial guidelines made thereunder has arisen which I ought to deal with.

[25] The ministerial guidelines concern the performance of the Parole Board's functions. They were issued pursuant to s 242E of the *Corrective Services Act* 2006. Section 242E provides as follows:

> "**242E Guidelines**
>
> The Minister may make guidelines about policies to help the parole board in performing its functions."

[26] In considering the exercise of an executive power, the status of guidelines relevant to that function is critical. Often, the guidelines themselves have no statutory force and have just been developed as an aid to the decision-maker. In those circumstances, complaint is often made that adherence to the guidelines improperly fetters the discretion of the decision-maker.[14] However, guidelines may have a statutory force such that they must be followed by the decision-maker and therefore act as a valid fetter to a discretion.[15] Ministerial guidelines promulgated pursuant to the now repealed s 227 of the *Corrective Services Act* 2006 were guidelines that were required to be followed.[16] Section 227(1) was in the following terms:

> "**227 Guidelines**
>
> (1) The Minister may make guidelines about the policy <u>to be followed</u> by the Queensland board when performing its functions." (emphasis added)

[27] Section 242E, the section which now authorises the making of ministerial guidelines, perhaps does not mandate that the Parole Board follow the guidelines in the way s 227 operated. It is not necessary to decide that issue.

[28] Nevertheless, it is necessary to refer to two sections of the ministerial guidelines, being section 1 and section 2. Those sections are as follows:

> "**<u>SECTION 1 – GUIDING PRINCIPLES FOR PAROLE BOARD QUEENSLAND</u>**

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[14] *Minister for Immigration and Citizenship v SZJSS* (2010) 243 CLR 164; *Riddell v Secretary, Department of Social Security* (1993) 42 FCR 443.

[15] *Smoker v Pharmacy Restructuring Authority* (1994) 53 FCR 287.

[16] *Maycock v Queensland Parole Board* [2015] 1 Qd R 408; *Johnston v The Central and Northern Queensland Regional Parole Board* [2018] QSC 54.

1.1 Under section 242E of the *Corrective Services Act 2006* (the Act) the Minister may make guidelines about policies to assist Parole Board Queensland in performing its functions. In following these guidelines, care should be taken to ensure that decisions are made with regard to the merits of the particular prisoner's case.

1.2 When considering whether a prisoner should be granted a parole order, the highest priority for Parole Board Queensland should always be the safety of the community.

1.3 As noted by Mr Walter Sofronoff QC[17] in the Queensland Parole System Review '*the only purpose of parole is to reintegrate a prisoner into the community before the end of a prison sentence to decrease the chance that the prisoner will ever reoffend. The only rationale for parole is to keep the community safe from crime*'. With due regard to this, Parole Board Queensland should consider whether there is an unacceptable risk to the community if the prisoner is released to parole; and whether the risk to the community would be greater if the prisoner does not spend a period of time on parole under supervision prior to the fulltime completion of their prison sentence.

SECTION 2 – SUITABILITY

2.1 When deciding the level of risk that a prisoner may pose to the community, Parole Board Queensland should have regard to all relevant factors, including but not limited to, the following –

a) the prisoner's criminal history and any patterns of offending;

b) the likelihood of the prisoner committing further offences;

c) whether there are any other circumstances that are likely to increase the risk the prisoner presents to the community (including any of the factors set out in section 5.1 of these guidelines);[18]

d) whether the prisoner has been convicted of a serious sexual offence or serious violent offence or any of the offences listed in section 234(7) of the Act;

e) the recommendation for parole, parole eligibility date, or any recommendation or comments of the sentencing court;

f) the prisoner's cooperation with the authorities both in securing the conviction of others and preservation of good order within prison;

g) any medical, psychological, behavioural or risk assessment report relevant to the prisoner's application for parole;

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[17] As the President of the Court of Appeal then was.

[18] Section 5.1 concerns parole orders and conditions.

h) any submissions made to Parole Board Queensland by an eligible person registered on the Queensland Corrective Services (QCS) Victims Register;

i) the prisoner's compliance with any other previous grant of parole or leave of absence;

j) whether the prisoner has access to supports or services that may reduce the risk the prisoner presents to the community; and

k) recommended rehabilitation programs or interventions and the prisoner's progress in addressing the recommendations.

2.2 A prisoner is not eligible for parole if under section 8(1) of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (DPSOA), a court has set down a hearing of an application for a Division 3 Order in relation to the prisoner and the application has not been discontinued or finally decided.

2.3 For serious sexual offenders who are not subject to a DPSOA application at the time of applying for parole, Parole Board Queensland should consider the likelihood of an application being sought in the future, prior to making a decision to grant parole. It is recommended Parole Board Queensland apply the same criteria used by the Attorney-General in these instances."

[29] In section 1 of the guidelines, there is recognition that the safety of the community is the paramount consideration. That also of course is the policy of the *DPSOA*.[19] The Court is empowered under the *DPSOA* to make orders far more restrictive upon the prisoner than is the Parole Board. The Parole Board may order release on conditions which have force only until expiry of the term of imprisonment the subject of a parole order. Division 3 orders under the *DPSOA* can involve detention of the prisoner after expiry of the term being served, and supervision orders well beyond the time a prisoner might otherwise be on parole.[20] In short, *DPSOA* orders are made where a stronger response is necessary than release on supervision until the expiry of the term of imprisonment.

