In the matter of

**TAMA LEWIS**

**(Applicant)**

**SECTION 193 *CORRECTIVE SERVICES ACT 2006***

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| PROCEEDING: | An application for parole |
| DELIVEREDPUBLISHED ON: | 23 September 2021 |
| MEETING DATES: | The Board met to consider the application on 31 August 2021 |
| SENIOR BOARD MEMBERS: | Deputy President Julie Sharp |
| DECISION: | The application for parole is granted and is to commence on 7 September 2021.<br><br>It is considered that the application for a parole order is of considerable public interest, accordingly, reasons are published. |

**Application for a parole order**

[1] A prisoner may apply for a parole order under s.180 of the *Corrective Services Act 2006* ('the Act'). Section 193(1) of the Act further provides that after receiving a prisoner's application for a parole order, Parole Board Queensland ('the Board') must decide to grant the application or refuse to grant the application.

[2] If the Board refuses to grant the application, the Board must give the prisoner written reasons for the refusal and decide the period of time within which a further application for a parole order must not be made without the Board's consent: section 193(1)(5) of the Act.

**Deciding an application for a parole order**

[3] The power of the Board to make decisions to grant or refuse an application for a parole order, including the matters it takes into consideration are not prescribed or limited by the Act, except that s.242E of the Act provides for Ministerial Guidelines to be made:

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

[4] Such Guidelines have been made by the Minister making it clear that the highest priority for the Board should always be the safety of the community. The guiding principles are stated as follows:

> **Section 1 – Guiding Principles for Parole Board Queensland**
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> 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 decision 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.
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> 1.3 As noted by My Walter Sofronoff QC 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*." 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 prisoner sentence.

[5] Regarding consideration of a prisoner's suitability for parole, the Guidelines provide:

**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);

d) whether the prisoner has been convicted of a serious sexual offence or serious violent offence or any of the offences listed in section 324(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 the prison;

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

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.

[6] And further –

5.1 When considering releasing a prisoner to parole, Parole Board Queensland should have regard to all relevant factors, including but not limited to the following –

a) length of time spent in custody during the current period of imprisonment;
b) length of time spent in a low security environment or residential accommodation;
c) any negative institutional behaviour such as assaults and altercations committed against correctional centre staff, and any other behaviour that may pose a risk to the security and good order of a correctional centre or community safety;
d) intelligence information received from State or Commonwealth agencies;
e) length of time spent undertaking a work order or performing community service;
f) any condition of the parole order intended to enhance supervision of the prisoner and compliance with the order;
g) appropriate transitional, residential and release plans; and
h) genuine efforts to undertake available rehabilitation opportunities.

**Relevance of a prisoner's parole eligibility date**

[7] When having regard to a parole eligibility date ordered by the sentencing court, section 192 of the Act provides:

> **192 Parole board not bound by sentencing court's recommendation or parole eligibility date**
>
> When deciding whether to grant a parole order, the parole board is not bound by the recommendation of the sentencing court or the parole eligibility date fixed by the court under the *Penalties and Sentence Act 1992*, part 9, division 3 if the board –
>
> (a) receives information about the prisoner that was not before the court at the time of sentence; and
>
> *Example –*
> *A psychologist's report obtained during the prisoner's period of imprisonment*
>
> (b) after considering the information, considers that the prisoner is not suitable for parole at the time recommended or fixed by the court.

[8] Fixing a parole eligibility date is an important part of a person's sentence. In fixing eligibility for release to parole earlier than the end of the sentence, the sentencing court is able to "*mitigate ... punishment of the prisoner in favour of his (or her) rehabilitation through conditional freedom, when appropriate*", to recognise mitigating factors, including cooperation with authorities and facilitating the course of justice by pleading guilty: *Power v The Queen* (1974 131 CLR 623 at 629, cited in *Williams v Queensland Community Corrections Board* [2001] 1 Qd R 557.

[9] The Court in *Williams* said this, at 567:

> "*(But) in the absence of such information placing the Board in a better position to make a judgment on this question (of the circumstances of the prisoner and his or her prospects of rehabilitation) than the sentencing judge, there is cause to question whether the refusal by the Board to grant parole at or about the time recommended is the result of some error by it which would justify a review of its decision*."

[10] The *Judicial Review Act 1991* ('the JR Act') confers jurisdiction to the Supreme Court of Queensland to determine applications made under the JR Act for a review of a decision of the Board. Such reviews are not reviews of the merits of a decision made by the Board, rather a review of a failure to make a decision, or matters relating to the exercise of the decision-making power such as the application of the rules of natural justice and the proper exercise of the power: see sections 20 and 22 of the JR Act.

**The prisoner's applications for a parole order**

<u>The first application</u>

[11] Tama Lewis, sometimes known as Darren Watson ('the applicant') became eligible for parole on 18 November 2020. On that date, he submitted an application for a parole order ('the first application'). The Board considered the first application on 31 March 2021 and made a preliminary decision not to grant the application.

[12] In arriving at that preliminary view, the Board was guided by the Ministerial Guidelines and took into account factors favourable to the applicant. Those factors included his parole eligibility date, his employment in custody, the completion of a low intensity substance intervention ('LISI') and that he had suitable accommodation available upon release.

[13] The factors which led the Board to the preliminary view that the applicant's risk to the community was unacceptable at that time were, in summary:

- The nature of the applicant's index offending, including serious drug offending and violent offending, including domestic violence;
- The applicant's criminal history which includes similar offending;
- The sentencing remarks of Justice Daubney in the Supreme Court on 1 February 2012, and of Justice Bowskill on 25 May 2018;
- The applicant's conviction by pleas of guilty in the Magistrates Court on 18 November 2020 of domestic violence offences which resulted in a head sentence of nine months imprisonment with a parole eligibility date fixed at 18 November 2020. That offending involved physical violence and verbal threats to the applicant' partner, in front of their young son;
- The applicant's outstanding treatment needs given the applicant's history of substance abuse and the link between that and his offending;
- The applicant's custodial behaviour which was characterised by angry outbursts, including four incidents between June 2020 and December 2020 when he demonstrated an inability to control his anger; and
- A forensic risk assessment report prepared by QCS Specialised Clinical Services date 22 March 2021 which noted significant difficulties with the expression of anger and the high level of intervention required to prevent future acts of high-risk acts of intimate partner violence.

[14] The Board noted the applicant's full-time release date of 26 August 2022 and invited him to make submissions in relation to the Board's preliminary view.

[15] The applicant's submissions were considered by the Board on 5 May 2021. Those submissions included the following information:

- The applicant feels he has matured significantly since his index offending;
- He is willing to undertake relevant treatment and interventions in the community, noting a lengthy period of abstinence;
- Details regarding behavioural incidents, persuading the Board to disregard an incident in August 2020, and taking responsibility for others; and
- Information relating to the current status of the applicant's relationship with the aggrieved in the domestic violence offending.

[16] Notwithstanding some of the positive factors in those submissions, the Board maintained its preliminary view and decided to refuse to grant the application for a parole order.

[17] The applicant sought a review of that decision by way of an application for a statutory order of a review under the JR Act. He contended that the decision of the Board was an improper exercise of the power conferred by the Act in that:

(a) The Board exercised a discretionary power, in accordance with a rule or policy, without regard to the merits of his particular case; and that the Board improperly fettered its discretion by imposing the view that the applicant, on the whole poses a risk, and the Board did not offer any specifics; and
(b) The Board failed to take relevant considerations into account by failing to take into account the effects that the COVID-19 pandemic has had with respect to the availability and delivery of programs; and
(c) The decision was an improper exercise of power because the Board took into account an irrelevant consideration, failed to take into account a relevant consideration, and the exercise of the power was so unreasonable that no reasonable person could have exercised it in that way.

[18] In essence, the applicant argued that the Board did not provide enough detail to support its decision to refuse the application, that the Board did things to prevent him completing various programs and did not properly take into account the problems associated with program delivery in light of COVID-19 restrictions in custody. Further, the applicant complained that the Board did not consider reports of a psychologist who had provided the applicant with treatment.

[19] The application was dismissed. In *Lewis v Parole Board Queensland* [2021] QSC 191, Martin J noted that the Board did not have the power to waitlist a person for a program, or to prevent them from completing one. Further, the Board provided sufficient reasons for the decision and was not in error by failing to take into account material (the psychologist's reports) which were not before it.