[30] Against that background, are ministerial guidelines 2.2 and 2.3. Guideline 2.2 reflects s 51 of the *DPSOA*. That is in these terms:

"**51 Parole**

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[19] For example, see ss 3, 13(6), 16 and 22.

[20] Sections 13A and 14.

> A prisoner is not eligible for parole under the *Corrective Services Act 2006* or the *Penalties and Sentences Act 1992* and can not be issued a parole order under those Acts if –
>
> (a) under section 8(1), the court has set a date for the hearing of an application for a division 3 order in relation to the prisoner and the application has not been discontinued or finally decided; or
>
> (b) the prisoner is subject to a continuing detention order or interim detention order, whether or not the order has taken effect."

[31] By s 51 of the *DPSOA*, if an order is made on the present application under s 8 then the Parole Board's power to grant parole to the respondent ceases.

[32] Differing submissions, though, were made in relation to guideline 2.3. Ms Robb submits that guideline 2.3 must be read with guideline 2.2. Guideline 2.3, Ms Robb submitted, does not apply to a situation where a *DPSOA* application has been made but a s 8 hearing is pending. She says that guideline 2.3, unlike guideline 2.2, which reflects the prohibition in s 51 of the Act, does not prohibit the Parole Board from acting upon the application for parole. Mr Tate, on the other hand, submits that guideline 2.3 contemplates the situation here where an application has been made and orders are sought.

[33] Clause 2.3, at least on its face, operates in a fairly narrow space. It applies when there is no *DPSOA* application on foot at the time the prisoner applies for parole. The *Corrective Services Act* 2006 (Qld) clearly contemplates that the "application for parole" is a formal step taken by the prisoner before the hearing.[21] The position, though, of a prisoner the subject of an unresolved *DPSOA* application before the hearing and determination of the parole application is not expressly dealt with in the guidelines. However, it must be a relevant consideration to the grant or otherwise of parole that the applicant for parole is the subject of a pending *DPSOA* application. While Ms Robb is correct that, before a s 8 order is made, the Parole Board has the power to grant parole, it must surely be a powerful discretionary consideration against the grant of parole that the Attorney-General has brought an application which is pending.

Should the s 8 hearing be adjourned?

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[21] Sections 180 and 188.

[34] Ms Robb points to various pieces of evidence suggestive of strength in the respondent's application for parole. The psychiatrists place the risk at low-moderate. Both doctors seem supportive of the notion of release on parole. In essence she says that the respondent should be given the opportunity to obtain parole and be released on parole, the inference being that if he performs well on parole he will be shown to be a person who is not "a serious danger to the community in the absence of a division 3 order". She submits that given the opinions of the doctors, it is unfair that the opportunity for parole may be scuttled by the making of a s 8 order.

[35] Any exercise of discretion to adjourn the applicant's application must be considered in the context of both the *DPSOA* and the *Corrective Services Act* 2006. The *DPSOA* operates in circumstances outside the ordinary. It is reserved for prisoners who are "a serious danger to the community" in the absence of the special orders provided for by it.

[36] While the powers of the Parole Board are not actually suspended until a s 8 order is made, the fact of *DPSOA* proceedings being likely is clearly a relevant consideration to a refusal of parole. That is recognised by ministerial guideline 2.3. Similarly, the fact that DPSOA proceedings have commenced and a s 8 hearing is pending is plainly a relevant consideration. Here, the Attorney-General has taken what is obviously the serious step of bringing an application under the *DPSOA*. In the ordinary course that application will proceed and if an order is made under s 8 then the respondent will remain in custody pending determination of the application for orders under Division 3. In that sense the *DPSOA* application is intended to take priority over the processes of the Parole Board. Adjourning the s 8 application for no real reason other than to enable the parole application to proceed simply frustrates the scheme established by the *DPSOA* and the *Corrective Services Act* 2006.

[37] Now that an application under the *DPSOA* has been made it should be allowed to proceed in its ordinary course which will, by force of s 51 of the *DPSOA*, put an end to the parole application.

[38] I refuse the application for an adjournment.

Conclusion/Orders

[39] As already explained, the only real defence to the making of orders under s 8, was to adjourn the application. I find that there are reasonable grounds for believing the respondent is a serious danger to the community in the absence of a Division 3 order. The applicant proposes that the respondent be examined by Dr Scott Harden and Dr Josephine Sundin. No objection is taken by the respondent to the suitability of these two doctors.

[40] I will set 3 December 2018 as the date for hearing of the final application. It is appropriate that the doctors give evidence in person, so I will make orders under s 39PB(3) of the *Evidence Act* 1977 (Qld).

[41] I will make the following orders:

1. The application to adjourn the hearing under s 8 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 ("the Act") is refused.

2. Being satisfied that there are reasonable grounds for believing that the respondent, Brenton James Newman, is a serious danger to the community in the absence of an Order pursuant to Division 3 of the Act, I order that:

   (i) The application for a Division 3 Order be set for final hearing on 3 December 2018.

   (ii) Pursuant to s 8(2)(a) of the Act, the respondent undergo examinations by two psychiatrists named by the Court, being Dr Scott Harden and Dr Josephine Sundin, who are to prepare independent reports, which are to be prepared in accordance with s 11 of the Act.

   (iii) Being satisfied that it is in the interests of jusice, pursuant to s 39PB(3) of the *Evidence Act* 1977, the Court directs that Dr Michael Beech, Dr Scott Harden and Dr Josephine Sundin may give oral evidence to the Court other than by audio visual link or audio link.

   (iv) Liberty to apply is granted.