The second application

[20] On 18 June 2021, the applicant made the second application for a parole order.

[21] The second application was considered by the Board on 31 August 2021. Since the decision to refuse the first application, the Board was informed that:

- The applicant had consistently engaged with a psychologist;
- There had been an improvement in the applicant's custodial behaviour;
- The applicant had returned two clear drug tests – on 15 June 2021 and 13 August 2021;

- In the recent parole interview, the applicant took full responsibility for his domestic violence offending and did not seek to minimise his conduct;
- The applicant remained employed in custody;
- The applicant retained the support of family and friends and had arrangements in place for external support and employment; and
- The QCS Community Protection Advisory Committee supported the applicant's release to parole with conditions.

[22] In the circumstances, and considering community safety the highest priority, the Board decided to grant the application for a parole order on conditions including:

- The mandatory conditions set out in s.200(1) of the Act;
- A condition requiring the applicant to comply with curfew and monitoring directions given under s.200A of the Act; and
- Conditions the Board considers reasonably necessary to ensure the applicant's good conduct and/or to stop him committing an offence, in accordance with s.200(3) of the Act.

[23] The final category of conditions are bespoke to the prisoner and based on evidence relating to individual risk and needs, and an assessment of how best to ensure community safety. In the applicant's case, the following additional conditions were imposed by the Board:

- You must notify the chief executive within two business days of your being served with any application for a protection order under the Domestic and Family Violence Protection Act 2012;
- You must, upon any release or re-release, not depart or be absent from your place of residence between the hours of 9pm and 5am without the prior approval of a corrective services officer for the first three (3) months, and as otherwise directed by an authorised corrective services officer, in accordance with section 200A of the Corrective Services Act 2006;
- You must attend courses, programs, meetings and counselling at such places and times as directed by an authorised corrective services officer, in particular to address substance use;
- You must not possess or use any weapons within the meaning of the Weapons Act 1990, including firearms, knives and other prescribed weapons whether operable or not;
- You must abstain from alcohol until otherwise issued a direction in relation to alcohol consumption by an authorised corrective services office;

- You must not enter upon or remain upon any hotels, casinos or clubs for the duration of the order without the prior approval of an authorised corrective services officer;
- You must not commit any act of domestic violence;
- You must attend domestic violence counselling and/or programs as directed by an authorised corrective service officer;
- You must comply with the conditions of any Domestic Violence/Protection Order/Safety Order in which you are named as respondent;
- You must notify the chief executive within two business days of the commencement of any intimate relationship;
- You must not in any way, directly or indirectly, contact or communicate with the aggrieved without the prior approval of an authorised corrective services office;
- You must, if directed by an authorised corrective services officer, undergo:

  (a) psychological assessment and/or counselling; and/or

  (b) psychiatric assessment and counselling.
- You must make an appointment with a General Practitioner within 48 hours of your release or as directed by an authorised corrective services officer and, if deemed suitable, obtain a referral to a psychologist/psychiatrist to address your outstanding treatment needs;
- You must nominate a single chemist/pharmacy to attend to your pharmaceutical needs;
- You must disclose details of access you have had to the Internet, including by identifying the device(s) you have used for such access;
- You must do all things necessary (including providing passwords/codes) to allow examination of any electronic device in your possession or to which you have access by an authorised corrective services officer or a member of the Queensland Police Service; and
- You must not in any way directly or indirectly contact or communicate or associate with members or associates of Criminal Organisations (for example, but not limited to, Outlaw Motorcycle Gangs).

[24] The applicant was released to parole on 7 September 2021 and will be supervised by QCS Community Corrections. If there are concerns that the applicant poses an unacceptable risk to the safety of the community (including any particular member of the community) an application can be made by QCS to the Board to amend, suspend or cancel the parole order under the relevant provisions of the Act. An

application by QCS for immediate suspension of a parole order can be made at any time, 24 hours a day, seven days a week, and will be considered by a Prescribed Board Member ('PBM'). The PBM has power under s.208B of the Act to issue a warrant for the arrest of a parolee if necessary.